

# Police Powers and Responsibilities and Other Legislation Amendment Bill 2019

## Explanatory Notes

### Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019.

### Policy objectives and the reasons for them

The main objectives of the Bill are to:

- clarify powers of law enforcement to access information on or through electronic devices so there is no ambiguity as to the scope of information that can be lawfully accessed;
- enhance the operations of the Prostitution Licensing Authority (PLA) and the Weapons Licensing Branch of the Queensland Police Service (QPS); and
- create efficiencies for the QPS in general and increase community safety.

### **Police Powers and Responsibilities Act 2000**

#### Access to information on or through electronic devices

Access information powers, in the *Police Powers and Responsibilities Act 2000* (PPRA), are attached to search warrant and crime scene warrant provisions. The powers permit police to apply for an order from a magistrate or Supreme Court judge that require a person to provide access information (for example a password or encryption code) or any assistance necessary (for example a swipe pattern or fingerprint) to gain access to an electronic device (for example a mobile phone or lap-top computer) so that information on or accessible through the device can be obtained by police.

With the emergence of new technologies and the adaptation of existing technologies, criminal elements and child sex crime perpetrators are using ‘cloud’ services to manage and promote their criminal activities. While the storage of incriminating information on traditional storage mediums, such as: computers; laptops; hard disk drives; and memory sticks is captured under existing laws, the use of cloud services is not clearly outlined within existing legislative definitions. For instance, while in the PPRA, the definition of ‘stored’, implies access to the cloud, the scope of information accessible in cloud services remains unclear.

The ambiguity is due to the term ‘stored’ as it relates to ‘information’ and the absence of a definition for those combined terms. Due to the lack of a definition it is unclear whether access information powers in the PPRA allow police to access password protected information through device applications such as *Facebook* and *Instagram* or email accounts such as *outlook.com* and *gmail.com*. The Bill makes amendments to resolve this ambiguity and to make it clear that any information can be accessed (within the terms of the judicial order) on or through an electronic device.

The new definitions and terminology do no more than clarify the original intent of recent amendments carried out via the *Serious and Organised Crime Legislation Amendment Act 2016* (SOCLAA). The SOCLAA amended access provisions in the PPRA based on recommendations in the October 2015 report of the Queensland Organised Crime Commission of Inquiry (QOCCI). In its report the QOCCI highlighted, through several case study examples, the propensity for child sex offenders to utilise social media applications to sexually offend against children.

While the focus of the SOCLAA amendments stemming from the QOCCI was to combat online child sex offending and serious organised crime, access information powers under the PPRA can be used in relation to any offence that forms the basis of a search warrant application or a crime scene threshold offence, that may be approved by a magistrate or Supreme Court judge.

The clarification of powers necessary for police to access information on or through devices will ensure the QPS keeps pace with criminal elements who would conceal a range of crimes, including: homicide; sexual assault; drug trafficking; cybercrime, such as fraud and revenge pornography; and terrorism related offences.

#### Voluntary transfer of ownership of vehicle to the State

Chapter four of the PPRA contains powers in relation to the immobilising, impoundment and forfeiture of vehicles regarding certain vehicle related offences. Section 119 provides that the owner of a motorbike may agree to transfer ownership of their motorbike to the State. Prior to amendments in 2013, section 119 also permitted the voluntary transfer of a vehicle to the State. Section 784 of the PPRA currently provides for the voluntary transfer of a motor vehicle to the State, but only for an evasion offence.

An audit by Road Policing Command in 2016 revealed 73 per cent of motor vehicles impounded were valued at less than \$500. The costs incurred for an impoundment period often far exceed the value of the vehicle. This results in both a financial detriment to the vehicle driver or owner and a cost borne by the service provider holding the vehicle in impoundment, who cannot usually recoup the costs of providing the service.

To alleviate this financial detriment, the Bill reintroduces the voluntary transfer of vehicle ownership for motor vehicles that have been impounded under chapter four. If a person is found not guilty or a charge is withdrawn after a vehicle is disposed of, section 121A allows for compensation.

#### Definition of controlled activity

Currently, under section 224 of the PPRA, a controlled activity is defined to include ‘one or more meetings between the police officer and a person, whether or not the meetings were the result of a written or oral communication with the person.’ The definition is outdated as the term ‘meetings’ implies the physical presence of the police officer and the person at the same location.

The term ‘meetings’ is omitted by the Bill so all methods of communication including email, mobile phone text messaging, social networking communications or meetings may be contemplated when considering the application of the controlled activity provisions.

### Broaden level of approval required to authorise a controlled operation

Under section 239 of the PPRA, a law enforcement officer may make application for authority to conduct a controlled operation. Controlled operations authorise conduct which would otherwise be unlawful (for example an undercover police officer covertly buying a dangerous drug from a suspected drug trafficker) to effectively detect crime which is difficult to investigate using conventional policing methods. An application must be progressed through the Controlled Operations Committee (the Committee) in accordance with section 240 of the PPRA. The Committee consists of an independent person, as required by legislation, who is a retired judge.

The process of the application for a controlled operation is rigorous and the many steps involved are making immediacy of response to timely intelligence difficult, having the potential to reduce the effectiveness of the scheme. To enhance the final approval process, but not diminish the rigour of the process, the Bill broadens the delegated officers who can approve a controlled operation.

### What a surveillance device authorises

The *Counter-Terrorism and Other Legislation Amendment Act 2017* amended section 322 of the PPRA by inserting a definition of 'premises' and of 'place' to apply to Chapter 13 (Surveillance devices) only. Under the new definitions 'premises' does not include a vehicle. The amendments were made to recognise the mobility of a vehicle and to remove the requirement to state, in the warrant, all properties to be traversed when exercising surveillance device warrant powers.

While the amendments have had the intended effect, there has been an unforeseen impact on named person warrants. Previously, when a vehicle was included in the definition of premises, the relevant surveillance devices could be installed in premises or in a vehicle as needed. The 2017 amendment means it is no longer possible to install devices in a vehicle under a named person warrant, as the definition of premises now expressly excludes a vehicle. The Bill makes amendments to allow previous practices to continue.

### Repeal of sober safe centre provisions

The Sober Safe Centre Trial commenced in October 2014 for a 12-month period after amendments were made to the PPRA via the *Safe Night Out Legislation Amendment Act 2014*. The trial was not continued beyond 12 months. As this legislation is not used, the Bill repeals the relevant sections and references in the PPRA.

### Reducing holding time of found property

Currently, under section 718 of the PPRA, found property must be held in the possession of police for at least 60 days. Before property can be forfeited to the State, the commissioner must give the owner of the property a written notice stating that unless the item is claimed within 30 days it will be forfeited to the State. If the owner of the item is unknown, notice may be published on the police service website. Storage space for both seized and found property around the State is at a premium and storage related expenses are burgeoning.

The 60-day holding period stipulated in the legislation is outdated. Due to advances in technology, reports of lost property may be made online and over the phone, and online search capabilities allow comparison of lost reports against found items through simple search fields. The QPS website has recently been upgraded to increase the usability level for the public when they are seeking to make enquiries about policing matters, including lost property.

The Bill removes the requirement for the QPS to hold property for at least 60 days while still maintaining the current 30-day notification period. There will be no reduction of time for an owner to make a claim on found property from when a written notice is given or published, rather the onus will be on the QPS to capitalise on the efficiency by providing timely notice of found property. This will create benefits by: freeing up storage space; decreasing manual handling (time and labour) in moving and re-organising property items on hold around other incoming and outgoing items; decreasing the time taken for audit and compliance inspections; and lessening the risk in holding items for long periods of time (damage, deterioration or loss).

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

#### **Access to information on or through electronic devices**

As access information definitions across Queensland legislation are similar, the lack of a definition of ‘stored information’ or ‘information stored’ exposes the same deficiencies to access information powers under section 51B of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA). The Bill makes amendments to relieve any ambiguity as to the scope of information accessible on or through a device in that legislation.

### **Crime and Corruption Act 2001**

#### **Access to information on or through electronic devices**

As access information definitions across Queensland legislation are similar, the lack of a definition of ‘stored information’ or ‘information stored’ exposes the same deficiencies to access information powers in the *Crime and Corruption Act 2001* (CCA). The Bill makes amendments to relieve any ambiguity as to the scope of information accessible on or through a device in that legislation.

### **Criminal Code**

#### **Offence to contravene access information order**

With respect to access information, minor amendments are required to section 205A of the Criminal Code (the Code), the offence provision applicable if a person contravenes an order requiring access to a device. The Bill amends the section heading to better reflect new definitions and terminology used in access information provisions in relevant Queensland legislation. The Bill also amends the section to incorporate the ‘reasonable excuse’ element into the offence provision, and the related provision that it is not a reasonable excuse to contravene an order based on the ground it may tend to incriminate the person or expose them to a penalty. Currently, the reasonable excuse element is in the substantive access information provisions. Section 178A of the PPRA, relating to crime scene warrants, is silent as to the

reasonable excuse element. The 'reasonable excuse' provision is more appropriately placed in the offence provision of the Code.

### **Domestic and Family Violence Protection Act 2012**

#### Search powers relating to a direction to move

Under section 134A(4) of the *Domestic and Family Violence Protection Act 2012* (DFVPA) a police officer may direct a person to move to another stated location (for example a police station, police beat or courthouse) to enable the officer to carry out various functions under section 134A(1) (for example serve a person with a domestic violence application or order). Section 134A(4) applies if, in the police officer's opinion, it is necessary to separate persons (for instance, it may be contrary to the best interests of the aggrieved to leave the respondent at their location) while a function under section 134A(1) is carried out.

If a person does not comply with the direction, they may commit the offence of contravening a direction under section 134F of the DFVPA. A police officer, who directs a respondent to move to a stated location, is required to transport that person in a police vehicle to satisfy the legislative obligation to remain in their presence. The absence of a power to search the respondent prior to transport jeopardises the safety of police, the respondent, and others. A respondent could easily conceal a weapon or dangerous object (such as a sharp implement or cigarette lighter) that could be used on themselves or against police in these circumstances.

The Bill includes a power to search a person in the narrow circumstances where police may give a direction to move under section 134A(4) of the DFVPA. The inclusion of the ability to search is not an expansion of powers *per se*, as the authority to direct a person to move to a stated location already exists: it simply satisfies an essential workplace health and safety issue for all persons when being transported by police.

The Bill provides that if during the search the police officer finds a thing that may be used to cause harm, they may direct the person to leave the thing at their current location before transport. In the event a police officer finds a thing the officer reasonably suspects is evidence of the commission of an offence (for example, a firearm or dangerous drug) the officer may seize the thing and deal with it in accordance with the PPRA.

Police will be required to comply with safeguards associated with the search of a person under the DFVPA by reference to the PPRA. Regardless of legislation, the QPS Operational Procedures Manual requires police in all cases involving the search of a person to protect their dignity.

#### Enabling select civilian QPS staff to share information

Part 5A was inserted into the DFVPA in 2016 to expressly enable information to be shared between government agencies and/or non-government organisations that provide domestic and family violence services. The Explanatory Notes to the amending Act state that a lack of effective information sharing has been found by several coronial inquests and other investigations to be at the heart of systemic failures to protect victims and their children from serious and fatal domestic violence.

Currently, section 169H(3)(b) of the DFVPA only permits police officers to share information under Part 5A. This does not reflect the reality of the QPS's operational environment, in which civilian staff play integral roles, particularly in 'back-office' positions which involve tasks such as responding to requests for information. The current limitations placed on the QPS by this provision are impacting upon its ability to efficiently respond to requests for information, particularly urgent requests.

The Bill will enable civilian staff to share information under Part 5A of the DFVPA. This reflects the operational practice and capacity of the QPS, while also improving efficiency of information sharing and achieving the policy objectives of the DFVPA information sharing framework.

### **Prostitution Act 1999**

#### Three-year ineligibility period

The Bill makes amendments to the *Prostitution Act 1999* (Prostitution Act) so there is no ineligibility period for automatic cancellation of a brothel licence and approved manager's certificate. There was never an intention to prohibit persons from applying for another licence or certificate for non-payment of fees only, let alone for three years. The amendments to the Bill correct this situation.

#### Authority for PLA officer to enter, search, seize and require documents at a licensed brothel

While under section 101(c) of the Prostitution Act it is a function of the PLA to monitor the provision of prostitution through licensed brothels, the Prostitution Act does not give PLA officers the authority to enter brothel premises, search and seize and require the production of documents where necessary. In the absence of legislative authority, the PLA has managed this by brothel licence conditions, however, this essentially relies on the goodwill of brothel owners and managers who might adopt the option of refusal to avoid a more serious offence.

There is little recourse for PLA officers if they are refused entry or not allowed to take an item which might be evidence of the commission of an offence. It is unusual for a regulatory authority not to have the required powers to fulfil their roles as an industry regulator. Under the *Tattoo Industry Act 2013* (TIA), for example, authorised officers (which includes an inspector appointed under the *Fair Trading Act 1989*) have powers of entry, search and seizure and it is an offence to obstruct an authorised officer in the course of duty. Under section 183AA of the *Liquor Act 1992* (Liquor Act), an investigator has the power to require the production of documents. Current provisions under section 60 of the Prostitution Act permit a police officer to 'require the licensee or approved manager to produce stated documents or things for inspection.'

