Police Powers and Responsibilities and Other Legislation Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2021.

Policy objectives and the reasons for them

The main objectives of the Bill are to:

- reduce knife crime by expanding the police banning notice regime to apply to a person (adult) who unlawfully possesses a knife in a relevant public place,
- limit re-traumatisation of victims' families and friends by introducing a new framework for parole decisions about a life sentenced prisoner who has committed multiple murders or who has murdered a child,
- strengthen the 'No Body, No Parole' (NBNP) framework to incentivise earlier prisoner co-operation to locate a homicide victim's remains,
- provide the Parole Board Queensland (the Board) with greater flexibility to respond to increased workload and the risks different prisoners pose to community safety,
- create administrative and operational efficiencies for the Queensland Police Service (QPS), enhance intelligence gathering about dangerous drugs and ensure Commonwealth child sexual abuse offences are updated in Queensland legislation, and
- create indictable offences for wilfully and unlawfully killing or seriously injuring a Queensland Corrective Services (QCS) dog, or QPS dog or horse, reflecting the seriousness of the offences in line with community expectations.

Police Powers and Responsibilities Act 2000 **(PPRA)**

<u>Police banning notices for unlawfully possessing a knife in a relevant public place</u>

Police can currently issue a police banning notice (banning notice) for no more than one month to a person in circumstances where there are concerns for public safety due to their behaviour in and around licensed premises, public places in safe night precincts and public events where alcohol is sold.

Police and the community are increasingly concerned with the disregard shown by some offenders who choose to carry a knife in a public place and use it in a fight. The injuries inflicted with a knife can bring life-changing consequences to both the victim and the offender.

The incidents of the unlawful possession of a knife in a public place under section 51 of the *Weapons Act 1990* (Weapons Act) are of concern to police. Two recent murders on the Gold Coast have involved offenders killing their victims with a knife in a safe night precinct. Safe

night precincts are government declared areas designed to promote responsible drinking practices and ensure a safe environment in and around licensed venues.

To further dissuade the carrying of a knife in public areas, the Bill will expand the existing banning notice regime in the PPRA so that it applies to a person who possesses a knife in contravention of section 51 of the Weapons Act in a relevant public place, that being, licensed premises, a public place in a safe night precinct and public events where alcohol is sold. This will exclude the person for no more than one month from the area in addition to proceedings that may be commenced for the unlawful possession of a knife.

There are safe night precincts in key entertainment areas across Queensland. Safe night precincts were created as an initiative to reduce late-night drug and alcohol-related violence. The banning of persons who unlawfully possess knives in safe night precincts, licensed premises and public events where alcohol is sold, is a natural extension to provide community safety in these public spaces.

Independent monitoring of surveillance devices by QPS civilian monitors and translators

The QPS utilises civilian police employees and contracted translators to monitor telephone calls and messages lawfully intercepted under warrants issued pursuant to the *Telecommunications (Interception and Access) Act 1979* (Cwlth). However, the PPRA does not expressly authorise the QPS to use such persons to monitor surveillance devices (issued under warrants pursuant to Chapter 13, 'Surveillance devices', PPRA) without the constant presence of a police officer. Currently, section 612, 'Assistance in exercising powers' of the PPRA and section 14, 'Security of facilities used under a surveillance device warrant' of schedule 9 of the *Police Powers and Responsibilities Regulation 2012* (PPRR) when read together, do not expressly allow QPS civilian employees and translators to monitor surveillance devices without a police officer being present at all times.

The inability to use civilian monitors and translators in this way creates significant inefficiencies. The limitations have become increasingly acute due to an increased volume of foreign language conversations being captured by surveillance devices. In such cases, the current practice is for an approved civilian translator to monitor and interpret conversations under the direct and constant supervision of a police officer. This requires police officers to sit in the monitoring room for extended periods while the translator interprets a foreign language.

The Bill will alleviate this inefficiency by permitting QPS civilian employees and contracted translators to monitor surveillance devices without constant police supervision, in the same way they could monitor intercepted telecommunications.

Provision of drug samples for intelligence gathering and research

The Enhanced National Intelligence Picture on Illicit Drugs (ENIPID) program commenced in 2010 under the ownership and coordination of the Australian Federal Police (AFP) Forensic Drug Intelligence.

Queensland is the only Australian jurisdiction that does not participate in the program, primarily because of the legislative impediments in the PPRA that restrict what the Commissioner of Police can do with forfeited drugs.

Under the ENIPID program, participating police services provide samples of forfeited illicit dangerous drugs for profiling each year. The samples are provided after any police prosecution is finalised.

The drug sample is then sent to the AFP who forward it to the National Measurement Institute in New South Wales for in-depth chemical analysis. The analysis results data is sent back to the AFP who then conduct drug profiling analysis of the sample results. The profile analysis is then provided to the originating State for their information.

The major benefits for Queensland in participating in the ENIPID program include:

- assisting the QPS in the disruption of local drug crime by identifying seizure linkages, within Queensland, other jurisdictions and at the border,
- chemically profiling domestic samples to assist in identifying precursor source countries including routes of manufacture, and
- providing a holistic overview of the Australian drug market to government including to the Australian Criminal Intelligence Commission and the Illicit Drug Data Report.

To facilitate Queensland's participation in the ENIPID program, and to provide samples for other intelligence and research programs into the future, the Bill will provide that forfeited drugs may be disposed of to the chief executive officer of the AFP, a police service of another State, or an entity established under the law of the Commonwealth or a State to investigate corruption or crime.

Including five Commonwealth child sexual abuse offences as prescribed internet offences

Section 21B of the PPRA allows police to inspect a digital device (for example a mobile telephone or computer) in the possession of a reportable offender convicted of a prescribed internet offence, to ensure compliance with the provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA). This power builds on section 21A of the PPRA which allows police to enter the premises of a reportable offender to verify the details which are required to be reported under the offender reporting legislation.

In June 2019, the joint meeting of the Ministerial Council for Police and Emergency Management and Council of Attorneys-General (the Council), noted states and territories that have not yet progressed legislative amendments to expand their registration and supervision schemes to apply to Commonwealth child sex offenders should do so as soon as practicable. Consequently, the QPS Child Protection Offender Registry (the Registry) has requested that nine Commonwealth child sexual offences be included in Schedule 1 of the CPOROPOA.

The Registry has also identified that five of the nine Commonwealth offences are suitable for inclusion as prescribed internet offences in section 21B of the PPRA as follows: Conduct for the purposes of electronic service used for child abuse material; Using a carriage service to prepare or plan to cause harm to engage in sexual activity with or procure for sexual activity persons under 16; Using a carriage service to "groom" another person to make it easier to procure persons under 16 (for the sender); Using a carriage service to "groom" another person to make it easier to procure persons under 16 (for another person); and Using a carriage service to "groom" another person to make it easier to procure persons under 16 to occur (in the presence of sender or another person).

Protecting police methodologies

Currently, section 803 'Protection of methodologies' of the PPRA provides limited protection to police officers in a court proceeding by allowing them to claim privilege and not disclose certain information about a police methodology unless directed to.

The locking and encrypting of electronic storage devices, such as mobile telephones and computers are common strategies used by criminals to defeat investigating police should their device be seized. Approved police and staff members from the QPS Electronic Evidence Unit use numerous confidential methods to access and download these devices when seized by police.

The QPS is employing and training several non-police personnel to perform this technical work and consequently they require the same statutory protection as police officers in any relevant court proceeding.

The Bill therefore amends the PPRA to afford QPS staff members a legal protection from revealing police methodologies in court.

Assumed identities
(a) use for training and administrative purposes

Globally, criminal networks are increasingly using the internet as an environment to conduct organised crime such as major fraud, distributing child exploitation material and money laundering. In response, the QPS is increasingly using assumed identities to gather intelligence and investigate these serious offences.

An assumed identity is a false or additional identity used by a police officer or other authorised person for the purpose of investigating an offence, or to gather intelligence in a hostile or dangerous environment. Assumed identities provide vital protection to undercover operatives engaged in infiltrating organised crime groups or collecting criminal intelligence. Officers apply for an assumed identity and, if applicable, they are provided with identification documents in the assumed identity to support operational cover. Generally, the QPS approves specialist police officers with an assumed identity to engage directly with criminals for offences such as drug trafficking and murder.

Section 283 'Deciding application' of the PPRA provides, in part, that an application to acquire and use an assumed identity must be necessary for the investigation and/or intelligence gathering in relation to criminal activity. It does not specifically extend to training specialist personnel for deployments in undercover roles or to dedicated training in the online environment. Additionally, it does not specifically allow for the provision of administrative support to investigations and intelligence gathering activities.

The Bill will permit the QPS to acquire and use assumed identities in an online and physical environment, during training, to allow scenario-based role playing in preparation for operational deployment. This is increasingly important as the complexities of investigating online organised crime requires officers to gain specific skills and knowledge that will allow them to assimilate to the online environment successfully.

(b) historical backstopping

The PPRA only provides for limited historical 'backstopping' of an assumed identity. That is, creating an assumed identity today that has the appearance of being created in the past. Historical backstopping allows for the creation of historical records for an assumed identity to establish a suitable record for the identity so as to give the impression it has been in existence for some time.

Chapter 12, part 3, 'Evidence of assumed identities' of the PPRA currently allows for the creation of birth, death and marriage certificates in retrospect. However, it is essential that additional supporting evidence of an assumed identity can be created to support these certificates, particularly in the online environment.

A watertight long-term history for an assumed identity is necessary to ensure minimal threat to the safety of the officer while also minimising potential financial losses should a police operation be compromised. The Bill will minimise these safety and economic risks by expressly extending historical backstopping beyond the realm of birth, death and marriage certificates.

(c) delegation to authorise

The demand for assumed identity authorisations and associated administration to support complex investigative strategies involving covert personnel is significant. Additionally, the line responsibility of Assistant Commissioners within the QPS is becoming more strategic in nature. Delegating the authorisation of an assumed identity to the Superintendent in charge of covert operations is more suitable for their role of dealing with day-to-day crime management.

The Bill amends the Commissioner's delegation power for granting and administering assumed identities from an Assistant Commissioner to also include the Superintendent responsible for covert operations. Currently, the Assistant Commissioner, Operations Support Command, is delegated by the Commissioner under section 318 of the PPRA to authorise the acquisition and use of assumed identities.

Police assistance removal orders

Currently, a removal order under section 399 of the PPRA is limited to removing a sentenced or remanded prisoner housed in a corrective services facility or a youth detention centre for the purpose of questioning the person about an indictable offence or investigating the offence. Police must first apply to a magistrate in person and swear the grounds on which the order is sought. A removal order under section 399 has a limited detention period of no more than eight hours, of which four hours is the maximum questioning period. Where justified, police may apply for an extension of the detention period.

The Bill will amend the PPRA to allow police to apply to a magistrate for a police assistance removal order to remove a sentenced or remanded prisoner from police custody to voluntarily provide information to assist police. The amendment will be similar to section 70 'Removal of prisoner for law enforcement purposes' of the *Corrective Services Act 2006* (CSA) but will apply where the prisoner is in police custody and not a correctional services facility. Section 70 allows a prisoner to be removed from a corrective services facility to another place, to enable the prisoner to provide information to a law enforcement agency to help the agency perform its functions.

The need for amendment arises because sentenced prisoners are routinely being held at police watchhouses for several days pending their transfer to a correctional facility to serve their term of imprisonment. During that time the prisoner may be willing to assist police as a witness in an investigation. Police are unable to apply to remove the prisoner under section 70 of the CSA as the prisoner is in police custody and not in a corrective services facility.

This legislative gap is the period from when the prisoner is first held in police custody after being remanded or sentenced to when they are eventually moved to a correctional facility. Additionally, PPRA removal orders do not extend to prisoners assisting police as a witness. They are limited to where the prisoner is a suspect for an indictable offence. Police can wait until the prisoner is housed in a correctional facility and apply under section 70 of the CSA to remove the prisoner to assist them. However, once the prisoner has been transported from police custody to a prison, they may be unwilling to assist police.

Police assistance removal orders will not apply to children. The QPS estimates the provisions will be used approximately 12 times per year. The amendment may assist police in finalising significant criminal investigations.

Replace references to 'Aborigine' with 'Aboriginal peoples'

The Bill inserts minor amendments to replace references to 'Aborigine and Torres Strait Islander' with the more culturally appropriate wording of 'Aboriginal peoples and Torres Strait Islander peoples' in the PPRA and PPRR. The amendment is not intended to restrict or expand those persons already identified under the existing reference.

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

Inclusion of nine Commonwealth child sexual abuse offences as reportable offences

In June 2019, the joint meeting of the Council, noted that states and territories that have not yet progressed legislative amendments to expand their registration and supervision schemes to apply to Commonwealth child sex offenders should do so as soon as practicable. Consequently, the Registry has requested that nine Commonwealth child sexual abuse offences be included in Schedule 1 of CPOROPOA.

The nine *Criminal Code 1995* (Cwlth) offences are:

- section 272.15A, "Grooming" person to make it easier to engage in sexual activity with a child outside Australia,
- section 471.25A(1), (2) & (3), Using a postal or similar service to "groom" another person to make it easier to procure persons under 16,
- section 474.23A, Conduct for the purposes of electronic service used for child abuse material,
- section 474.25C, Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16, and
- section 474.27AA(1), (2) & (3), Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age.

Including these additional offences will satisfy the position of the Council and enable those convicted and sentenced to a period of imprisonment or a supervision order for these offences, to be placed on the National Child Offender System. This will ensure that those persons will be required to keep police informed of their whereabouts and other personal details, including any reportable contact they may have with children, for a specific period of time after they are released into the community. This will assist the QPS to effectively manage those reportable offenders in the community.

Corrective Services Act 2006 **(CSA)**

New parole framework for life sentenced multiple or child murderers

On 17 June 2021, the Honourable Annastacia Palaszczuk MP, Premier and Minister for Trade and the Honourable Mark Ryan MP, Minister for Police and Corrective Services and Minister for Fire and Emergency Services publicly announced the Government's intention to introduce a new framework for parole decisions about a life sentenced prisoner who has committed multiple murders or who has murdered a child (restricted prisoner).

Both the Premier and Minister Ryan acknowledged the ongoing trauma experienced by victims' families and friends as a result of the crimes committed by these prisoners, as well as the need to protect the community from harm.

The Bill introduces a new framework designed to protect the community and reduce the re-traumatisation of victims' families, while ensuring public confidence in the parole system. It does this by authorising the President of the Board to declare that a restricted prisoner must not be considered for parole for a period of up to 10 years (restricted prisoner declaration).