Currently, when PLA officers are denied access to a brothel, police must be called in order to secure access, which is an unnecessary impost upon police resources. Accordingly, the Bill provides legislative powers for authorised PLA officers to enter, search and seize, require the production of documents and not be obstructed in their duties.

### Breach of licence condition to be simple offence

Brothel licenses and approved manager's certificates are issued by the PLA with conditions. In the case of a brothel licence there are currently 52 standard conditions, many of which may be described as administrative in nature such as record keeping requirements, maintenance and cleaning of brothels, and provision of information to staff and sex workers. Section 78(1)(c) of the Prostitution Act prescribes it is an indictable offence to contravene any condition or restriction of a licence or certificate and carries a maximum penalty of 200 penalty units or 5 years imprisonment. The Bill reduces this to a simple offence. This reduction in penalty is consistent with the generally administrative and low-level nature of the condition and with the low penalties imposed by the courts. Further, it may make the offence suitable to be prescribed in the future as an offence for which a Penalty Infringement Notice can be issued, providing further efficiencies for the PLA and the criminal justice system.

### **Public Safety Preservation Act 1986**

#### Access to information on or through electronic devices

As access information definitions across Queensland legislation are similar, the lack of a definition of 'stored information' or 'information stored' exposes the same deficiencies to access information powers in the *Public Safety Preservation Act 1986* (PSPA). The Bill amends the PSPA to relieve any ambiguity as to the scope of information accessible on or through a device in that legislation.

### **Weapons Act 1990**

#### Definition of 'magazine'

The *Weapons Act 1990* (Weapons Act), *Weapons Categories Regulation 1997* (Categories Regulation) and *Weapons Regulation 2016* make several references to firearm magazines, both in terms of offences for their possession and the classification of, and responsibilities relating to, firearms. 'Magazine' is currently defined in the Weapons Act to relate to a 'detachable receptacle for ammunition'. This definition does not consider magazines that are integral to, or form part of, the firearm, such as those typically found on shotguns, and other long arm firearms.

The National Firearms Agreement requires certain types of firearms to be categorised in accordance with their 'magazine capacity', with greater restriction generally attaching to weapons with greater capacity magazines. This is reflected in the Categories Regulation, which defines 'magazine capacity' for a firearm to mean 'the maximum number of rounds of ammunition of a particular calibre that are designed to be held in the receptacle from which rounds are fed into the chamber of the firearm.'

The current definition of 'magazine' in the Weapons Act has the potential to cause confusion and create a legal inconsistency between the Weapons Act and the Categories Regulation as the Weapons Act does not cover magazines with the capacity to hold ammunition that are an integral part of the firearm itself, such as a tubular magazine.

The Bill addresses this by including definitions of ‘magazine’, ‘detachable magazine’, ‘integral magazine’ and ‘magazine capacity’ in the Weapons Act, meaning the definitions will automatically apply to the subordinate legislation and provide consistency throughout.

#### Suspension notice extension

The Weapons Act currently allows an authorised officer to suspend a person’s weapons licence where they suspect on reasonable grounds the licence holder is no longer a fit and proper person. The suspension period is designed to provide the licensee time in which to demonstrate that they are, in fact, a fit and proper person. The Weapons Act specifies that a suspension can only continue for a maximum period of 30 days.

When a person’s licence is suspended because they may no longer be a fit and proper person on the grounds of mental or physical health, the licensee may engage the services of a psychologist or a medical practitioner to demonstrate their fitness.

The process of engaging specialist health care professionals can take an extended period of time due to waiting periods to make appointments and the need to sometimes attend more than once. In these situations, limiting the time allowed under this ‘show cause’ process can create difficulties for a licensee as they are unable to provide the required evidence to establish they are a fit and proper person within the legislatively imposed 30 days.

In such situations, the person’s licence is cancelled, notwithstanding the person may have been able to establish their fitness and the licensee must apply to the Queensland Civil and Administrative Tribunal (QCAT) for the reinstatement of their licence so a further suspension period can be applied. The current statutory window of 30 days disadvantages licensees and is an administrative impost on the QPS and QCAT. As such, the Bill amends the Weapons Act to mitigate this issue by extending the time for which a licence can be suspended to 90 days.

#### Regulating firearm modifications

The Weapons Act outlines guidelines and restrictions on the persons who may be granted access to firearms belonging to the various categories under the Categories Regulation. Once issued, a person’s firearms licence will state the category of firearm they may lawfully possess. Weapons Licensing (WL), QPS maintains a register of every firearm registered in Queensland and who it is registered to. Firearms owners have obligations, under the Weapons Act, to notify the QPS of any changes to the details maintained in the register.

Currently, armourers who modify a firearm in such a way that it changes the category the firearm would fall into under the Categories Regulation are under no obligation to ensure the owner has the required licence to possess the modified firearm. Nor do they have a responsibility to notify the WL about the modification. This creates two problems. Firstly, it means a person may come into possession of a category of firearm they are not lawfully entitled to possess. Secondly, it makes it difficult for the police commissioner to perform the role imposed by section 49 of the Weapons Act to maintain an accurate register of all firearms, including their category.

The Bill amends the Weapons Act to include an express obligation on armourers, who are modifying firearms in a way that alters the category of the firearm, to confirm that a person can lawfully possess the new category of firearm by sighting the person’s weapons licence. The



Bill further amends the Weapons Act to require armourers to record such modifications in their firearms register and report the changes to the WL to ensure the firearms register of all firearms in Queensland can be accurately maintained.

## Achievement of policy objectives

The Bill achieves its objectives by amending the following legislation:

- *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA);
- *Crime and Corruption Act 2001* (CCA);
- *Criminal Code* (the Code);
- *Domestic and Family Violence Protection Act 2012* (DFVPA);
- *Police Powers and Responsibilities Act 2000* (PPRA);
- *Prostitution Act 1999* (Prostitution Act);
- *Public Safety Preservation Act 1986* (PSPA);
- *Weapons Act 1990* (Weapons Act);
- *Weapons Categories Regulation 1997* (Categories Regulation); and
- *Weapons Regulation 2016* (Weapons Regulation);

The Bill will achieve its objective of enhancing the efficiency and operability of the QPS and increasing community safety through amendments to:

- the PPRA to:
  - clarify that powers about accessing information on or through electronic devices will apply to the access of any device information (within relevant safeguards and criteria), including information accessible through social media and email accounts;
  - enable the voluntary transfer of the ownership of an impounded vehicle to the State;
  - amend the definition of ‘controlled activity’ to reflect modern practices through omitting reference to outdated terminology;
  - broaden the level of approval required for the authorisation of controlled operations;
  - clarify that the use of a surveillance device warrant for a named person captures a vehicle;
  - reduce the regulatory burden through the repeal of provisions concerning the sober safe centre trial; and
  - reduce the minimum holding time of ‘found property’ by the QPS from 60 to 30 days.
- the Weapons Act to:
  - amend the definition of ‘magazine’ to ensure this term is consistently applied between the Weapons Act, Weapons Regulation and Categories Regulation;
  - expand the suspension period for weapons licences from 30 to 90 days;
  - oblige armourers, who by modifying a firearm place the firearm into a new category under the Categories Regulation to:
    - ensure the firearm’s owner is licensed to possess the firearm under the new category;
    - to record the modification in the weapons register kept at their premises; and
    - notify Weapons Licensing of the modification.

The Bill will achieve its objective of enhancing the operation of the PLA through amendments to the Prostitution Act that:

- rectify the three-year ineligibility period for brothel licensees who have not paid annual fees;
- allow authorised officers of the PLA the power to enter, search, seize property and require the production of documents at a licensed brothel;
- create an offence for obstructing an authorised officer; and
- change the offence of contravening a condition or restriction of a licensed brothel from an indictable to a simple offence.

Finally, the Bill will achieve its objective of increasing community safety by making amendments to the DFVPA that:

- enable the search of a person given a direction to move and who is to be transported under section 134A of the DFVPA; and
- broaden delegated QPS persons able to share information for the purposes of the DFVPA.

### *Access to information on or through electronic devices*

#### PPRA

The Bill inserts new Part 1A, section 149A (Definitions for chapter) into Chapter 7 (Search warrants, obtaining documents, accessing registered digital photos and other information, and crime scenes). New and amended definitions relevant to access information orders for both search and crime scene warrants include ‘access information’, ‘device information’, ‘digital device’ and ‘specified person’. Current definitions of ‘access information’, ‘specified person’, ‘storage device’ and ‘stored’ are omitted. ‘Digital device’ is defined broadly to mean a device on which information may be stored or accessed electronically and includes a computer, memory stick, hard drive, smart phone and tablet computer. This list is not exhaustive and diverse items such as smart watches, drones, implants and satellite navigation units would be captured under the definition.

The Bill substitutes terminology that refers to ‘stored information’ or ‘information stored’ with ‘device information’ to make it clear that any information, (albeit limited by the terms of the judicial order), can be accessed on or via a digital device (for example social media, instant messaging services, emails and other information that may be accessible in the cloud/Internet). The amended definition of ‘access information’ and new definitions of ‘digital device’ and ‘device information’ also assist with clarity. This removes ambiguity about the scope of information that can be lawfully accessed via an order in a search or crime scene warrant under sections 154, 154A, 154B, 178A and 178B of the PPRA.

The Bill also inserts the new terminology into section 21B (Power to inspect storage devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004) of the PPRA. This section does not provide police with powers to require access information, but to inspect the storage device of a reportable offender under certain circumstances. The definition of ‘storage device’ is omitted from the section and the definition of ‘digital device’ in the Schedule 6 (Dictionary) of the PPRA will apply instead. Further, references throughout the section to the word ‘storage’ will be replaced with the term ‘digital’.

***Access to information on or through electronic devices in other affected Queensland legislation***

**CPOROPOA, CCA and PSPA**

To relieve any ambiguity as to the scope of information accessible through an electronic device the Bill amends:

- section 51B of the CPOROPOA;
- sections 85A, 88A-88C and Schedule 2 (Dictionary) of the CCA; and
- sections 8AZE, 8AZF, 8PAB, 8PAC, 47C and the Schedule (Dictionary) of the PSPA.

The Bill achieves clarity in section 51B of CPOROPOA by inserting new definitions of ‘access information’, ‘device information’ and ‘digital device’ and omitting the current definitions of ‘access information’, ‘storage device’ and ‘stored’. References to ‘information stored’ in the section are substituted with the terminology ‘device information’.

The Bill achieves clarity in CCA provisions by inserting new definitions of ‘access information’, ‘device information’, ‘digital device’ and ‘specified person’ and omitting the current definitions of ‘access information’, ‘specified person’, ‘storage device’ and ‘stored’. References to ‘information stored’ in the sections are substituted with the terminology ‘device information’.

The Bill achieves clarity in PSPA provisions by inserting new definitions of ‘access information’, ‘device information’ and ‘digital device’ and omitting the current definitions of ‘access information’, ‘storage device’ and ‘stored’. References to ‘information stored’ in the sections are substituted with the terminology ‘device information’.

**The Code**

With respect to access information, the Bill makes minor amendments to section 205A of the Code (Contravening order about information necessary to access information stored electronically), the offence provision applicable if a person contravenes an order requiring access to a device. The Bill amends the section heading to better reflect new definitions and terminology used in the CCA and PPRA. The Bill also amends the section to incorporate the ‘reasonable excuse’ element into the offence provision. Currently, the reasonable excuse defence is in sections 154A of the PPRA and 88B of the CCA. New section 178A of the PPRA, relating to crime scene warrants, is silent as to the reasonable excuse element. The ‘reasonable excuse’ provision is more appropriately placed in the offence provision. The Bill also incorporates the provision that it is not a reasonable excuse to contravene an order based on the ground it may tend to incriminate the person or expose them to a penalty.

***Amendments to the DFVPA***

**Search powers under section 134A(4)**

The Bill amends section 134A of the DFVPA so a person who is given a direction to move and is transported can be searched for anything in their possession that may be used to cause harm to themselves or another person prior to transport. When exercising the search power under section 134A, police will still be required to tell a person they are not under arrest or in custody, however police will also inform the person they may be searched before moving to another

location. Under the amended section if a police officer finds a thing that may be used to cause harm, they may direct the person to leave it at their current location before moving to another location.

If a police officer finds a thing the officer reasonably suspects is evidence of the commission of an offence (for example, a firearm or dangerous drug) the officer may seize the thing and deal with it in accordance with the PPRA. For instance, they will be required to issue a receipt for the seized property under section 622 and otherwise handle the seized item in accordance with Chapter 21 (Administration), Part 3 (Dealing with things in the possession of the police service) of the PPRA.

#### Enabling select civilian QPS staff to share information

The Bill amends section 169 of the DFVPA to enable civilian staff to share information under Part 5A of the DFVPA. This reflects the operational practice and capacity of the QPS, while also improving efficiency of information sharing and achieving the policy objectives of the DFVPA information sharing framework.