The new framework sets a higher threshold for the granting of exceptional circumstances parole to prisoners subject to a restricted prisoner declaration, given the seriousness of their crimes and the ongoing impact they have on victims' families and friends, as well as the broader community.

Where a restricted prisoner declaration is not made, the new framework creates a presumption against parole, thereby placing the onus on the prisoner to demonstrate they do not pose an unacceptable risk to the community.

These measures are designed to reduce the re-traumatisation of victims' families, while protecting the community and ensuring confidence in the parole process.

Strengthening the No Body, No Parole framework

No Body, No Parole (NBNP) laws were enacted by the *Corrective Services (No Body, No Parole) Amendment Act 2017*, which commenced on 25 August 2017. No Body, No Parole refers to the principle that a prisoner convicted of a homicide offence who refuses to adequately assist police in locating a victims' remains should not be granted parole. Withholding the location of a body extends the suffering of victims' families and all efforts should be made to attempt to minimise this sorrow.

As such, a primary focus of NBNP is to encourage cooperation from these prisoners by denying them parole release until such time as the Board is satisfied the prisoner has satisfactorily cooperated in identifying the location or last known location of the victim's remains.

Currently, consideration of NBNP is triggered by a relevant prisoner applying for parole. Due to the nature of their offending, this cohort of prisoner is typically sentenced to longer terms of imprisonment, meaning there can be a long period of time between sentencing and consideration of NBNP. Changes to the environment, such as bushfires, floods, development or animal activity may impact any opportunity to locate the remains in that time. A prisoner may also pass away before they are incentivised to cooperate.

The amendments strengthen the original intention of the NBNP policy by incentivising prisoners to provide earlier cooperation in locating the remains of a homicide victim by allowing the Board to consider the prisoner's cooperation and decide whether or not to make a no cooperation declaration in relation to the prisoner at any time after sentencing.

Supporting the Parole Board Queensland

The Board is experiencing unprecedented demand to determine applications for parole. Amendments to the CSA included in this Bill will provide the Board with greater flexibility to respond to increased workload and the risks different prisoners pose to community safety.

The efficient and effective operations of the Board play a vital role in ensuring confidence in the criminal justice system and ensuring the humane management of prisoners.

Police Service Administration Act 1990 **(PSAA) and CSA**

Indictable offence to wilfully and unlawfully kill or seriously injure a police or corrective services dog or police horse

Section 10.21B of the PSAA contains the simple offence of 'Killing or injuring police dogs and police horses' and has a maximum penalty of 40 penalty units or two years imprisonment. Section 124(f) and section 131 of the CSA include the simple offence to kill or injure a corrective services dog. Section 124(f) applies to a prisoner only, and has a maximum penalty of 2 years imprisonment. Section 131 applies to a person, other than a prisoner, and has a maximum penalty of 100 penalty units or 2 years imprisonment. Section 242 of the Criminal Code 'Serious Animal Cruelty' (indictable offence) has a maximum penalty of seven years imprisonment. Section 18 of the *Animal Care and Protection Act 2001* 'Animal Cruelty Prohibited' is a simple offence with a maximum penalty of 2000 penalty units or three years imprisonment. Like the Criminal Code offence, this offence is not specific to law enforcement animals.

In February 2020, Police Dog 'Kaos' was stabbed by two offenders after they fled from a stolen motor vehicle. Kaos suffered a 15mm full-thickness laceration in the mid oesophagus, damage to the trachea and nerve damage. Kaos received urgent lifesaving veterinary care and has since retired from active duty.

In such instances, a charge under section 242 'Serious animal cruelty' of the Criminal Code, can be difficult to prosecute as it must be proved that the offender intended to inflict severe

pain or suffering to the police animal. The serious animal cruelty offence focuses on acts analogous to torture or prolonged suffering. This is evidenced by the Explanatory Notes that accompanied the insertion of the offence into the Criminal Code via the Criminal Law Amendment Bill 2014. In relation to the offence of 'Serious Animal Cruelty' the Explanatory Notes at page 2 stated:

> 'The new offence will target those persons who intentionally inflict severe pain or suffering upon an animal; in effect the torture of an animal.'

And at page 6 of the Explanatory Notes:

> 'The Bill introduces a new offence of serious animal cruelty. This offence will apply to a narrow cohort of offenders who intentionally torture an animal.'

Due to the limitations of the serious animal cruelty offence, the appropriate charge is section 468 'Injuring animals' of the Criminal Code. That offence is only punishable by a maximum of two years imprisonment unless the animal is stock, which carries a maximum penalty of seven years. The simple offence under the PSAA is considered inadequate to address the violent nature of the offenders' actions and severe injuries to Kaos. Had Kaos died, it would have cost the QPS approximately $29,000 to replace him.

The Bill inserts a new offence into the PSAA and the CSA to wilfully and unlawfully kill or seriously injure a police or corrective services dog or police horse. The offence of killing or seriously injuring police or corrective services animals is focused on single acts of assault/retaliation on a police or corrective services animal (as opposed to prolonged suffering/torture), which is a risk inherent to the unique role the animals have in law enforcement. The offence will be applicable where the animal is being used by a police or corrective services officer in execution of their duties, or because of, or in retaliation for, the use of the animal by a police or corrective services officer in execution of their duties. The new offence is indictable and punishable by a maximum period of five years imprisonment.

The new offence is intended to adequately protect police and corrective services dogs and police horses by providing parity with other like offences and to be in-line with community expectations for those persons who wilfully and unlawfully kill or seriously injure a police or corrective services dog or police horse.

The simple offences in section 10.21B of the PSAA and section 124(f) (applies to prisoners only) and section 131 (applies to persons other the prisoners) of the CSA will be retained and will capture low level offending, for example, where a person, including a prisoner, kicks or hits a police or corrective services dog or police horse but does not cause severe injury. Like the existing simple offences, the new offences will allow the court, upon a finding of guilt, to order the Police Commissioner or QCS Commissioner to be reasonably compensated to treat, care, rehabilitate, retrain or replace the police or corrective services dog or police horse.

Working with Children (Risk Management and Screening) Act 2000 **(WWCA)**

The Bill amends the WWCA to further strengthen the blue card system by including additional Commonwealth Criminal Code offences as disqualifying and serious offences.

Under the WWCA, a person who is charged with a disqualifying offence will have their blue card suspended, or their blue card application withdrawn. Further, it is an offence under the WWCA for a person convicted of a disqualifying offence to apply for a blue card.

Consistent with and complementary to the amendments to CPOROPOA, the Commonwealth child sexual offences which have been identified for inclusion as reportable offences will be elevated to disqualifying offences under the WWCA.

In addition, further amendments will elevate other Commonwealth Criminal Code offences as disqualifying or serious offences under the WWCA (for example, offences relating to organ trafficking); and tidy-up existing references to the Commonwealth Criminal Code to ensure the correct numbering and section titles are used.

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),
- *Corrective Services Act 2006* (CSA),
- *Corrective Services and Other Legislation Amendment Act 2020,*
- *Corrective Services (COVID-19 Emergency Response) Regulation 2020,*
- *Police Powers and Responsibilities Act 2000* (PPRA),
- *Police Powers and Responsibilities Regulation 2012* (PPRR),
- *Police Service Administration Act 1990* (PSAA), and
- *Working with Children (Risk Management and Screening) Act 2000* (WWCA).

The Bill will achieve its objectives of reducing knife crime, creating administrative and operational efficiencies for the QPS, enhancing intelligence gathering regarding dangerous drugs and ensuring Commonwealth child sexual abuse offences are updated in Queensland legislation through amendments to:

- the PPRA to:
  - expand the scope of police banning notices to include persons who possess a knife in contravention of section 51 of the Weapons Act, in a relevant public place,
  - allow police civilian employees and contracted translators working as monitors to independently monitor surveillance devices,
  - allow police to dispose of drug samples to the chief executive officer of the Australian Federal Police, a police service of another State, or an entity established under the law of the Commonwealth or a State to investigate corruption or crime, for intelligence gathering and research purposes,
  - include five Commonwealth child sexual offences as prescribed internet offences,
  - expand the protection of police methodologies in court to include QPS staff members,
  - in relation to assumed identities:
    - clarify that an assumed identity can be used for training and administrative functions,
    - clarify historical backstopping for assumed identities, and
    - alter the delegation to authorise assumed identities from Assistant Commissioner to include the Superintendent responsible for covert operations.
  - extend removal orders to apply to prisoners in police custody who assist police, and

  - replace references to 'Aborigine' with 'Aboriginal peoples'.
- the CPOROPOA to:
  - include nine Commonwealth child sexual offences as reportable offences in Schedule 1, 'Prescribed offences'.
- the WWCA to:
  - include additional Commonwealth Criminal Code child sexual offences as disqualifying offences.

The Bill will achieve its objective to limit re-traumatisation of victims' families, strengthen the NBNP framework, and enhance the operations of the Board through amendments to the CSA that:

- provide a new framework for parole decisions about a life sentenced prisoner who has committed multiple murders or who has murdered a child,
- provide discretion for the Board to consider NBNP matters at any time after sentencing to incentivise earlier prisoner cooperation, and
- provide additional flexibility for the Board to respond to increased workload and the risks different prisoners pose to community safety.

The Bill will achieve its objective of recognising the severity of killing or seriously injuring a police or corrective services dog or police horse by making amendments to the PSAA and CSA that:

- insert new indictable offences for wilfully and unlawfully killing or seriously injuring a police or corrective services dog or police horse with a maximum penalty of 5 years imprisonment.

Amendments to the PPRA

Police banning notices to include persons who unlawfully possess a knife

The Bill expands the scope of police banning notices (banning notices) by permitting police to issue a banning notice under section 602C 'Police officer may give initial police banning notice' where a person possesses a knife in contravention of section 51 of the Weapons Act 'Possession of a knife in a public place or a school'. Banning notices apply to relevant public places. A relevant public place is defined as licensed premises, a public place in a safe night precinct and a public place at which an event is being held and liquor is being sold for consumption.

Section 602C currently contains examples of disorderly, offensive, threatening or violent behaviour to guide police officers as to the circumstances in which they may consider issuing a banning notice. The Bill will insert the example of '*possessing a knife in contravention of the Weapons Act 1990, section 51*' to add to the examples in the section.

Police civilian employees and contracted translators working as monitors to independently monitor surveillance devices

Section 612 'Assistance in exercising powers' provides it is lawful for a police officer exercising a power under an Act to seek the help of another person the officer reasonably requires for performing a function of the police service. A specific example is provided that 'a police officer may seek the help of a translator to interpret conversations and visual images

recorded using a surveillance device.' Removing this example will, in part, facilitate QPS civilian employees and contracted translators to monitor a surveillance device without the need for constant police supervision.

The Bill also amends the PPRR, including the insertion of new definitions for *authorised monitor, authorised person* and *monitoring equipment*. This ensures that civilian QPS employees and contracted translators can monitor surveillance devices without constant police officer supervision in the same way they could monitor intercepted telecommunications.

Police to dispose of forfeited drug samples for intelligence gathering and research

To facilitate Queensland's participation in the ENIPID program and to provide drug samples to participate in other intelligence and research programs into the future, the Bill provides that forfeited drugs may be disposed of to the chief executive officer of the AFP, a police service of another State or an entity established under the law of the Commonwealth or a State to investigate corruption or crime. This is achieved by amending section 707 of the PPRA 'Alternative to destruction if drug matter is thing used in the commission of a drug offence'.

Additional five Commonwealth child sexual abuse offences as prescribed internet offences

The Bill inserts the following five offences contained in the *Criminal Code 1995* (Cwlth) as prescribed internet offences under section 21B 'Power to inspect digital devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004' of the PPRA:

- section 474.23A, Conduct for the purposes of electronic service used for child abuse material,
- section 474.25C, Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16, and
- section 474.27AA(1) (for the sender), (2) (for another person) & (3) (in the presence of sender or another person), Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age.

Assumed identities
(a) assumed identity can be used for training and administrative purposes

The Bill inserts new subsections 283(2)(a)(i),(ii) and (iii) to expand section 283 'Deciding application' of the PPRA so the chief executive may grant an authority to acquire or use an assumed identity to allow for the use of an assumed identity for one or more of the following purposes: (i) an investigation or intelligence gathering in relation to criminal activity; (ii) the training of persons for the purpose mentioned in subparagraph (i); an administrative function in support of a purpose mentioned in subparagraph (i) or (ii). The training of persons and administrative functions are new purposes for which an assumed identity may be authorised.

(b) historical backstopping

The Bill inserts new subsection (3) under section 302 'Assumed identity may be acquired and used' to provide that an authority also authorises the making (by the person to whom the authority applies) of any false or misleading representations about the person, for the purposes of, or in connection with, the acquisition or use of the assumed identity by the person; and the

use by the person of the assumed identity to obtain evidence of the identity. This provision will expressly provide for historical 'backstopping' of an assumed identity.

(c) delegated authority

Section 318 'Delegation—commissioner' of the PPRA, provides in part that the Commissioner of Police may delegate any of their powers under Chapter 12, 'Assumed identities' to a Deputy Commissioner or Assistant Commissioner. The Bill changes this delegation to include a Superintendent of the police service who is responsible for covert operations.

Extending removal orders to apply to prisoners in police custody to assist police

The Bill inserts new Division 3A of the PPRA 'Removal of persons from lawful custody to help police.' Under Division 3A, an adult who is in the Police Commissioner's custody under section 8 of the CSA and wishes to provide information to police in relation to an offence the subject of an investigation or an offence in relation to criminal activity for which they are not a suspect, may be removed from lawful custody to assist police. Police will be required to comply with numerous safeguards including:

- police officers must apply for a police assistance removal order (removal order) via a magistrate,
- before making the application to a magistrate, the police officer must obtain approval from an officer of a least the rank of Detective Superintendent,
- the application must be made in person and state the grounds on which the removal order is sought,
- the magistrate may refuse to consider the application unless the police officer gives the magistrate all the information the magistrate requires,
- before applying for a removal order, a police officer must obtain the written consent of the relevant person and the consent must also be electronically recorded if reasonably practicable,
- a police officer must inform the relevant person that they may seek legal advice before providing consent,
- the magistrate may only make a removal order if the magistrate is satisfied the relevant person is not a suspect and has consented to be removed into the custody of a police officer for the purposes of an investigation of an offence or intelligence gathering in relation to criminal activity,
- if a removal order is made, the relevant person cannot be questioned by a police officer about an offence the person has been charged with or the commission of an offence the person is suspected of being involved in,
- the removal order must state all the details required by section 411E, including the reason for the person's removal, the places if known, to which the relevant person is to be taken and any other conditions the magistrate considers appropriate,
- police officers may not keep a person under a removal order for more than eight hours, unless the assistance period is extended,
- police officers may apply for extension of the assistance period to a magistrate, or justice of the peace (magistrates court) and if neither of those are available, another justice of the peace, other than a justice of the peace (commissioner for declarations),
- further consent of the relevant person must be gained prior to police applying for an extension order,

- an assistance period may only be extended if the magistrate or justice is satisfied the relevant person has given consent for the assistance period to be extended and the extension is reasonably necessary,
- an order may extend the assistance period for a reasonable time of not more than eight hours,
- the relevant person may withdraw consent to help police at any time,
- if a person withdraws consent after the person is taken into custody, the police officer must return the person to the police watchhouse as soon as reasonably practicable,
- finally, the relevant police officer for a removal order must ensure the details of the order are recorded in the register of enforcement acts.