#### ***Amendments to the Prostitution Act***

##### Three-year ineligibility period

The Bill amends section 8 (Who is ineligible for a brothel licence) of the Prostitution Act so there is no ineligibility period for automatic cancellation of a licence under sections 25(c) or 25(d). Specifically, section 8 is amended by specifying that subsection (1)(f) and (g) does not apply if the licence or the certificate was automatically cancelled for failure to pay a fee under the Prostitution Act or a corresponding law.

The Bill amends section 34 (Who is ineligible for a certificate) of the Prostitution Act so there is no ineligibility period for automatic cancellation of a licence under sections 25(c) or 25(d). Specifically, section 34 is amended by specifying that subsection (1)(f) and (g) does not apply if the licence or the certificate was automatically cancelled for failure to pay a fee under the Prostitution Act or a corresponding law.

##### Authority for authorised officer to enter, search, seize and require documents at a licensed brothel

The Bill inserts Part 3A (Enforcement) into the Prostitution Act to provide the PLA with powers for its officers to enter, search and seize, require the production of documents and not be obstructed in their duties. The Bill will permit entry to a licensed brothel or any other premises the authorised officer reasonably suspects are being used for prostitution if: the occupier consents to the entry; or the entry is authorised by a warrant; or the premises are open for business or otherwise open for entry.

The power to require the production of documents is also included in the new enforcement section. A person must not, without reasonable excuse fail to comply with the requirement. This is not a new power but reflects existing powers after entry for police officers under section 60(1)(c) of the Prostitution Act which 'require the licensee or approved manager to produce stated documents or things for inspection' and under section 84 of the Prostitution Act, which provides an offence for failing to comply with the police requirement.

The new Part 3A will amalgamate existing powers of entry for police officers under Part 3 (licensing system), Division 3 (Powers of entry) of the Prostitution Act. Under new Part 3A an authorised officer will include: a police officer of at least the rank of inspector; a police officer authorised by a police officer of at least the rank of inspector to exercise enforcement powers; and a staff member of the PLA authorised by the executive director to exercise enforcement powers. The powers, obstruction offence and safeguards are modelled upon like provisions for authorised officers in Part 5, Division 2 of the TIA and the Liquor Act.

#### Breach of licence condition to be simple offence

The offence under section 78(1)(c) of the Prostitution Act (Provide prostitution at the brothel in contravention of any condition or restriction of a licence or a certificate), is amended from an indictable offence with a maximum of 200 penalty units or 5 years imprisonment to a simple offence with a maximum penalty of 20 penalty units. This reduction in penalty is consistent with the generally administrative and low-level nature of the conditions and with the low penalties imposed by the courts.

#### ***Amendments to the Weapons Act***

##### Definition of magazine

The Bill amends the definition of ‘magazine’ in the Schedule 2 (Dictionary) of the Weapons Act and inserts new sub-definitions of ‘detachable magazine’ and ‘integral magazine’. The definition of ‘magazine capacity’ is removed from the Categories Regulation and relocated to the Weapons Act. A number of consequential amendments are made to the Weapons Act, the Categories Regulation and the Weapons Regulation as a result.

##### Suspension notice extension

The Bill amends section 28(2)(c)(ii) to extend the timeframe for suspension of a weapon’s licence from 30 days to 90 days.

##### Regulating firearm modifications

The Bill makes amendments to Part 4, Division 2 of the Weapons Act to impose an obligation on armourers who are modifying firearms in a way that alters the category of the firearm to:

- confirm that the person is authorised to possess the new category of firearm by sighting the person’s firearm licence. Failure to comply with this obligation has a maximum penalty of 100 penalty units;
- record the modification in their weapons register and advise an authorised officer of the modification, including the owner’s details of the firearm before and after the modification (including serial number, make, type, calibre, magazine capacity, and length), within 14 days. Failure to comply with these requirements has a maximum penalty of 20 penalty units or 6 months imprisonment.

## **Alternative ways of achieving policy objectives**

There are no alternative ways 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 these proposals.

## **Consistency with fundamental legislative principles and the Human Rights Act 2019**

The amendments have been drafted with due regard to the *Legislative Standards Act 1992* (LSA) and with consideration to the principles of the *Human Rights Act 2019*. While some of the proposals may be considered to engage those principles, they are considered necessary to ensure police maintain the ability to solve serious offences and maintain community safety.

### **Amendments to the CPOROPOA**

#### Clause 3 – Clarification of powers to access electronic information

Clause 3 of the Bill amends section 51B of the CPOROPOA by including new definitions and terminology in relation to existing police powers to access information from the digital device of a reportable offender. A reportable offender who is required to provide access information is not excused from complying on grounds of self-incrimination. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals and maintain the privilege against self-incrimination under sections 4(2)(a) and 4(3)(f) of the LSA.

The amendments are necessary in order to clarify the breadth of information that police can gain access to under the provisions. Section 51B applies if an authorised police officer suspects on reasonable grounds that a reportable offender has committed an indictable offence against the CPOROPOA, for example an offence under section 51A (Failing to comply with offender prohibition order). The police officer may require the reportable offender to give access information to a device, enabling the officer to gain access to information on the device or accessible through the device.

An example of how police may use the section could arise where a reportable offender is required to report to police the social media applications they are using. Police acquire intelligence that the offender is engaging with children on social media applications, which have not been declared to police. Under section 51B, having a reasonable suspicion the reportable offender has committed an indictable offence against CPOROPOA, police could require the offender to provide access to a device in the offender's possession and passwords to the social media applications in question.

Once the power is utilised, police are required to make an application to a magistrate for post-search approval via sections 161 to 163 of the PPRA. The reportable offender does not commit an offence for failing to provide access information unless a magistrate makes a post-search approval order in relation to the police use of the power.

Section 51B currently provides that it is not a reasonable excuse to fail to comply with a requirement because it may tend to incriminate the reportable offender or expose the offender

to a penalty. The exclusion of the privilege against self-incrimination is consistent with like access information provisions in the PPRRA and other jurisdictions.

For the scope of their report the QOCCI ‘determined that online child sex offending included any type of sexual offence committed against a child, which occurred as result of the use of the internet’ (p.259). The QOCCI further noted that ‘globally the increasingly sophisticated online environment has resulted in a tidal wave of child sexual offending, particularly within the child exploitation material market’ (p.261).

The clarification of definitions that resolve the scope of information police can access, do no more than align the legislation with the intent of amendments made via the *Child Protection (Offender Reporting) and Other Legislation Amendment Act 2017*. Any breach of fundamental legislative principles is balanced by appropriate safeguards and the need to ensure the compliance of reportable offenders with their reporting conditions or prohibition orders.

## **Amendments to the CCA**

### Clauses 6 to 11 – Clarification of powers to access electronic information

Clauses 6 to 11 of the Bill amend definitions and terminology in relation to existing commission officer powers to access information from a digital device as part of a search warrant under the CCA. A specified person who is required to provide access information is not excused from complying with an order on the ground of self-incrimination. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals and maintain the privilege against self-incrimination under sections 4(2)(a) and 4(3)(f) of the LSA.

The amendments are necessary in order to clarify the breadth of information that a commission officer can gain access to by judicial order under the provisions. Existing access information powers under search warrant provisions of the CCA enable authorised commission officers to apply to a magistrate or a Supreme Court judge for an order requiring a specified person to provide access information, for example a password or swipe pattern, to a storage device such as a computer, mobile phone or memory stick. Once access is provided to a storage device officers can gain access to information stored on or accessible through the device.

Under existing section 88C of the CCA a person is not excused from complying with an access information order on the ground that compliance may tend to incriminate the person or make the person liable to a penalty. The exclusion of the privilege against self-incrimination is consistent with like provisions in Queensland legislation and other jurisdictions.

The new definitions and terminology do no more than clarify the original intent of the provisions as inserted via the SOCLAA. The departure from fundamental legislative principles is justified as the objective of the provisions cannot be achieved unless commission officers are able to access all information relevant to offences they are investigating, for example major crime or corruption in the public sector.

## **Amendments to the DFVPA**

### Clause 16 – Search powers relating to a direction to move

Clause 16 of the Bill amends section 134A of the DFVPA. The power to search a person who has been given a direction to move under section 134A of the DFVPA and is to be transported, may be viewed as a breach of the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

Police generally have broad powers for searching persons who have been detained, arrested or who are otherwise in lawful custody under section 442 of the PPRA. This section covers a number of instances where a person may need to be searched under the PPRA. For instance, where a person is detained for a breach of the peace and is to be transported or where a person is detained for the purposes of testing under Chapter 18A (Breath, saliva, blood and urine testing of persons suspected of committing particular assault offences). Section 442(d) extends the search power to anyone a police officer has lawfully detained under another Act. The purpose of search powers in these circumstances is to ensure that while detained in police custody a person does not use something hidden on their person to harm themselves, police officers or other persons.

Following on from section 442, section 443(3) supports the occupational health and safety intent of the section 442 power by stating a police officer may take and retain, while the person is in custody – (a) anything that may endanger anyone’s safety, including the person’s safety; or (b) anything that may be used for an escape; or (c) anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

A person who has been given a direction under section 134A(4) of the DFVPA to move to a place (for example police station, police beat or courthouse) must remain in the presence of police (as per section 134E(3) DFVPA). The DFVPA states a person who is taken to a place in this manner is not under arrest or in custody, however to say a person is not in custody is somewhat artificial, in that should that person harm themselves or another person, they would do so while effectively in the care and control of police.

The intent of the power under section 134A(4) was further described in the Explanatory Notes of the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016:

*the Bill expands the current power to allow police to direct a person to move to and remain at another appropriate place so an officer can serve an application for a PO, serve a DVO, or issue or serve a PPN. The additional power will assist police to de-escalate domestic violence situations by separating the parties, enhance opportunities for respondents’ to understand the documents that are being served on them and help police to reinforce the seriousness of the violence that has occurred.*

The Bill amends section 134A of the DFVPA by including a search power that may only be exercised when a person is given a direction to move and is to be transported to another stated location under section 134(4). Further, section 134A(4) only applies if, in the police officer’s opinion, it is necessary to separate persons (for instance, it may be contrary to the best interests of the aggrieved to leave the respondent at their location) while a function under section 134A(1) is carried out.



The addition of a search power under section 134A of the DVFPFA is justified as it will ensure the safety of all parties. It will also provide for the continued use of the ‘direction to move’ power for the policy objectives described in the Explanatory Notes above. When exercising the search power under section 134A, police will still be required to tell a person they are not under arrest or in custody, however police will also inform the person they may be searched before moving to another location. If a thing is found that the police officer reasonably suspects may provide evidence of the commission of an offence (for example a weapon or dangerous drug), the officer may seize it to be dealt with in accordance with the seizure of a thing under the PPRA.

Any search of a person through the use of the power will fall under the definition of ‘enforcement act’ in the PPRA and therefore will need to be recorded in the register of enforcement acts. This will provide ongoing data and accountability regarding the use of the power by police. Police will be required to comply with safeguards associated with the search of a person under the DFVPA by reference to the PPRA.

A direction under section 134A of the DFVPA currently falls within the definition of ‘enforcement act’ in the PPRA. Data from the enforcement act register reveals the power (that is, a direction to move or a direction to remain) has been used sparingly between 2017 to 2019, with the direction to move being used on far fewer occasions, than the direction to remain.

### **Amendments to the PPRA**

#### Clauses 27 to 35 – Clarification of powers to access electronic information

Clauses 27 to 35 of the Bill amend the definitions and terminology used in relation to existing police powers to access information from a device as part of a search or crime scene warrant. The amendments are necessary in order to clarify the breadth of information that police can gain access to by judicial order under the provisions. A specified person who is required to provide access information is not excused from complying with an order on the ground of self-incrimination. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals and maintain appropriate protection against self-incrimination under sections 4(2)(a) and 4(3)(f) of the LSA.

Existing access information powers under search and crime scene warrant provisions of the PPRA enable police to apply to a magistrate or a Supreme Court judge for an order requiring a specified person to provide access information, for example a password or swipe pattern, to a storage device such as a computer, mobile phone or memory stick. Once access is provided to a device police can gain access to information stored on or accessible through the device.

The new definitions and terminology do no more than clarify the original intent of recent amendments carried out via the SOCLAA. The SOCLAA amended access provisions in the PPRA based on recommendations in the October 2015 report of the QOCCI. In its report the QOCCI highlighted, through several case study examples, the propensity for child sex offenders to utilise social media applications to sexually offend against children.

While the focus of the SOCLAA amendments stemming from the QOCCI was to combat online child sex offending and serious organised crime, access information powers under search and crime scene warrants can be used in relation to any offence that forms the basis of a search warrant application or meets the crime scene offence threshold.

Among other things, the amendments via SOCLAA clarified that ‘stored’ on a storage device includes accessible through the device. These amendments were made to clarify that in addition to information physically stored on a device, police could also access information via a device, for example information in cloud services. It is the scope of information that police can access via cloud services that is unclear in the current provisions. The ambiguity is due to the term ‘stored’ as it relates to ‘information’ and the absence of a definition for those terms.