The Bill also inserts a definition of *criminal activity* into the new division which means conduct that involves the commission of an offence by 1 or more persons.

Replace references to 'Aborigine' with 'Aboriginal peoples'

The Bill inserts minor amendments to replace references to 'Aborigine and Torres Strait Islander' with the more culturally appropriate wording of 'Aboriginal peoples and Torres Strait Islander peoples' in the PPRA and PPRR.

Provide QPS staff members legal protection from revealing police methodologies in court

The Bill amends section 803(1) of the PPRA to provide that staff members of the QPS, as well as police officers, are not required to disclose information about police methodologies in a proceeding, unless directed to do so. The Bill also inserts a definition of *staff member* into the schedule 6 Dictionary of the PPRA which refers the reader to section 1.4, 'Definitions' of the PSAA.

Amendments to CPOROPOA

The Bill inserts the following nine offences contained in the *Criminal Code Act 1995* (Cwlth) into Schedule 1, 'Prescribed offences' of the CPOROPOA:

- section 272.15A, "Grooming" person to make it easier to engage in sexual activity with a child outside Australia,
- section 471.25A(1), (2) & (3), Using a postal or similar service to "groom" another person to make it easier to procure persons under 16,
- section 474.23A, Conduct for the purposes of electronic service used for child abuse material,
- section 474.25C, Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16, and
- section 474.27AA(1), (2) & (3), Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age.

Schedule 1 contains prescribed offences that constitute a reportable offence under the CPOROPOA.

Amendments to the CSA

New parole framework for life sentenced multiple murder or child murderers

The Bill inserts a discretion for the President of the Board to declare that a restricted prisoner must not be considered for parole for up to 10 years (restricted prisoner declaration). This will provide some reassurance and certainty to victims' families that they will not have to relive the crimes committed by restricted prisoners by regularly receiving a notification that the prisoner is applying for parole.

The President's discretion will be triggered by either the QCS Commissioner providing a report (restricted prisoner report) to the President of the Board, or the Board notifying the President that a restricted prisoner has applied for parole.

In recognition of the seriousness of the crimes committed by prisoners subject to a restricted prisoner declaration, the new framework sets a higher threshold for their release on exceptional circumstances parole. It achieves this by providing certain criteria which must be met.

Where a restricted prisoner declaration is not in force, the Board must refuse to grant a restricted prisoner's parole application unless it is satisfied the prisoner does not pose an unacceptable risk to the community.

Strengthening the No Body, No Parole framework

The Bill strengthens the original intent of the NBNP policy by incentivising prisoners to provide earlier cooperation in locating the remains of a homicide victim. The Bill introduces a new discretion for the Board to consider a prisoner's cooperation in locating a homicide victim's remains at any time after sentencing, instead of requiring the Board to wait until the prisoner applies for parole.

Where the Board has determined that a NBNP prisoner has not cooperated satisfactorily in locating the remains of their victim/s, the prisoner will be issued with a no cooperation declaration, restricting the prisoner from reapplying for parole where there is no new cooperation. This avoids potential re-victimisation where a prisoner may repeatedly make applications for parole despite having provided no new cooperation.

Supporting the Parole Board Queensland

The Bill amends the CSA to support the efficiency and effectiveness of the Board's operations, including:

- amending section 193 of the CSA to extend the time the Board may decide to not consider a further parole application for a life sentenced prisoner to no more than three years,
- amending section 234 to provide minimum quorum requirements for certain parole matters to enable the Board to adjust its meeting arrangements according to the risks different prisoners pose to community safety,
- introducing a new power to prescribe parole decisions that must be published on the Board's website, and
- providing for the temporary extension of parole consideration timeframes under section 193(3) for a period of six months. This extension will provide an additional 60 days from receipt of a parole application for the Board to make a decision. Commencement of the temporary extended timeframes will be by a proclamation.

Minor and technical amendments

The Bill will make minor and technical amendments to section 306C of the CSA to clarify the threshold of the low alcohol limit as it applies to a corrective services officer or recruit and to section 46 of the *Terrorism (Preventative Detention) Act 2005* (TPD Act) to correctly reference the CSA.

Amendments to the PSAA and CSA

New indictable offences of wilfully and unlawfully killing or seriously injuring a police dog or corrective services dog or police horse

The Bill inserts the new offences of 'Wilfully and unlawfully killing or seriously injuring police dogs and police horses' as new section 10.21BA of the PSAA and 'Wilfully and unlawfully killing or seriously injuring a corrective services dog' as a new section 131A of the CSA. These sections specify the new offences are a crime with a maximum penalty of five years imprisonment. These sections apply to a police or corrective services dog or police horse that is being used by a police or corrective services officer in the performance of the officer's duties. It further applies to a police or corrective services dog or police horse because of, or in retaliation for, its use by a police or corrective services officer in the performance of the officer's duties. Upon a finding of guilt, the court may, in addition to any penalty imposed, order the person to pay for the treatment, care, rehabilitation and retraining of the dog or horse concerned, or if necessary, the buying and training of its replacement.

The Bill also amends section 10.23 'Proceedings for offences' of the PSAA and adds a new section 350A to 350C of the CSA, to set out criteria for when the new offences should be heard summarily or on indictment. These sections dealing with proceedings are intended to provide the same effect as though the new offences are indictable offences under Chapter 58A 'Indictable offences dealt with summarily', section 552A 'Charges of indictable offences that must be heard and decided summarily on prosecution election' of the Criminal Code.

Amendments to the WWCA

The Bill amends Schedules 2 to 5 of the WWCA to prescribe Commonwealth Criminal Code child sexual abuse offences and other relevant offences as either disqualifying or serious and update references and, where necessary, to take account of changes to offence titles and the repeal of certain Commonwealth Criminal Code provisions in recent years.

These amendments are complementary in nature to the amendments being advanced with respect to CPOROPOA and will ensure that persons convicted of such offences which are elevated to the disqualifying offence framework are unable to engage in child-related work.

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

Any expenditure increase caused by the amendments will be met through existing QPS and QCS budget allocations. The Registry has advised they anticipate only a slight increase in reportable offenders because of the inclusion of the nine Commonwealth child sexual offences as reportable sex offences in Queensland. Any additional costs incurred by this will be absorbed within the existing QPS budget.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to the *Legislative Standards Act 1992* (LSA). While some of the amendments may be considered to engage those principles, they are considered necessary to achieve the objectives of the Bill.

PPRA amendments

Expansion of police banning notices

The Bill expands police banning notices (banning notices) to capture persons who unlawfully possess a knife in a relevant public place. The expansion has the capacity to impact on a person's right to enter and remain in particular public places by extending the circumstances for when police may give a person a banning notice. A relevant public place includes a licensed premise, a public place in a safe night precinct or a public event where alcohol is for sale.