Under existing provisions in sections 154B and 178B of the PPRA a person is not excused from complying with an access information order for the reason that compliance may tend to incriminate the person or make the person liable to a penalty. The exclusion of the privilege against self-incrimination is consistent with like provisions in Queensland legislation and other jurisdictions, for instance access information provisions under section 465AAA(7) of the *Crimes Act 1958* (Victoria).

Any departure from fundamental legislative principles is justified as the objective of the provisions cannot be achieved unless police have the ability to access all information relevant to offences. Without the clarifying definitions alleged perpetrators of child sex offending and other crimes, who commit offences via social media and private email accounts, will not be able to be prosecuted and future perpetrators will find incentive in using social media and messaging systems to commit and conceal offences.

#### Clause 37 – Level of approval for the authorisation of controlled operations

Clause 37 of the Bill amends section 274 of the PPRA to broaden the level of commissioned officer able to provide authorisation for a controlled operation. This could be seen as conflicting with the fundamental legislative principle that powers should be delegated only to appropriately qualified officers or employees of an administering department under section 4(3)(c) of the LSA.

Controlled operations are used by police to obtain evidence of the commission of a relevant offence without the police officer themselves being liable for committing the offence. The current process for applying to undertake controlled operations is extensive. An application for a controlled operation must be progressed through the Committee under section 240 of the PPRA.

The Committee consists of an independent person, as required by legislation, who is a retired judge. Other members include the Detective Superintendent, Drug and Serious Crime Group and the Chairperson of the Crime and Corruption Commission (CCC). At present, after the Committee’s consideration and recommendation, the application may progress for final approval to the Assistant Commissioner, State Crime Command or a Deputy Commissioner who will then either authorise the operation (with or without conditions) or refuse the application.

To enhance the final approval process, but not diminish the rigour of the process, the Bill amends section 274 of the PPRA to allow for the following delegations to authorise a controlled operation (after the Committee has made its recommendations): any Deputy Commissioner; any Assistant Commissioner; or the Detective Chief Superintendent responsible for Statewide crime operations. These amendments will better align the authorisation level in Queensland with other Australian policing jurisdictions.

The broadening in approval level is minimal and maintains a standard of appropriately qualified officers combined with the thorough application process and continuous monitoring.

#### Clause 45 – Holding time of found property

Clause 45 of the Bill amends section 718 of the PPRA to omit the minimum 60-day period that found property must be held in the possession of the police service. This may be viewed as a breach of the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

The current legislation requires that at least 30 days before property can be forfeited to the State the commissioner must give the owner of the property a written notice stating that unless the item is claimed it will be forfeited to the State. If the owner of the property is unknown the 30 days' notice may be published on the police service website. This provision will remain unchanged meaning there will be no reduction in time that a person is notified before property will be forfeited. Therefore, to take advantage of the efficiency it will be incumbent upon police to provide notice of located property as soon as possible.

Current technology allows the QPS to do this through QPS social media sites (Facebook/Blogs), traditional media channels and the formal advertising site on the QPS website. The QPS website has been recently upgraded to increase the usability level for the public when they are seeking to make enquiries about policing matters, including lost property.

In addition to notice requirements, further safeguards regarding property will remain unchanged. These safeguards provide that the commissioner may order the forfeiture of property only if: the owner cannot be found after making reasonable inquiries; or having regard to the nature, condition and value of the property it is not reasonable to make inquiries about its owner; or if the commissioner is unable, after making reasonable efforts, to return the thing to the owner (for example the owner refuses to take possession of their property).

The amendments will relieve pressure on property offices around the State that are under burgeoning pressure from the cost of storing located property. As there is no change to the notice period given before forfeiture of property the amendment is compatible with the rights and liberties of individuals.

#### **Amendments to the Prostitution Act**

##### Clause 57 – Powers for authorised officers to enter, search, seize and require documents at a licensed brothel

Clause 57 of the Bill inserts new Part 3A (Enforcement) into the Prostitution Act to provide powers for authorised PLA officers to enter, search, seize and require the production of documents, and an offence provision applicable if officers are obstructed in their duties. The insertion of such powers may be seen as a breach of the fundamental legislative principle under section 4(3)(e) of the LSA as the provisions confer powers to enter premises and search for or seize documents or other property, in some circumstances without a warrant issued by a judge or other judicial officer.

Under section 101(c) of the Prostitution Act it is a function of the PLA to monitor the provision of prostitution through licensed brothels. However, the Prostitution Act does not give PLA

officers the authority to enter brothel premises to search and seize where necessary. Presently, in the absence of legislative authority, the PLA has carried out compliance inspections via brothel licence conditions, so that licensees must allow PLA officers to enter and inspect the brothel premises. However, this essentially relies on the goodwill of brothel owners and managers who might adopt the option of refusal to avoid a more serious offence. There is little recourse for PLA officers if they are refused entry or not allowed to take an item which might be evidence of the commission of an offence. In the event PLA officers are denied access to a brothel, police must be called in order to secure access, which is an unnecessary impost upon police resources.

A number of safeguards will apply to the use of the powers as follow:

- only authorised officers will be permitted to exercise the enforcement powers;
- an authorised officer must produce/display the officers identity card prior to entry, unless an exception applies, or it is not practicable in the circumstances. If it is not practicable in the circumstances the officer must produce the identity card at the first reasonable opportunity;
- an authorised officer may only enter premises if:
  - the occupier of the premises consents to the entry; or
  - the entry is authorised by a warrant; or
  - the premises are open for business or otherwise open for entry.
- Further, the power to enter premises does not confer a power to enter premises or part of a premises used only for residential purposes without the occupier's consent or the authority of a search warrant;
- following the seizure of anything the PLA officer must:
  - provide a receipt to the person from whom a thing was seized; and
  - allow a person who would be entitled to the seized thing, to inspect it, or if it is a document, to take extracts from it or make copies of it;
- seized property must be returned to the person at the end of: 12 months; or if a prosecution for an offence involving it is started within 12 months – the proceeding for the offence and any appeal from the proceeding; and
- otherwise, seized property is to be returned if the authorised officer is satisfied its retention as evidence is no longer necessary and its return is not likely to result in its use in repeating the offence;
- an authorised officer may require the production of documents only:
  - by written notice to a person;
  - by notice that states a reasonable time and place to produce the documents; and
  - by belief on reasonable grounds that a person has possession or control of the documents, and they are relevant to the administration and enforcement of the Prostitution Act.

The new provisions have been modelled from the TIA, the Liquor Act and existing powers of police officers under the Prostitution Act. For instance, existing powers after entry for police officers under section 60(1)(c) of the Prostitution Act which 'require the licensee or approved manager to produce stated documents or things for inspection' and section 84 'Complying with police requirement.' The new section 61E whereby an authorised officer can require the

production of documents is better safeguarded through the requirements of written notice to produce documents at a reasonable time and place and the threshold of belief on reasonable grounds. This written notice requirement will provide a manager or licensee with the opportunity to obtain legal advice.

Any potential breach of fundamental legislative principles is justified in order to ensure compliance from brothels with the Prostitution Act and this is balanced by the inclusion of the safeguards as mentioned above.

Furthermore, the PLA seeks powers to enter licensed brothels not only to ensure the brothel operates lawfully but also to ensure the health, safety, welfare and agency of sex workers is protected. PLA officers do this by engaging with sex workers without the licensee or manager being present, ensuring they have received adequate induction on their rights, sexual health and safe sex practices. This engagement also provides an opportunity to ensure that sex workers are well informed of their right of choice to accept or reject a client and provide only those sexual services they are comfortable with.

### **Amendments to the PSPA**

#### Clauses 70 to 76 – Clarification of powers to access electronic information

Clauses 70 to 76 of the Bill amend existing access information provisions in the PSPA. Section 8AZE of the PSPA permits a police officer to require access information in an emergency situation and section 8AZF outlines the powers that police have to gain access to, examine, copy and send information that may be stored on the device. Sections 8PAB and 8PAC operate in a like fashion in the event of a terrorist emergency. Amendments in the Bill will provide clarification around the scope of information that can be accessed on or through a device under the sections. A person who is required to provide access information is not excused from complying with an order on the ground of self-incrimination. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals and maintain the privilege against self-incrimination under sections 4(2)(a) and 4(3)(f) of the LSA.

However, during a critical incident it is vital that police gain intelligence and information rapidly in order to identify offenders and effectively resolve and manage an emergency situation. The search of electronic devices is vital in this gathering of intelligence and potentially in the prevention of further incidents. The search power is restricted to the gathering of information relevant to the emergency and the use of the powers is subject to all other safeguards surrounding the use of extraordinary emergency powers under Part 2, Division 4 of the PSPA, and the use of terrorism emergency powers under Part 2A of the PSPA.

The amendment of definitions and terminology goes no further than clarifying the original intent of the scope of information that can be accessed. The intention was that should the criteria of an emergency situation or terrorist emergency arise, police could require access to any relevant information that may be on a device or accessible through the device.

The Explanatory Notes to the Counter-Terrorism and Other Legislation Amendment Bill 2017 made a number of references to Facebook, for instance, at page 2 under the heading of 'Policy objectives and the reasons for them' and at page 39, where in relation to section 8AZF (What

power to search or seize a storage device includes) it states, 'For example, reviewing text messages sent or received and viewing pictures posted to Facebook.'

Despite references to Facebook in the Explanatory Notes clarification is required to ensure that terminology regarding information that is stored is not construed narrowly to mean information that is physically stored on a device or information that is contained in a cloud service that is specifically designed for extra data storage (for example, Dropbox).

Like other Queensland legislation and Australian jurisdictions, the PSPA provides that it is not a reasonable excuse to fail to comply with a requirement based on the ground that it may tend to incriminate the person or expose them to a penalty.

Departures from fundamental legislative principles are justified in order to ensure for the effective management, resolution and investigation of emergency incidents.

## Consultation

A consultation draft of the Bill was circulated among the following key community stakeholders:

- Bar Association of Queensland;
- Queensland Law Society;
- Queensland Council for Civil Liberties;
- Crime and Corruption Commission;
- Aboriginal and Torres Strait Islander Legal Service;
- Magistrates Court of Queensland;
- Women's Legal Service;
- Legal Aid Queensland; and
- Youth Advocacy Centre

Six stakeholders provided feedback in relation to the Bill. An Amendment was made to the Bill as a result of comments provided by stakeholders, as follows:

- Proposed section 61E (Power to require answers to questions) of the Prostitution Act was removed. Although the section did not abrogate the right against self-incrimination stakeholders were concerned that persons affected by the power may not have enough knowledge or awareness to invoke their rights and seek legal assistance.

## Consistency with legislation of other jurisdictions

The amendments to the Bill are consistent with legislation in other jurisdictions. With respect to access information provisions the Commonwealth, Victoria, Western Australia (WA) and New South Wales all refer to the 'access of data' rather than 'information stored' or 'stored information' in their relevant provisions.

With regard to controlled operations delegations each Australian jurisdiction varies. Tasmania, Victoria and New South Wales allow for delegation to a Deputy Commissioner or an Assistant Commissioner. WA and South Australia (SA) allow for delegation to a senior officer which is defined as a police officer of or above the rank of Superintendent (SA) or Commander (WA).

The *Sex Work Act 1994* (Victoria) contains powers and safeguards analogous to proposed powers for the PLA. For instance, the *Sex Work Act 1994* contains sections 61B (Production of identity card), 61C (Accounts and other documents available for inspection), 61D (Licensees to produce documents and answer questions), 61E (Third parties to produce documents and answer questions relating to specified business), 61J (Entry or search with consent), 61K (Entry without consent or warrant) and 61R (Retention and return of seized documents).

The powers, obstruction offence and safeguards are also consistent with other Queensland provisions for authorised officers in Part 5, Division 2 of the TIA and the Liquor Act. For example, section 183AA of the Liquor Act contains the provision, 'Power to require production of documents.' Sections 49 (Production of authorised officer's identity card), 50 (Entry of premises by authorised officer), 51 (Warrants), 52 (Authorised officer's general powers in a place) and 53 (Procedure after thing seized) of the TIA are consistent with the proposed new sections in the Prostitution Act.

The maximum penalty of 50 penalty units for failing to produce a document under new section 61E of the Prostitution Act is consistent with the penalties under section 183AA of the Liquor Act and section 115 of the *Food Production (Safety) Act 2000*.

## Notes on provisions

### Part 1 – Preliminary

#### 1. Short title

Clause 1 provides that, when enacted, the Act may be cited as the *Police Powers and Responsibilities and Other Legislation Amendment Act 2019*.

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

#### 2. Act amended

Clause 2 states that this part amends the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

#### 3. Amendment of s 51B (Access information for storage devices)

Clause 3 amends the heading of section 51B and subsection (2) of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* by removing reference to ‘storage’ and replacing it with ‘digital’ to reflect the new definition of digital device.