The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA and that legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review under section 4(3)(a) of the LSA. The provisions further impact upon the common law right to freedom of movement and association. Common law rights to freedom of movement are associated with the rights to liberty and security of the person, freedom of peaceful assembly and procession, and to a democratic society respecting the rule of law. However, the power to exclude a person from a public place may be justified on the basis that the restriction protects the rights of most users by ensuring they are free to use the place without fear of assault or intimidation.

The number of persons detected unlawfully possessing a knife in a public place is of concern to police. Two recent murders on the Gold Coast involved offenders killing their victims with a knife in a safe night precinct. Accordingly, a stronger response is required to maintain community safety in public spaces. This will not impact on any person who carries a knife in a relevant public place where they have a reasonable excuse such as the appropriate carrying of a kirpan.

A banning notice can prevent a person from entering a relevant public place for no more than one month when they have behaved in a disorderly, offensive, threatening or violent way at, or in the vicinity, of the relevant public place and their ongoing presence poses an unacceptable risk. It operates to maintain the safety of the community in areas where people come together to dine, drink and socialise.

Despite the prohibitions on movement inherent to a banning notice, section 602J of the PPRA provides that a banning notice does not prohibit the respondent for the notice from entering or remaining in the respondent's residence, place of employment or place of education. Further, banning notice powers are subject to appropriate review provisions via sections 602N 'Internal review for police banning notices', 602O 'Commissioner's decision about notices' and 602P 'Review by QCAT'. Additionally, section 602C, 'Police officer may give initial police banning notice' prescribes that banning notices only apply to adults.

Any fundamental legislative principles engaged by this initiative to reduce knife crime and protect the public are balanced by appropriate safeguards and review provisions.

Police assistance removal orders

The Bill expands the reasons for which a person may be removed from police custody in the PPRA. Under new Division 3A, a person who is in the Police Commissioner's custody under the CSA and wishes to provide information to police in relation to an offence or provide intelligence in relation to criminal activity for which they are not a suspect, may be removed from lawful custody to assist police. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

However, police will have to comply with numerous safeguards including:

- police officers must apply for a police assistance removal order via a magistrate,
- before making the application to a magistrate the police officer must obtain approval from an officer of a least the rank of Detective Superintendent,
- the application must be made in person and state the grounds on which the order is sought,
- the magistrate may refuse to consider the application unless the police officer gives the magistrate all the information the magistrate requires,
- before applying for an order, a police officer must obtain the written consent of the relevant person and the consent must also be electronically recorded if reasonably practicable,
- a police officer must inform the relevant person that they may seek legal advice before providing consent,
- the magistrate may only make an order if the magistrate is satisfied the relevant person is not a suspect and has consented to be removed into the custody of a police officer for the purposes of an investigation of an offence or intelligence gathering in relation to criminal activity,
- if a police assistance removal order is made, the relevant person cannot be questioned by a police officer about an offence the person has been charged with or the commission of an offence the person is suspected of being involved in,
- the order must state all the details required by section 411E including the reason for the persons removal, the places if known, to which the relevant person is to be taken and any other conditions the magistrate considers appropriate,
- police officers may not keep a person under a police assistance removal order for more than eight hours, unless the assistance period is extended,

- police officers may apply for extension of the assistance period to a magistrate, or justice of the peace (magistrates court) and if neither of those are available, another justice of the peace other than a justice of the peace (commissioner for declarations),
- further consent of the relevant person must be gained prior to police applying for an extension order,
- an assistance period may only be extended if the magistrate or justice is satisfied the relevant person has given consent for the assistance period to be extended and the extension is reasonably necessary,
- an order may extend the assistance period for a reasonable time of not more than eight hours,
- the relevant person may withdraw consent to help the police service at any time,
- if a person withdraws consent after the person is taken into custody, the police officer must return the person to the police watch-house as soon as reasonably practicable,
- finally, the relevant police officer for a removal order must ensure the details of the order are recorded in the register of enforcement acts.

Furthermore, police are already able to remove a person in a corrective services facility from the chief executive's custody under section 70, 'Removal of prisoner for law enforcement purposes' of the CSA. Under section 70(1)(a) a prisoner may be removed from corrective services custody to provide information to a law enforcement agency to help the agency perform its law enforcement functions. The new power in the PPRA merely addresses a gap where police are unable to utilise section 70 of the CSA because the prisoner is still in a police watchhouse rather than a correctional services facility.

The new PPRA provision closes this gap by allowing the removal of a non-suspect to provide intelligence or information and is narrower than the CSA provision which permits removal for a law enforcement function. Any breach of the fundamental legislative principle is minimised by stringent safeguards and the assistance the provisions can provide in solving serious crime. The assistance provided to police is completely voluntary.

<u>Include five Commonwealth child sexual abuse offences as prescribed internet offences</u>

The Bill extends section 21B 'Power to inspect digital devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004' of the PPRA to include five additional Commonwealth child sexual abuse offences. This may be considered an imposition on the rights and liberties of those reportable child sex offenders convicted of the new offences. These reportable offenders are currently required to present all digital devices, in their possession, or to which they have access to, to police for inspection, where they meet the criteria under section 21B. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA.

The amendments recognise Article 34 of the United Nations Convention of the Rights of The Child:

> *States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:*

(a) The inducement or coercion of a child to engage in any unlawful sexual activity,

(b) The exploitative use of children in prostitution or other unlawful sexual practices,

(c) The exploitative use of children in pornographic performances and materials.

To safeguard the rights of reportable offenders who have been convicted of particular sexual offending, police are limited to the number of inspections that can be undertaken in each year. Additional inspections require a device inspection order which must be issued by a magistrate.

The rights of children who offend are considered in these amendments. In Queensland, children who are convicted of sexual and particular other serious offences against children are generally suspended from reporting unless they present a current risk to the lives or sexual safety of other children.

The engagement of fundamental legislative principles is justified to ensure monitoring of child-sex offenders keeps pace with new offences and is consistent with child sexual offences recognised across Australian jurisdictions.

Expand the protection of police methodologies where QPS staff members give evidence

The Bill extends section 803 'Protection of methodologies' to include QPS staff members. This may be seen to impact on a defendant's right to procedural fairness during proceedings. It will allow QPS staff members protection against divulging technical aspects of their work, such as unlocking or decrypting electronic devices, unless directed by the court. Section 803 acts to prevent the prejudice of an investigation, protect the identity of a confidential informant, the life or physical safety of a person, the effectiveness, maintenance or enforcement of a lawful method or public safety procedure used by the QPS, or to prevent a person's escape from custody. The provisions may be viewed as a breach of the fundamental legislative principle that legislation be consistent with principles of natural justice under section 4(3)(b) of the LSA.

Section 803 does not apply if the court is satisfied disclosure of the information is necessary: for the fair trial of the defendant; or to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or in the public interest. Therefore, the protection of disclosure of police methodology is not absolute and any breach of the fundamental legislative principle is moderated by these safeguards.

Historical backstopping to be expressly stated for assumed identities

Historical backstopping creates the appearance of a legitimate history for police officers acting under assumed identities as undercover officers. Historical backstopping allows undercover officers to blend into serious and organised crime syndicates and acquire the evidence necessary to prosecute the group's members. The provisions 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.