Subclause (3) amends section 51B(2)(b) to refer to the new term ‘device information’ and replacing ‘or any other information or help’ with ‘any assistance necessary’.

Subclause (4) amends section 51B(2)(c)(i) and (ii) by replacing reference to ‘the information stored on’ with ‘device information from’ to reflect the new definition of device information.

Subclause (5) amends section 51B(2)(c)(iii) and (iv) by replacing reference to ‘information stored on’ with ‘device information from’ to reflect the new definition of device information.

Subclause (6) and (7) amend section 51B(10) by removing definitions of *access information*, *storage device* and *stored* and replacing them with the new modernised definitions of *access information*, *device information* and *digital device*.

The definition of *access information* for a digital device, means information necessary for a person to access or read device information from the device. Examples of access information are provided and include userid, username, passcode and password.

The definition of *device information* from a digital device, means information stored on the device; or information accessed, communicated or distributed by using the device, including by using an application on the device. Examples of device information are provided and include images stored on a computer, location data stored on or sent from a mobile phone, emails or text messages sent from a smart phone, and messages or videos distributed from a social media application on a tablet computer.



The definition of *digital device* means a device on which information may be stored or accessed electronically; and includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

The replacement definitions ensure that access to social media applications such as Facebook and Instagram, or private email accounts such as outlook.com and gmail.com, can be appropriately captured by police where an authorised police officer suspects on reasonable grounds that a reportable offender has committed an indictable offence against the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

#### **4. Insertion of new pt 7, div 6**

Clause 4 inserts a new Part 7, Division 6 (Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2019) to provide transitional provisions for the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

The new section 92 (Definitions for division) provides definitions of *amending Act* and *former section 51B*.

The new sections 93 (Saving of former s 51B) and 94 (Declaratory provision about effect of amending Act) provide transitional arrangements for the former section 51B.

### **Part 3 – Amendment of Crime and Corruption Act 2001**

#### **5. Act amended**

Clause 5 states that this part amends the *Crime and Corruption Act 2001*.

#### **6. Amendment of s 85A (Definitions for part)**

Clause 6 amends section 85A of the *Crime and Corruption Act 2001* by removing the definitions of *access information*, *specified person*, *storage device* and *stored*, and replacing them with the new modernised definitions for *access information*, *device information*, *digital device* and *specified person*.

The definition of *access information* for a digital device, means information necessary for a person to access or read device information from the device. Examples of access information are provided and include userid, username, passcode and password.

The definition of *device information* from a digital device, means information stored on the device; or information accessed, communicated or distributed by using the device, including by using an application on the device. Examples of device information are provided and include images stored on a computer, location data stored on or sent from a mobile phone, emails or text messages sent from a smart phone, and messages or videos distributed from a social media application on a tablet computer.

The definition of *digital device* means a device on which information may be stored or accessed electronically; and includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

The definition of *specified person* is amended to remove references to ‘storage device’ and replace it with ‘digital device’ or where applicable ‘device’. The amended definition also clarifies that the specified person has, or is likely to have, the requisite knowledge.

The replacement definitions clarify that access to social media applications such as Facebook and Instagram, or private email accounts such as outlook.com and gmail.com, can be appropriately captured if necessary by commission officers when applying for search warrants under Chapter 3 of the *Crime and Corruption Act 2001*.

**7. Amendment of s 88A (Order in search warrant about information necessary to access information stored electronically)**

Clause 7 amends the heading of section 88A to ‘Order in search warrant about device information from digital device’ as a result of the amended definitions in clause 6.

Subclause (2) amends section 88A(1) replacing ‘storage device in the person’s possession, or to which the person has access’ to ‘digital device’.

Subclause (3) replaces section 88A(1)(b) and (c) to use the new term ‘device information’ and to reference any assistance necessary for the officer to gain access to device information from the device.

Subclause (4) amends section 88A(2) to improve readability and replace reference to ‘storage device’ with ‘digital device’ as a result of the amended definitions in clause 6.

Subclause (5) amends section 88A(3)(a) by referring to subsection (1)(b) that outlines the assistance to be provided by a specified person to a commission officer.

Subclause (6) amends section 88A(3) by inserting subsection (d) to provide that the access information order made under subsection (2) must state that a failure to comply with the order may be dealt with under the Criminal Code, section 205A. The amendment removes any doubt that the existing offence provision in section 205A of the Criminal Code applies.

**8. Amendment of s 88B (Order for access information after storage device has been seized)**

Clause 8 replaces the heading in section 88B to ‘Order after digital device has been seized’ as a result of the amended definitions in clause 6.

Subclause (2) consequentially amends section 88B(1)(a) by replacing ‘storage’ with ‘digital’.

Subclause (3) consequentially amends section 88B(1)(b)(ii) by replacing ‘information stored on’ with ‘device information from’.

Subclause (4) consequently amends section 88B(4)(a) by inserting reference to section 88A(1)(b).

Subclause (5) amends section 88B(4)(d) by removing ‘without reasonable excuse’ from the failure to comply wording. The without reasonable excuse wording is appropriately placed in the offence wording in section 205A of the Criminal Code.

Subclause (6) consequentially amends section 88B(5) by removing reference to ‘information stored on the storage device’ with ‘device information from the digital device’.

**9. Amendment of s 88C (Compliance with order about information necessary to access information stored electronically)**

Clause 9 amends the heading in section 88C to ‘Compliance with order about device information from digital device’ as a result of the amended definitions in clause 6.

Subclause (2) amends section 88C to improve readability by using the term ‘expose’ instead of ‘liable’ in relation to the penalty.

**10. Insertion of new ch 8, pt 17**

**Part 17 Police Powers and Responsibilities and Other Legislation Amendment Act 2019**

Clause 10 inserts a new Part 17 (Police Powers and Responsibilities and Other Legislation Amendment Act 2019) to provide transitional arrangements as a result of the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

**s 454 (Definitions for part)**

Section 454 provides definitions of *amending Act* and *former* for the part.

**s 455 (Particular applications or orders made before commencement)**

Section 455 provides transitional arrangements for an application for an order, or an order, under the former section 88A or 88B.

**s 456 (Declaratory provision about effect of amending Act)**

Section 456 provides a declaratory provision where a former provision applies.

**11. Amendment of sch 2 (Dictionary)**

Clause 11 amends Schedule 2 by removing the definitions of *specified person*, *storage device* and *stored*, and replacing them with definitions of *device information*, *digital device* and *specified person* as a result of clause 6.

**Part 4 – Amendment of Criminal Code**

**12. Code amended**

Clause 12 states that this part amends the Criminal Code.

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

Clause 13 amends the heading of section 205A of the Criminal Code to ‘Contravening order about device information from digital device’. The amendment ensures that the heading accurately reflects section 205A that references sections of the *Police Powers and Responsibilities Act 2000* and the *Crime and Corruption Act 2001* that have been amended in the Bill to refer to the new definitions of ‘device information’ and ‘digital device’.

Subclause (2) amends section 205A to incorporate the ‘without reasonable excuse’ element into the offence provision. The amendment ensures the existing defence contained in sections 154A and 156(3)(b) of the *Police Powers and Responsibilities Act 2000* and 88B of the *Crime and Corruption Act 2001* also applies to section 178A of the *Police Powers and Responsibilities Act 2000*. Section 178A relates to access information orders for crime scene warrants. That section had been silent as to the reasonable excuse element. The reasonable excuse provision is more appropriately placed in the offence provision.

Subclause (3) amends section 205A by inserting a new subsection (2) providing that it is not a reasonable excuse to contravene the order on the basis that complying with the order might tend to incriminate the person or expose the person to a penalty. The amendment mirrors the existing compliance provisions in the relevant Acts.

**14. Insertion of new ch 101**

**Chapter 101 Transitional provision for Police Powers and Responsibilities and Other Legislation Amendment Act 2019**

Clause 14 inserts a new Chapter 101 to provide transitional arrangements as a result of the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

**s 743 (Saving of former s 205A)**

Section 743 provides a transitional provision for offences against the former section 205A.

**Part 5 – Amendment of Domestic and Family Violence Protection Act 2012**

**15. Act amended**

Clause 15 states that this part amends the *Domestic and Family Violence Protection Act 2012*.

**16. Amendment of s 134A (Power to give direction)**

Clause 16 amends section 134A of the *Domestic and Family Violence Protection Act 2012* that provides police with a power to give particular directions under the Act.

Subclause (1) amends section 134A by inserting new sections 134A(4A), (4B) and (4C).

These new sections provide that where a person has been directed by a police officer to move to another stated location under subsection (4) and the person is to be transported by police to the other location, the following apply before the person is transported to the other location. The police officer may search the person for anything in the person's possession that may be used to cause harm to the person or another person. If, during the search, the police officer finds such a thing, the police officer may direct the person to leave the thing at the person's current location before being transported to the other location. A thing seized by police during the search is, for the purposes of section 622 (Receipt for seized property) of the *Police Powers and Responsibilities Act 2000*, taken to have been seized under that Act.

The amendment provides additional safety to police, the detained person and members of the public by enabling police to search a person to be transported under section 134A(4).

Subclause (2) omits section 134A(5)(b)(ii) and inserts new subsections (ii) to (v), providing additional requirements on police to advise the person who has been directed under subsections (2), (4) or (6)(b).

Subclause (3) consequently amends section 134A(1) and (5) by replacing reference to 'subsection (2) or (4)' with 'subsection (2), (4) or (6)(b)'.

Subclause (4) consequently amends section 134A(6) by replacing reference to 'subsection (5)' with 'subsection (8)'.

Subclause (5) consequently amends section 134A(7) by replacing reference to 'subsection (6)' with 'subsection (9)'.

Subclause (6) consequently renumbers section 134A(4A) to (7) as sections 134A(5) to (10).

#### **17. Amendment of s 169H (Who may give or receive information on behalf of entity)**

Clause 17 amends section 169H(3)(b) to permit a staff member of the Queensland Police Service under the *Police Service Administration Act 1990*, in addition to a police officer, to give, receive or use information for the entity under subsection (2).

Section 169H(3)(b) had only allowed a police officer to give, receive or use information. The clause provides greater autonomy to the Queensland Police Service in relation to dealing with information under the *Domestic and Family Violence Protection Act 2012*.

## **Part 6 – 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 19 (General power to enter to make inquiries, investigations or service documents)**

Section 19 provides general powers for police to enter particular places to make enquiries and serve documents. Section 19(2) restricts the entry power to a private place if a provision of an Act provides for entry under a search warrant or other stated authority. Section 19(2) provides a note with the example of section 59 of the *Prostitution Act 1999*.

Clause 19 amends the note in section 19(2) to replace reference to ‘section 59’ with ‘part 3A, division 2’ to reflect the new authorised officer powers in Part 3A of the *Prostitution Act 1999*.

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

Clause 20 amends section 21B(6) by removing the definition of *storage device* as the definition of *digital device* in the new section 149A will apply.

Subclause (2) replaces reference to ‘storage’ with the term ‘digital’ as a result of the definition *digital device* contained in the new section 149A and referenced in Schedule 6 of the *Police Powers and Responsibilities Act 2000*.

**21. Amendment of s 41 (Prescribed circumstances for requiring name and address)**

Clause 21 removes section 41(m) that provided police with a power to require name and address in circumstances relating to sober safe centres. The power is no longer required as a result of the repeal of the sober safe centre trial laws in 2015.

Subclause (2) renumbers section 41 subsections (n) to (p) as subsections (m) to (o) as a result of subsection (m) being removed.

**22. Amendment of s 42 (Power for age-related offences and for particular motor vehicle related purposes)**

Clause 22 removes section 42(1)(c)(vii) that provided police with a power to require a person to state their correct date of birth when being detained by police for transport or admission to a sober safe centre. The power is no longer required as a result of the repeal of the sober safe centre trial laws in 2015.

Subclause (2) consequently renumbers section 42(1)(c)(viii) as section 42(1)(c)(vii).

**23. Amendment of ch 2, pt 6A (Prevention of criminal consorting)**

Clause 23 consequently amends the note after the heading in Chapter 2, Part 6A by renumbering reference to ‘section 41(p)’ to ‘section 41(o)’. The amendment is required as subsection (p) has been renumbered as a result of the sober safe provisions being removed by clause 21.

**24. Amendment of s 106A (Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice)**

Clause 24 amends section 106A to rectify a grammatical error by removing reference to ‘an vehicle production notice’ and replacing it with ‘a vehicle production notice’.

**25. Replacement of s 119 (Voluntary transfer of ownership of motorbike to State)**

Clause 25 replaces section 119 to expand its application to include a motor vehicle impounded and held at a holding yard under Chapter 4.

The purpose of the amendment is to provide the owner of an impounded motor vehicle under Chapter 4 with the option to agree to transfer ownership of the vehicle to the State, thereby ending the impoundment period and enabling the vehicle to be disposed of.

An example of where this option could be engaged would be in circumstances where the total cost to store an impounded motor vehicle under Chapter 4 in the holding yard exceeds the value of the vehicle itself.

**26. Amendment of s 121 (Application of proceeds of sale)**

Clause 26 amends section 121 to include those vehicles where ownership has been transferred to the State under section 119. Should the Commissioner of police decide to sell the vehicle, the proceeds of the sale must be distributed accordingly.

**27. Insertion of new ch 7, pt 1A**

**Part 1A Preliminary**

Clause 27 inserts a new Part 1A (Preliminary) before Part 1.

**s 149A (Definitions for chapter)**

The new section 149A (Definitions for chapter) contains the definitions for *access information*, *device information*, *digital device* and *specified person*. The previous definitions of *access information*, *specified person*, *storage device* and *stored* have been removed from section 150AA.

The definition of *access information* for a digital device, means information necessary for a person to access or read device information from the device. Examples of access information are provided and include userid, username, passcode and password.

The definition of *device information* from a digital device, means information stored on the device; or information accessed, communicated or distributed by using the device, including by using an application on the device. Examples of device information are provided and include images stored on a computer, location data stored on or sent from a mobile phone, emails or text messages sent from a smart phone, and messages or videos distributed from a social media application on a tablet computer.

The definition of *digital device* means a device on which information may be stored or accessed electronically; and includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

The definition of *specified person* is amended to remove references to ‘storage device’ and replace it with ‘digital device’ or where applicable ‘device’. The amended definition clarifies that it applies in relation to a digital device at, or seized from, a place for which a search warrant is, or was issued, or a crime scene is or was established. The amendment also clarifies that the specified person has, or is likely to have, the requisite knowledge.

The replacement definitions ensure that access to social media applications such as Facebook and Instagram, or private email accounts such as outlook.com and gmail.com, can be appropriately captured by police when seeking orders for access information when applying for search warrants and crime scene warrants under Chapter 7.

## **28. Amendment of s 150AA (Definitions)**

Clause 28 amends section 150AA by removing the definitions of *control order property*, *employee*, *issuer*, *relevant evidence*, *warrant evidence or property* and relocates them to the new section 149A or to Schedule 6 (Dictionary) of the Act.

## **29. Omission of s 150AA (Definitions)**

Clause 29 omits section 150AA as the relevant definitions have been relocated to the new section 149A or to Schedule 6 (Dictionary) of the Act.

## **30. Amendment of s 154 (Order in search warrant about information necessary to access information stored electronically)**

Clause 30 amends section 154 dealing with orders in search warrants for access information as a result of the amended definitions in clause 27.

Subclause (1) amends the heading to ‘Order in search warrant about device information from digital device’.

Subclause (2) amends section 154(1) by replacing reference to ‘storage device in the person’s possession, or to which the person has access’ with ‘digital device’.

Subclause (3) replaces section 154(1)(a) and (b) to use the new term ‘device information’ and refer to any assistance necessary for the officer to gain access to device information from the device. Subclause (3) also replaces reference to ‘evidence of the commission of an offence’ with ‘relevant evidence’ to provide drafting consistency.

Subclause (4) consequently amends section 154(2) by replacing reference to ‘subsection (1)(a) or (b)’ with ‘subsection (1)(b) or (c)’.

Subclause (5) consequently amends section 154(3)(a) to make mention of the assistance to be provided by the specified person under subsection (1)(b).



Subclause (6) amends section 154(3)(b) to replace ‘and assistance’ to ‘or assistance’ to correctly reflect the section.

Subclause (7) amends section 154(3) by inserting subsection (d) to require that any order made under subsection (2) must state that a failure to comply with the order may be dealt with under the Criminal Code, section 205A.

**31. Amendment of s 154A (Order for access information after storage device has been seized)**

Clause 31 amends section 154A as a result of the amended definitions contained in the new section 149A.

Subclause (1) amends the heading of section 154A to ‘Order after digital device has been seized’.

Subclause (2) and (3) amends section 154A(1)(a) and (b)(ii) by replacing references to ‘storage’ and ‘information stored on’ with ‘digital’ and ‘device information from’ respectively.

Subclause (4) consequently amends section 154A(2) by replacing reference to ‘subsection (1)(a) or (b)’ to ‘subsection (1)(b) or (c)’.

Subclause (5) amends section 154A(3)(b) to correctly refer to a Supreme Court judge where judge is mentioned.

Subclause (6) amends section 154A(4)(a) by inserting reference to section 154A(1)(b) to clarify the nature of the assistance that is to be provided by the specified person.

Subclause (7) amends section 154A(4)(d) to remove reference to ‘without reasonable excuse’ which is now mentioned in the offence provision in section 205A of the Criminal Code.

Subclause (8) consequently amends section 154A(5) to replace reference to ‘information stored on the storage device’ to ‘device information from the digital device’ as a result of the amended definitions in section 149A.

**32. Amendment of s 154B (Compliance with order about information necessary to access information stored electronically)**

Clause 32 amends the heading of section 154B to ‘Compliance with order about device information from digital device’ as a result of the amended definitions contained in section 149A.

Subclause (2) amends section 154B to improve readability by using the term ‘expose’ in relation to the offence penalty.

**33. Amendment of s 156 (What search warrant must state)**

Clause 33 amends section 156(3) by removing reference to ‘without reasonable excuse’ which is relocated to the offence provision in section 205A of the Criminal Code.

**34. Amendment of s 178A (Order for access information for a storage device at or seized from a crime scene)**

Clause 34 amends section 178A to ensure the amended definitions contained in section 149A are used throughout the section.

Subclause (1) amends the heading of section 178A to ‘Order about digital device at or seized from a crime scene’.

Subclause (2) amends section 178A(1) by removing reference to ‘access information order for a storage device’ and replacing it with reference to the order requiring a specified person to do a thing mentioned in subsection (2).

Subclause (3) inserts a new subsection (1A) to restructure the existing requirements of the specified person mentioned in the order.

Subclause (4) consequently amends section 178A(2), (3) and (4) by removing reference to ‘access information’.

Subclause (5) consequently amends section 178A(2) by removing reference to ‘information stored on the storage device’ and replacing it with ‘device information from the digital device’.

Subclause (6) amends section 178A(3)(a) to refer to the assistance to be provided by the specified person mentioned in subsection (2)(b) in relation to the device.

Subclause (7) consequently amends section 178A(3)(b) replacing ‘and assistance’ with ‘or assistance’.

Subclause (8) removes section 178A(5) as the definitions are now contained in section 149A.

Subclause (9) consequently renumbers sections 178A(1A) to (4) as sections 178A(2) to (5).

**35. Replacement of s 178B (Compliance with access information order)**

Clause 35 replaces section 178B to provide a new heading ‘Compliance with order about device information from digital device’. The section is also amended to refer to section 178A(1) to clarify which order the section relates to.

**36. Amendment of s 224 (Authorised controlled activities)**

Clause 36 amends section 224(1)(b)(i) by removing reference to a police officer and a person ‘meeting’ on one or more occasions, whether or not the meeting was the result of written or oral communication with the person. The amendment provides a more modern and generic reference to a police officer ‘communicating’ with the person in any way, whether on one or more occasions.

The amendment removes any doubt that all types of communication, such as emails and text messages between the relevant police officer and a subject person in relation to a controlled activity offence investigation, are appropriately captured as controlled activities under section 224.

**37. Amendment of s 274 (Delegation—commissioner)**

Clause 37 amends section 274(a) and (b) to provide that the Commissioner of police may delegate any of the Commissioner's powers under Chapter 11 in relation to the authorisation, variation and cancellation of controlled activities to a Deputy Commissioner, or Assistant Commissioner or the detective Chief Superintendent responsible for Statewide crime operations.

The amendment broadens the previous delegation that was limited to a Deputy Commissioner and the Assistant Commissioner for Statewide crime operations. This will ensure that the approval of controlled operations continues to happen in a timely manner by appropriately experienced senior police.

**38. Amendment of s 332 (What a surveillance device warrant authorises)**

Section 332(1) provides that a surveillance device warrant may authorise the use of a surveillance device in relation to a stated premises, stated vehicle/object or stated person. Section 332(2) provides for the different uses a surveillance device warrant authorises such as the installation, use and maintenance of the device.

However, in 2017 the *Counter Terrorism and Other Legislation Amendment Act 2017* amended section 322 by inserting definitions of 'premises' and 'place'. The amendments had the unintended consequence of excluding a vehicle for the purposes of a named person warrant under section 332(2)(c).

The amendments in the *Counter Terrorism and Other Legislation Amendment Act 2017* were made to recognise the mobility of a vehicle and to remove the requirement to state, in the warrant, all properties that can be traversed when exercising surveillance device warrant powers.

Clause 38 amends section 332(2)(c)(i) and (ii) to remove any doubt that a surveillance device warrant authorisation includes the installation, use and maintenance of a surveillance device in or on a vehicle for a named person warrant.

**39. Amendment of s 378 (Additional case when arrest for being intoxicated in a public place may be discontinued)**

Clause 39 removes section 378(3)(c) as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*.

**40. Omission of s 378A (Additional case when arrest may be discontinued to take person to sober safe centre)**

Clause 40 removes section 378A as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*.

**41. Omission of ch 14, pt 5, div 1, hdg (General provisions)**

Clause 41 removes the heading of Chapter 14, Part 5, Division 1 as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*.

**42. Omission of ch 14, pt 5, div 2 (Sober Safe Centre Trial)**

Clause 42 removes the content of Division 2 of Chapter 14, Part 5 as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*.

**43. Amendment of s 442 (Application of ch 16)**

Clause 43 removes section 442(ca) as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*. Section 442(cb) to (d) is consequently renumbered as section 442(d) to (f).

**44. Amendment of s 602F (Extended police banning notice)**

Clause 44 removes section 602F(4)(e) as a result of the Sober Safe Centre Trial finishing in October 2015. The trial commenced in October 2014 for a 12-month period after amendments were made via the *Safe Night Out Legislation Amendment Act 2014*. Section 602F(4)(f) to (h) is consequently renumbered as section 602F(4)(e) to (g).

**45. Amendment of s 718 (Order for forfeiture of particular relevant things)**

Clause 45 omits section 718(1) that permits the commissioner to order the forfeiture to the State of property that has been in the possession of the police service for at least 60 days.

The minimum 30-day requirement to provide written notice to the owner of their found property, or to provide notice via the QPS website of property where an owner is unknown, remains unchanged.

The amendment reflects the advances in technology that enable members of the public to immediately report their lost property to police on-line or by telephone. Additionally, where applicable, incidents of found property lodged at a police property point and not disposed of, are uploaded on the police service website for members of the public to quickly and accurately search in an effort to locate their goods. The amendment provides additional efficiencies for police by reducing any unnecessary holding time at a police property point for unclaimed property. Police will continue to be able to hold unclaimed property for longer than the minimum period if required.

**46. Amendment of s 784 (Voluntary transfer of ownership of motor vehicle to State)**

Clause 46 amends section 784(4) to replace 'State agrees' with 'commissioner agrees' in order to correctly reference that the agreement to transfer a vehicle is between the owner of the vehicle and the police commissioner.

**47. Amendment of s 808A (Annual report about use of device inspection powers)**

Clause 47 consequently amends section 808A(3) by replacing reference to ‘storage’ with ‘digital’ as a result of the amended definitions in the new section 149A.

**48. Amendment of sch 3 (Relevant offences for chapter 13 disclosure of information provisions)**

Clause 48 amends Schedule 3, section 11 by removing reference to ‘section 71(1), (2), (3) or (4)’ and inserting reference to ‘section 71(1), (2), (3), (4), (5) or (6)’ as a result of the renumbering of section 71 of the *Weapons Act 1990*.

**49. Insertion of new ch 24, pt 18**

Clause 49 inserts a new Part 18 to provide transitional arrangements for the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

**Part 18 Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2019**

**s 884 (Definitions for part)**

Section 884 provides definitions of *amending Act* and *former* for this part.

**s 885 (Particular applications or orders made before commencement)**

Section 885 provides transitional arrangements for an order, or applications for an order, under the former sections 21B, 154, 154A or 178A that deal with access information to digital devices such as computers.

**s 886 (Declaratory provision about effect of amending Act)**

Section 886 provides transitional arrangements about deciding, after commencement of the amending Act, a matter to which a particular former provision applies.

**s 887 (Saving of operation of s 390P)**

Section 887 provides transitional arrangements to ensure that the repeal of the former section 390P does not affect the legislative protection provided to health care professionals in relation to acts or omissions associated with sober safe centres prior to commencement of the amending Act.

**50. Amendment of sch 6 (Dictionary)**

Clause 50 amends Schedule 6 by removing the definitions of *access information*, *centre officer*, *control order property*, *employee*, *health care professional*, *issuer*, *manager*, *premises* (both entries), *prescribed safe night precinct*, *relevant evidence*, *responsible person*, *sober safe centre*, *specified person*, *storage device*, *stored* and *warrant evidence or property*.

Subclause (2) inserts definitions for *access information*, *control order property*, *device information*, *digital device*, *employee*, *issuer*, *premises*, *relevant evidence*, *specified person* and *warrant evidence or property*. The new definition of *property* combines the previous two definitions of property into one for ease of reading. The other definitions now reference the new section 149A.