While the amendment may be considered contrary to the principles of natural justice, for example procedural fairness, the amendment is necessary to provide an additional layer of safety for undercover police officers engaging with this dangerous cohort of offender. The

amendment does not impact on a court's capacity to accept or refuse information that has been collected because of an assumed identity.

Delegation for assumed identity authorisation

The Bill amends section 318 of the PPRA to broaden the level of commissioned police officer able to provide authorisation for an assumed identity. 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.

The demand for assumed identity authorisation and associated administration to support complex investigative strategies involving covert personnel is significant. Additionally, the line responsibility of Assistant Commissioner's within the QPS is becoming more strategic in nature. Delegating to the Superintendent in charge of covert operations is more suitable for their role of dealing with day-to-day crime management.

The broadening in approval level is minimal and maintains a standard of appropriately qualified officers. Section 318(3) limits the number of delegations that may be in force under the section to no more than four at any one time.

CPOROPOA amendments

Include nine Commonwealth child sexual offences as reportable offences under CPOROPOA

The Bill extends Schedule 1 of the CPOROPOA to include nine Commonwealth child sexual offences as reportable offences. This has the capacity to increase the number of child sex offenders in the National Child Offender System. Consequently, this may be considered to impinge on the rights of convicted child sex offenders who would not have previously been captured for the new offences. The provisions 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 amendments recognise Article 34 of the United Nations Convention of the Rights of The Child.

Offences for child sexual offending are, in so far as possible, consistent throughout Australia. This allows individual states to recognise reportable offenders who relocate from other jurisdictions. Monitoring is not considered an additional punishment and acts to allow law enforcement agencies to deter and disrupt recidivist child sexual offending. Police have the capacity to identify risk through assessment tools and in-home visits which can assist to identify areas of concern.

The rights of children who offend are considered in these amendments. In Queensland, children who are convicted of sexual and particular other serious offences against children are generally suspended from reporting unless they present a current risk to the lives or sexual safety of other children.

The engagement of fundamental legislative principles is justified to ensure monitoring of child-sexual offenders keeps pace with new offences and is consistent with offences recognised across Australian jurisdictions.

WWCA amendments

Include several Commonwealth offences against children as disqualifying offences under the WWCA – clause 55 of the Bill

The proposed expansion to the range of disqualifying offences under the WWCA may be considered to have insufficient regard to the rights and liberties of individuals as the amendments will automatically exclude a broader range of individuals from holding a working with children authority.

This is a potential departure from the principle that sufficient regard be given to the rights and liberties of individuals and the right to obtain and keep employment and the right to conduct business without interference.

In addition, under section 354 of the WWCA, a person who is convicted of a disqualifying offence is afforded no review rights. This may be a breach of the fundamental legislative principle that administrative power should be sufficiently defined and subject to review.

The amendments are considered justified for the protection of children from harm, as it prevents individuals with convictions for serious specified offences from making a working with children check application or entering or continuing in regulated child-related service environments. They are also consistent with the principles for administering the WWCA, that the welfare and best interests of the child are paramount and that every child is entitled to be cared for in a way that protects the child from harm and promotes the child's wellbeing (section 6 WWCA).

CSA amendments

New parole framework for life sentenced multiple or child murderers

The new framework may be viewed as a departure from the principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the LSA. This includes appropriate exercise of administrative power, the right to be heard, procedural fairness, equal treatment of individuals before the law, and retrospective impact on rights and liberties.

The framework is consistent with the already established administrative power and independence of the Parole Board to decide parole applications. The Board is established as an independent and unbiased decision maker whose decisions may be subject to judicial review. Further, the President of the Board must be a former judge of a state court, the High Court or a court constituted under a Commonwealth Act, or must have qualifications, experience or standing equivalent to a former judge. These functions, including the independence and standing of the President of the Board, and ability to have decisions reviewed, continue under the new framework.

Safeguards for ensuring consistency with this principle include that it is only the President of the Board who is able to make a declaration, subject to where the President delegates this function to a Deputy President if there is a conflict of interest. Further, where a prisoner is subject to a declaration, they are still able to apply for exceptional circumstances parole in the event that they are dying or incapacitated, and no longer present an unacceptable risk to the community. An exceptional circumstances parole application, and restricted prisoner's parole application where no declaration is in place, will continue to be considered by the Board.

The equal treatment of individuals under the law is also considered when deciding if legislation has sufficient regard to the rights and liberties of individuals. This proposal treats a restricted prisoner differently from other prisoners, introducing a higher threshold for parole release. This differential treatment is considered justified, due to the heinous nature of the crimes committed by restricted prisoners and the significant harm caused to victims and the community.

The proposal also has appropriate regard to the principles of natural justice, which are already observed during the parole process for prisoners, including through the provision of relevant material to the prisoner, the opportunity to provide comment, and the provision of reasons for the Board's decision to the prisoner. These processes will be retained for matters involving the new framework.

The new framework is justified when considered with regard to:

- the nature, circumstances and seriousness of offending that resulted in the prisoner being subject to a sentence of life imprisonment as imposed by a court for multiple murders or the murder of a child (the most severe sentence under the Queensland Criminal Code),
- the significant mandatory non-parole period applicable to prisoners sentenced to a term of life imprisonment,
- the need for the parole framework to protect the community,
- the trauma and re-victimisation associated with parole applications by restricted prisoners on victims' families, friends and the broader community due to the requirement that registered victims be notified each time a parole application is made (and given the opportunity to make a submission), and
- the significant public interest and media attention attached to such cases.

This proposal has limited retrospective application for a small cohort of prisoners who have a parole application in progress at the time of commencement. This is considered justified as:

- The purpose of the declaration is justified on the basis that a parole eligibility date is not a guarantee for release on that date, or that parole will be determined based on the parole system as in force at the time of sentence.
- The purpose of the presumption against parole is to ensure an increased level of scrutiny and a higher threshold for parole for these prisoners. This recognises the serious nature of the offending, the ongoing impact of the offending on victims' family and friends, and the need to protect the community from further harm.

The proposal is also justified on that basis that it aims to protect surviving victims and their families from continued trauma associated with the stress of parole applications and potential for release.

Strengthening the No Body, No Parole framework

The administrative process for a prisoner to seek reconsideration of their no cooperation declaration must have sufficient regard to the principles of natural justice, including the rights to be heard, procedural fairness, and an unbiased decider (section 4(3)(b) LSA). Safeguards for ensuring consistency with this principle include ensuring material provided to the Board by another party is provided to the prisoner for them to comment on, providing reasons for decisions, and allowing access to judicial review. These are all aspects of the existing NBNP process that will be maintained.

The reasonableness and fairness of the treatment of individuals under the law is also considered when deciding if legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) LSA). This proposal treats a potential NBNP prisoner differently from other prisoners by providing an alternative process and policy for parole suitability. This is justified when considered with regard to the purpose of NBNP, which is to ensure that a prisoner continues to be incentivised to provide cooperation in relation to locating a victim's remains, and inclusion of a safeguard to ensure the prisoner is always able to seek to have their matter reconsidered by the Board. Further, the differential treatment is based on the nature and circumstances of the offending, which is an accepted form of differential treatment within the criminal justice system.

Supporting the Parole Board Queensland
Extending the time the Board may decide to not consider a further application for parole for a life sentenced prisoner

The amendment to extend the time a life-sentenced prisoner can reapply for parole once refused by the Board restricts the ability for a prisoner to apply for parole, and therefore engages the principles of natural justice, including the rights to be heard and procedural fairness.