Subclause (3) is a minor drafting amendment to the definitions of *body art tattooing business*, *detection dog* and *tattoo parlour* so that the full wording for the terms ‘chapter’ and ‘part’ are used in the definition.

## **Part 7 – Amendment of Prostitution Act 1999**

### **51. Act amended**

Clause 51 states that this part amends the *Prostitution Act 1999*.

### **52. Amendment of s 8 (Who is ineligible for a brothel licence)**

Section 8 provides the circumstances when a person is ineligible to apply for a brothel licence. Subsections (1)(f) and (g) provide that if a person has had a licence, authority or certificate cancelled in the last three years they are ineligible to apply for a brothel licence.

Sections 25 and 51 of the Act provide, in part, for the automatic cancellation of a brothel licence/authority/certificate for the failure to pay the annual fees during the prescribed suspension period.

Sections 24B and 50B provide, in part, for the automatic suspension period of 28 days for failing to pay the annual licence fee.

This has created the unintended consequence that should the person be able to pay the annual fee after the suspension period has commenced, they cannot do so as their licence/authority/certificate has been automatically cancelled for three years. It was never the intention of the legislation to prohibit persons from applying for another licence or certificate for non-payment of fees.

Clause 52 rectifies this issue by amending section 8 with a new subsection (2) that provides that subsection (1)(f) and (g) do not apply if the licence or authority or certificate was automatically cancelled for failure to pay a fee.

### **53. Amendment of s 26 (Investigating disciplinary action)**

Clause 53 consequently amends section 26(2) by removing the word ‘officer’ and replacing the term with ‘official’ as a result of the new definition of authorised officer in section 59.

### **54. Amendment of s 34 (Who is ineligible for a certificate)**

Section 34 provides the circumstances when a person is ineligible to apply for an approved manager’s certificate. Subsections (f) and (g) provide that if the person has had a

licence/certificate/authority to provide prostitution or to manage a brothel cancelled in the last three years they are ineligible to apply for an approved manager's certificate.

It was never the intention of the legislation to prohibit persons from applying for another approved manager's certificate for non-payment of fees.

Clause 54 rectifies this issue by amending section 34 by inserting a new subsection (2) that provides that subsection (1)(f) and (g) do not apply if the licence/certificate/authority was automatically cancelled for failure to pay a fee.

#### **55. Amendment of s 52 (Investigating disciplinary action)**

Clause 55 amends sections 52(2) by replacing reference to 'authorised officer' with 'authorised official' to differentiate it from the use of authorised officer in the new Part 3A.

#### **56. Omission of pt 3, div 3 (Powers of entry)**

Clause 56 removes Part 3, Division 3 as powers of entry are provided in the new Part 3A.

#### **57. Insertion of new pt 3A**

Clause 57 inserts a new Part 3A (Enforcement) after section 58. In addition to nominated police officers, Part 3A provides enforcement powers to appropriately qualified staff members who have been authorised by the executive director of the Prostitution Licensing Authority as authorised officers.

## **Part 3A Enforcement**

### **Division 1 Authorised officers**

#### **s 59 (Meaning of *authorised officer*)**

Clause 57 inserts section 59 that provides that an authorised officer is a police officer of at least the rank of inspector; a police officer authorised by a police officer of at least the rank of inspector to exercise the enforcement powers; or a staff member authorised under section 60 by the executive director to exercise enforcement powers.

#### **s 60 (Executive director may authorise staff member to exercise enforcement powers)**

Clause 57 inserts section 60 to provide that the executive director may authorise an appropriately qualified staff member, or an appropriately qualified class of staff members, to exercise enforcement powers. The executive director must issue the authorised staff member with an identity card. The clause creates an offence for the authorised staff member not to return their identity card to the executive director as soon as practicable after ceasing to be an authorised officer. The offence is punishable by a maximum penalty of 25 penalty units.

## **Division 2 Powers of entry**

### **s 61 (Production of authorised officer's identity card)**

Clause 57 inserts section 61 requiring the authorised officer to produce or display their identity card for inspection when exercising an enforcement power in relation to a person. If, for any reason, it is not practicable to produce or display the identity card, the officer must produce it for inspection by the person at the first reasonable opportunity.

### **s 61A (Entry of premises by authorised officer)**

Clause 57 inserts section 61A to provide that an authorised officer may at any reasonable time enter a licensed brothel, or any other premises the authorised officer suspects is being used for prostitution, if the occupier consents to the entry; or entry is authorised by a warrant; or the premises are open for business or otherwise open for entry.

The entry power is limited by subsection (2) that does not confer a power to enter premises, or a part of premises, used only for residential purposes without the consent of the occupier or the authority of a search warrant.

As a safeguard to the occupier, subsection (3) requires that before asking the occupier for consent, the authorised officer must explain to the occupier the purpose of the entry; and that the occupier is not required to consent; and that consent may be conditional and withdrawn at any time.

Additionally, if the premises are entered by consent under subsection (1)(a), or during business hours under subsection (c), by a police officer who is not of at least the rank of inspector of police, the officer must be specifically authorised in writing for the particular entry.

### **s 61B (Warrants)**

Clause 57 inserts section 61B to provide the power for an authorised officer to apply to a magistrate for a warrant for a place. The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting there are particular things (the evidence) that may provide evidence of the commission of an offence against the Act. The magistrate must also be satisfied there are reasonable grounds for suspecting that such evidence is, or may be within the next 7 days, at the place.

Section 61B also provides what the warrant must state, including the power to use force that may be necessary and reasonable to enter the place and exercise enforcement powers.

### **s 61C (Authorised officer's general powers in premises)**

Clause 57 inserts section 61C that outlines the powers an authorised officer may exercise after entering the premises under the division. The powers can only be exercised with the consent of the occupier of the premises or if the entry is authorised by a warrant. The authorised officer may:

- search any part of the premises;
- seize evidence for which the warrant was issued;



- seize a thing if the authorised officer believes on reasonable grounds:
  - the thing is evidence of the commission of an offence against the Act; and
  - the seizure is necessary to prevent –
    - the concealment, loss or destruction of the thing, or
    - the use of the thing in committing, continuing or repeating an offence against the Act.
- inspect, examine, record, photograph or film anything in or on the premises;
- take extracts from, or make copies of, any document in or on the premises; or
- take into or onto the premises any person, equipment and materials that the authorised officer reasonably requires for the purpose of exercising any powers in relation to the premises.

#### **s 61D (Procedure after thing seized)**

Clause 57 inserts section 61D to provide procedures and safeguards for the authorised officer after seizing a thing. As soon as practicable after seizing the thing, the authorised officer must give a receipt for it to the person from whom it was seized.

The authorised officer must allow a person who would be entitled to the seized thing, if it were not in the authorised officer's possession, to inspect it, or if it was a document to take extracts from it or make copies of it.

The authorised officer must also return the seized thing to the person at the end of 12 months, or if a proceeding is commenced within 12 months for an offence or a disciplinary proceeding involving the seized thing – at the end of the proceeding for the offence and any appeal from the proceeding.

Regardless, the authorised officer must return the seized thing to the person if the authorised officer is satisfied its retention as evidence is no longer necessary, and its return is not likely to result in its use in repeating the offence.

#### **s 61E (Power to require production of documents)**

Clause 57 inserts section 61E. Subsection (1) provides that an authorised officer may require a person, by written notice given to the person, to produce to the authorised officer, at a reasonable time and place stated in the notice, any documents the authorised officer believes, on reasonable grounds, the person has possession or control of and are relevant to the administration or enforcement of the Act.

Subsection (2) provides that the authorised officer may require the person to give the authorised officer reasonable assistance in exercising the power mentioned in subsection (1).

Subsection (3) provides that a person must not, without reasonable excuse, fail to comply with a requirement made under subsection (1) or (2). The new offence is punishable by a maximum penalty of 50 penalty units.

Subsection (4) provides that it is a reasonable excuse for a person to fail to produce a document, other than a document required to be kept by the person under the Act, if producing the document might tend to incriminate the person or expose them to a penalty.

Subsection (5) provides that an authorised officer may examine the document and make a copy, or take an extract from, the document; or if the officer considers on reasonable grounds that it is necessary to remove the document to examine or copy it, remove the document from the person's possession or control.

Subsection (6) provides that subsection (7) applies if a document removed under subsection (5) is a record made or kept under the Act; or an accounting record or other record about a business conducted under a brothel licence.

Subsection (7) provides that the authorised officer must permit, at all reasonable times, a person who would otherwise be entitled to inspect or make additions to the record, to be able to inspect and make additions.

Subsection (8) provides that an authorised officer who has removed a document under subsection (5) must as soon as is practicable examine it, copy it if necessary, and then return it to the person.

#### **s 61F (Authority to be given particulars after entry)**

Clause 57 inserts section 61F to require that as soon as practicable after an authorised officer enters premises under section 61A, or a place under a warrant issued under section 61B, the authorised officer must give the Prostitution Licensing Authority the particulars in relation to the entry prescribed by regulation.

#### **s 61G (Obstructing authorised officer)**

Clause 57 inserts section 61G. Subsection (1) provides that a person must not obstruct an authorised officer exercising an enforcement power, or someone helping an authorised officer exercising an enforcement power, unless they have a reasonable excuse. The offence is punishable by a maximum penalty of 60 penalty units.

Subsection (2) provides that if a person has obstructed an authorised officer, or someone helping them, and the officer decides to proceed with the exercise of the power, the officer must warn the person that—

- (a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and
- (b) the authorised officer considers the person's conduct an obstruction.

Subsection (3) defines *obstruct* to include assault, hinder, resist, attempt to obstruct and threaten to obstruct.

#### **58. Amendment of s 65 (Application to Magistrates Court)**

Clause 58 amends section 65(1) by replacing reference to 'authorised officer' with 'authorised official' as a consequence of the amended definition of authorised officer in section 59.

**59. Amendment of s 71 (Rescission of declaration)**

Clause 59 amends section 71(1)(d) by replacing reference to ‘authorised officer’ with ‘authorised official’ as a consequence of the amended definition of authorised officer in section 59.

**60. Amendment of s 78 (Brothel offences)**

Clause 60 amends section 78(1)(c) to omit subsection (1)(c) and insert a new subsection (2A) to make it an offence for a licensee, or an approved manager of a licensed brothel, to provide prostitution at the brothel in contravention of any condition or restriction of a licence or a certificate. The offence is punishable by a maximum penalty of 20 penalty units.

Subclauses (3) and (4) consequently renumbers section 78(1)(d) as section 78(1)(c), and section 78(2A) and (3) as section 78(3) and (4).

**61. Omission of s 84 (Complying with police requirement)**

Clause 61 removes section 84 as the requirement to produce documents is now captured in the new section 61E (Power to require production of documents).

**62. Amendment of s 111 (Licence and certificate register)**

Clause 62 replaces section 111(2)(a) by making reference to an ‘authorised officer’ and an ‘authorised official’ as a consequence of the amended definition of authorised officer in section 59.

**63. Amendment of s 132 (Evidentiary provision)**

Clause 63 amends section 132(2) and (3) by removing reference to ‘or an authorised officer’ and replacing it with ‘an authorised officer or an authorised official’ as a consequence of the amended definition of authorised officer in section 59.

**64. Amendment of s 133 (Disclosure of information)**

As a consequential amendment, clause 64 amends the definition of *official* in section 133(3) by:

- inserting new subsection (fa) ‘an authorised officer’;
- amending subsection (g) by replacing ‘officer’ with ‘official’; and
- renumbering paragraphs (fa) and (g) as paragraphs ‘(g) and (h)’.

**65. Renumbering of s 164 (Application of Act to application for variation not decided before commencement)**

Section 164 provides transitional arrangements for provisions of the *Court and Civil Legislation Amendment Act 2017*. Clause 65 renumbers section 164 as section ‘163A’ in order to rectify a numbering error in the Act.

**66. Renumbering of pt 9, div 8 (Provisions for Planning (Consequential) and Other Legislation Amendment Act 2016)**

Clause 66 renumbers Part 9, Division 8 as 'Part 9, Division 9' in order to rectify a numbering error in the Act.

**67. Insertion of new pt 9, div 10**

Clause 67 inserts a new Part 9, Division 10 (Provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2019) to provide transitional arrangements as a result of the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

**Division 10 Provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2019**

**s 168 (Proceedings for particular offences)**

Section 168 provides transitional arrangements in relation to an offence against former sections 78(1)(c) or 84 of the Act before the commencement of the amending Act. Section 78(1)(c) relates to the offence of providing prostitution at a brothel in contravention of any condition or restriction of a licence or a certificate. Section 84 relates to the offence of failing to comply with a police requirement.

**68. Amendment of sch 4 (Dictionary)**

As a consequential amendment, clause 68 amends the definitions in schedule 4. Subclause (1) removes the definition of *authorised officer of a relevant local government*.

Subclause (2) inserts definitions of *authorised officer*, *authorised official of a relevant local government*, *enforcement power* and *occupier* as a result of the amended definition of authorised officer.

**Part 8 – Amendment of Public Safety Preservation Act 1986**

**69. Act amended**

Clause 69 states that this part amends the *Public Safety Preservation Act 1986*.

**70. Amendment of s 8AZE (Power to require access information)**

Clause 70 amends section 8AZE dealing with the power to require access information or assistance as a result of the new definitions contained in the schedule (Dictionary).

The replacement definitions ensure that access to social media applications such as Facebook and Instagram, or private email accounts such as outlook.com and gmail.com, can be appropriately captured by police when police exercise extraordinary emergency powers, and terrorist emergency powers, for specified areas under Part 2 and Part 2A respectively of the Act.

Subclause (1) amends the section heading to ‘Power to require access information or assistance’ to best describe the powers contained in the section.

Subclause (2) amends section 8AZE(1)(a) and (6) to replace reference to ‘storage device’ with ‘digital device’ as a result of the new definition of digital device.

Subclause (3) amends section 8AZE(1)(b) by replacing reference to ‘information’ with ‘device information’ as a result of the new definition of device information.

Subclause (4) amends section 8AZE(1)(c) to correctly reference the emergency situation officer.

Subclause (5) amends section 8AZE(1)(c) to include reference to the assistance that the person must provide in addition to the access information.

Subclause (6) replaces section 8AZE(2) to correctly reference the emergency situation officer and the terms ‘digital device’ and ‘device information’.

Subclause (7) amends section 8AZE(5) to improve readability by inserting the words ‘on the basis’.

#### **71. Amendment of s 8AZF (What power to search or seize a storage device includes)**

Clause 71 amends section 8AZF as a result of the new definitions contained in the schedule (Dictionary).

Subclause (1) amends the heading to replace ‘storage’ with ‘digital’.

Subclause (2) amends section 8AZF by replacing reference to ‘this is a storage device’ with ‘that is a digital device’.

Subclause (3) amends section 8AZF(a), (b) and (d) by removing reference to ‘storage’.

Subclause (4) amends section 8AZF(a), (b) and (d) by replacing reference to ‘information stored on’ with ‘device information from’.

Subclause (5) amends section 8AZF(c) to provide references to ‘digital device’ and ‘device information’.

#### **72. Amendment of s 8PAB (Power to require access information)**

Clause 72 amends the heading of section 8PAB to ‘Power to require access information or assistance’ to best describe the powers contained in the section.

Subclause (2) amends section 8PAB(1)(a) and (6) to replace reference to ‘storage’ with ‘digital’ as a result of new definitions in clause 76.

Subclause (3) amends section 8PAB(1)(b) to correctly reference the terrorist emergency officer and the term ‘device information’.

Subclause (4) amends section 8PAB(1)(c) to correctly reference the terrorist emergency officer.

Subclause (5) amends section 8PAB(1)(c) to include reference to the assistance the person may be able to provide the terrorist emergency officer.

Subclause (6) replaces section 8PAB(2) to correctly reference the terrorist emergency officer and the terms ‘digital device’ and ‘device information’ as a result of the new definitions in the Schedule (Dictionary).

Subclause (7) amends section 8PAB(5) by replacing reference to ‘that complying’ with ‘on the basis that complying with the requirement’ to improve readability.

**73. Amendment of s 8PAC (What power to search or seize a storage device includes)**

Clause 73 amends section 8PAC to replace reference to ‘storage’ with ‘digital’ and reference to ‘information’ with ‘device information’ as a result of the new definitions in the Schedule (Dictionary).

**74. Amendment of s 47C (Use of particular evidence in proceedings)**

Clause 74 amends section 47C to replace reference to ‘storage’ with ‘digital’ and reference to ‘information’ with ‘device information’ as a result of the new definitions in the Schedule (Dictionary).

**75. Insertion of new pt 5**

Clause 75 inserts a new Part 5 after section 50 to provide transitional arrangements for the Police Powers and Responsibilities and Other Legislation Amendment Act 2019.

**Part 5 Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2019**

**s 51 (Definitions for part)**

Section 51 provides definitions of *amending Act* and *former* for the transitional arrangements.

**s 52 (Saving of former provisions)**

Section 52 provides transitional arrangements for offences against former sections 8AZE, 8AZF, 8PAB and 8PAC.

**s 53 (Declaratory provision about effect of amending Act)**

Section 53 provides a declaratory provision for deciding a matter, after commencement of the amending Act, to which a former provision applies.

## **76. Amendment of schedule (Dictionary)**

Clause 76 amends the definitions in the schedule by removing definitions of *access information*, *storage device* and *stored* and replacing them with *access information* (new definition), *device information* and *digital device*.

The definition of *access information* for a digital device, means information necessary for a person to access or read device information from the device. Examples of access information are provided and include userid, username, passcode and password.

The definition of *device information* from a digital device, means information stored on the device or information accessed, communicated or distributed by using the device, including by using an application on the device. Examples of device information are provided and include images stored on a computer, location data stored on or sent from a mobile phone, emails or text messages sent from a smart phone, and messages or videos distributed from a social media application on a tablet computer.

The definition of *digital device* means a device on which information may be stored or accessed electronically; and includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

The replacement definitions ensure that access to social media applications such as Facebook and Instagram, or private email accounts such as outlook.com and gmail.com, can be appropriately captured by police when police exercise extraordinary emergency powers, and terrorist emergency powers, for specified areas under Part 2 and Part 2A respectively of the Act.

## **Part 9 – Amendment of Weapons Act 1990**

### **77. Act amended**

Clause 77 states that this part amends the *Weapons Act 1990*.

### **78. Amendment of s 28 (Suspension of licence by giving suspension notice)**

Clause 78 amends section 28(2)(c)(ii) by extending the timeframe to suspend a weapons licence from 30 days to 90 days.

Section 28(1)(b) allows an authorised officer to suspend a licence, issued under the Act, if there are reasonable grounds for believing the licensee may no longer be a fit and proper person to hold a licence. The weapons licence is cancelled after 30 days if the suspension has not been lifted.

Extending the timeframe for suspension provides the licensee with additional time to show they are fit and proper to hold a weapons licence. Currently, once a licence is cancelled, the licensee is then required to apply to QCAT for the licence to be re-instated to enable another suspension period to be applied. This situation disadvantages licensees and consumes unnecessary police and QCAT time in processing these submissions and notices.

The extension of time will alleviate this problem, and not disadvantage the licensee, as the authorised officer will still be able to lift the suspension when satisfied the person is fit to hold the licence.

**79. Insertion of new s 70A**

Clause 79 inserts section 70A (Obligations of armourers when modifying firearm to become different category of weapon) to place a lawful obligation on licensed armourers to ensure a licensee is correctly licensed to possess a modified firearm prior to modification work being undertaken at the licensee's request.

A failure by the licensed armourer to do so is punishable by a maximum penalty of 100 penalty units.

**80. Amendment of s 71 (Licensed dealers and armourers to keep register)**

Clause 80 amends section 71 that places obligations on licensed dealers and armourers to keep a register.

Subclause (1) amends section 71(2) and (5), replacing reference to 'under a regulation' with 'by regulation' to improve readability.

Subclause (2) inserts a new section 71(3A) and (3B). Section 71(3A) requires that a licensed armourer must enter in the weapons register the particulars prescribed by regulation for each modification of a firearm under section 70A. A failure to do so is punishable by a maximum penalty of 20 penalty units or 6 months imprisonment.

The new section 71(3B) requires that a licensed armourer must notify an authorised officer, in the approved form, of each modification of a firearm under section 70A within 14 days after the modification happens. A failure to do so is punishable by a maximum penalty of 20 penalty units or 6 months imprisonment.

Subclause (3) amends section 71(5) replacing reference to subsection (4) with subsection (6).

Subclause (4) renumbers sections 71(3A) to (6) as sections 71(4) to (8).

**81. Amendment of s 132 (Conditions for concealable firearms licence)**

Clause 81 amends section 132 that provides the conditions of a concealable licence. The amending clause removes section 132(1)(d) and (e) and inserts a new subsection (d) to provide that the licensee cannot possess 'a weapon with a magazine capacity of more than 10 rounds'. Maintaining both subsections would be duplicitous given the relocation of the definition of *magazine capacity* from the *Weapons Categories Regulation 1997* to the *Weapons Act 1990*.

When read in conjunction with the definition for *magazine capacity* in clause 82, the amendment ensures that Category H weapons with magazines that are integral to the weapon, or detachable, and have capacity of more than 10 rounds are appropriately captured.



**82. Amendment of sch 2 (Dictionary)**

Clause 82 amends Schedule 2 by removing the definition of *magazine* and provides new definitions of *detachable magazine*, *integral magazine*, *magazine* and *magazine capacity*.

The amendments ensure that the relevant definitions capture magazines that are fixed or integral to a weapon, as well as detachable magazines.

## **Part 10 – Amendment of Weapons Categories Regulation 1997**

**83. Regulation amended**

Clause 83 states that this part amends the *Weapons Categories Regulation 1997*.

**84. Omission of s 1A (Definition)**

Clause 84 removes section 1A that defines *magazine capacity* as the amended definition is to be located in Schedule 2 of the *Weapons Act 1990*.

**85. Amendment of s 3 (Category B weapons)**

Clause 85 amends section 3(1)(f) to provide drafting consistency by replacing reference to ‘not greater’ with ‘not more’ in relation to lever action shot gun magazine capacity.

**86. Amendment of s 4 (Category C weapons)**

Clause 86 amends section 4 to provide drafting consistency by replacing reference to ‘no greater’ with ‘of not more’ in relation to magazine capacity for Category C weapons.

**87. Amendment of s 5 (Category D weapons)**

Clause 87 amends section 5 to provide drafting consistency by replacing reference to ‘greater’ with ‘more’ in relation to magazine capacity of Category D weapons.

## **Part 11 – Amendment of Weapons Regulation 2016**

**88. Regulation amended**

Clause 88 states that this part amends the *Weapons Regulation 2016*.

**89. Amendment of s 8 (Additional particulars to accompany application for licence)**

Clause 89 amends section 8 to improve readability by removing reference to ‘prescribed particulars are as follows’ and replacing it with ‘the following particulars for each firearm owned by the applicant are prescribed’.

Subclause (2) consequently amends section 8(a) by removing reference to ‘each’ firearm and replacing it with ‘the firearm’.

Subclause (3) replaces section 8(b) to include both the chamber capacity and the magazine capacity of the firearm as prescribed particulars.

**90. Amendment of s 24 (Prohibition on possession of particular magazine for category H weapons)**

Clause 90 amends the heading of section 24 and the offence provision to reference the new definition of detachable magazine.

**91. Replacement of s 34 (Prohibition on possession of magazine for particular category B weapons)**

Section 34 provides that the registered owner of a category B weapon must not possess a magazine of particular capacity for the category of weapon in certain circumstances.

Clause 91 replaces section 34 to restructure the section and reference the new term ‘detachable magazine’ to accurately reflect the new magazine definitions in Schedule 2 (Dictionary) of the *Weapons Act 1990*.

**92. Amendment of s 37 (Conditions of minor’s licence)**

Clause 92 removes section 37(1)(c) and (d) and inserts a new subsection (c) that uses the term *magazine capacity* which is now defined in Schedule 2 (Dictionary) of the *Weapons Act 1990*. Maintaining both subsections would be duplicitous given the relocation of the definition of *magazine capacity* from the *Weapons Categories Regulation 1997* to the *Weapons Act 1990*.

Subclause (2) consequently renumbers section 37(1)(e) as section 37(1)(d). Subclause (3) consequently amends section 37(2) by replacing reference to ‘subsection (1)(e)’ with ‘subsection (1)(d)’.

**93. Amendment of s 57 (Other particulars licensed dealer or licensed armourer to enter in weapons register)**

Clause 93 amends section 57(1)(c) to include both the chamber capacity and the magazine capacity of the firearm as being particulars the licensed dealer or licensed armourer must enter in the weapons register.

**94. Amendment of s 59 (Particulars to be entered in collection register kept by licensed collector)**

Clause 94 amends section 59(1)(c) to include both the chamber capacity and the magazine capacity of the firearm as being particulars the licensed collector must enter in the collection register.

**95. Amendment of s 103 (Information licensed dealer involved in acquisition of weapon to give to authorised officer)**

Clause 95 amends section 103(1)(e) to include both the chamber capacity and the magazine capacity of the firearm as particulars the licensed dealer must enter in the weapons register when acquiring a weapon.

**96. Amendment of s 104 (Information particular persons who have sold or otherwise disposed of weapon to give authorised officer)**

Clause 96 amends section 104(1)(e) to include both the chamber capacity and the magazine capacity of the firearm as information a person must provide to an authorised officer when selling or disposing of a weapon.

**97. Amendment of s 161 (Handgun shooting competition that is prescribed to be an accredited event)**

Clause 97 amends section 161(a) to replace reference to ‘magazine with a maximum capacity’ with ‘magazine capacity’ to accurately reflect the new magazine definitions in Schedule 2 (Dictionary) of the *Weapons Act 1990*.