Safeguards for ensuring consistency with this principle include the Board's ability to consent to hearing the parole application earlier (see section 180(2)(a) CSA) and the prisoner's ability to apply for exceptional circumstances parole under section 176 CSA. In addition, as part of the initial parole refusal decision safeguards include ensuring material provided to the Board by another party is provided to the prisoner for them to comment on, providing reasons for decisions, and allowing access to judicial review. These are all aspects of the existing process that will be maintained.

The equal treatment of individuals under the law is also considered when deciding if legislation has sufficient regard to the rights and liberties of individuals. This proposal treats a life-sentenced prisoner differently from other prisoners by extending the parole re-application timeframe following a parole refusal decision.

This is justified when considered with regard to:

- the nature of offending that results in a prisoner being subject to a sentence of life imprisonment as imposed by a court (the most severe sentence under the Queensland Criminal Code),
- the significant mandatory non-parole period applicable to prisoners sentenced to a term of life imprisonment,
- the Board's previous refusal of a parole application,

- the need for the parole framework to protect the community,
- the adverse impact of regular parole applications on registered victims due to the requirement for a registered victim to be notified each time a parole application is made (and given the opportunity to make a submission), and
- the significant community interest attached to such cases.

Further the amendment provides for a restriction on reapplying for parole to be a maximum of three years, allowing the Board to take into account the individual circumstances of the matter and set an appropriate length.

New power to prescribe parole decisions that must be published

The Bill provides authority for a regulation to prescribe certain classes of decisions made by the Board or President that must be published. This amendment engages section 4(5) of the LSA, sufficient regard to the institution of Parliament. The amendment is considered justified as the amendment to the authorising law clearly provides the power for the regulation to be made, the regulation will be subject to sufficient legislative scrutiny as a disallowable legislative instrument, and the amendment is consistent with the purpose of maintaining community safety and crime prevention through the humane containment, supervision and rehabilitation of prisoners.

Temporarily extend parole consideration timeframes

The Bill includes an amendment to temporarily extend parole consideration timeframes under section 193(3) for 60 days, for a period of six months. This amendment engages section 4(3)(g) of the LSA in that it may be perceived to adversely affect rights and liberties of prisoners who have reached their parole eligibility date and have not had their parole application considered by the Board.

Prisoners who have applied for parole before the commencement of these amendments will be subject to the new temporary timeframes. The adverse impact is that a decision on their parole application can take up to 60 days longer. In some cases, this may result in a prisoner being released later than they would otherwise. However, there is no guarantee that the Board's consideration of a parole application will result in a prisoner's release.

The proposal is considered justified as a timeframe is still in place to ensure decisions are made within a reasonable period. The timeframe aligns to the earliest date a prisoner can apply for parole, that is 180 days before their parole eligibility date. In addition, a parole eligibility date is not a guarantee for release on that date. It is simply the earliest possible date that a prisoner may be released on parole.

PSAA and CSA amendments

New indictable offences to wilfully and unlawfully kill or seriously injure a police dog or corrective services dog or police horse

The Bill inserts a new offence in section 10.21BA of the PSAA to wilfully and unlawfully kill or seriously injure a police dog or horse, and inserts section 131A to wilfully and unlawfully kill or seriously injure a corrective services dog in to the CSA. The offences will be applicable

where the animal is being used by a police or corrective services officer in execution of their duties, or because of, or in retaliation for, the use of the animal by a police or corrective services officer in execution of their duties. The new indictable offences are punishable by a maximum period of five years imprisonment. The provisions 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 simple offence in section 10.21B of the PSAA, 'Killing or injuring police dogs or police horses' has proven inadequate when life threatening injuries or death is wilfully inflicted upon a police animal. In February 2020, police dog 'Kaos' was stabbed by two offenders after they fled from a stolen motor vehicle. Kaos suffered a 15 mm full-thickness laceration in the mid oesophagus, damage to the trachea and nerve damage. Kaos received urgent lifesaving veterinary care and has since retired from active duty. The two offenders were charged under section 468, 'Injuring animals' of the Criminal Code, which has a maximum penalty of two years imprisonment.

The new offence under the CSA is intended to adequately protect corrective services dogs by providing parity with other offences. The amendment is commensurate to the new offence under section 10.21BA of the PSAA for wilfully and unlawfully killing or seriously injuring a police dog or horse. As vital tools to assist QCS to detect contraband, manage prisoners' behaviour and respond to prison incidents, corrective services dogs are also at risk of serious injury and/or death. Accordingly, the consequences of actions against police dogs and corrective services dogs need to be aligned.

The new offences may be perceived as an unnecessary duplication as section 242 of the Criminal Code contains the indictable offence of 'Serious Animal Cruelty', punishable by a maximum penalty of seven years imprisonment. However, the offence of serious animal cruelty focuses on acts analogous to torture or prolonged suffering. This is evidenced by the Explanatory Notes that accompanied the insertion of the offence into the Criminal Code via the Criminal Law Amendment Bill 2014. In relation to the offence of Serious Animal Cruelty the Explanatory Notes at page 2 stated:

> 'The new offence will target those persons who intentionally inflict severe pain or suffering upon an animal; in effect the torture of an animal.'

And at page 6 of the Explanatory Notes:

> 'The Bill introduces a new offence of serious animal cruelty. This offence will apply to a narrow cohort of offenders who intentionally torture an animal.'

The offences of killing or seriously injuring police or corrective services dogs/police horses are focused on single acts of assault/retaliation on a police or corrective services animal (as opposed to prolonged suffering/torture), which is a risk inherent to the unique role the animals have in law enforcement. Through the Crimes Amendment (Animal Cruelty) Bill 2005, New South Wales introduced the offences of section 530, 'Serious Animal Cruelty' and section 531, 'Killing or seriously injuring animals used for law enforcement' at the same time, into the *Crimes Act 1900*. The positioning of the offences consecutively to each other emphasises the need for two distinct offences and highlights the differing elements of each offence.

The new offences are intended to adequately protect police and corrective services dogs and police horses by providing parity with other offences and to be in-line with community expectations for those persons who wilfully and unlawfully kill or seriously injure a police or corrective services dog or police horse. The simple offences in section 10.21B of the PSAA and sections 124(f) (applies to prisoners only) and section 131 (applies to persons other the prisoners) of the CSA will be retained and will capture low level offending, for example, where a person kicks or hits a police or corrective services dog or police horse.

Any breach of the fundamental legislative principle is balanced by the need to reflect the seriousness of the offence in line with community expectations.

Consultation

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

- Human Rights Commissioner,
- Chief Justice,
- Chief Judge,
- Bar Association of Queensland,
- Queensland Law Society,
- Queensland Council for Civil Liberties,
- Crime and Corruption Commission,
- Aboriginal and Torres Strait Islander Legal Service,
- Queensland Indigenous Family Violence Legal Service,
- Aboriginal and Torres Strait Islander Women's Legal Service North Queensland,
- Magistrates Court of Queensland,
- Women's Legal Service,
- Legal Aid Queensland,
- Youth Advocacy Centre,
- Queensland Homicide Victims Support Group,
- Act for Kids,
- Protect All Children Today,
- Bravehearts Foundation Limited,
- Parole Board Queensland,
- Prisoners Legal Service,
- Sisters Inside,
- Together Union,
- Queensland Police Union of Employees, and
- Queensland Police Commissioned Officers' Union of Employees.

An amendment was made to the Bill as a result of a comment provided by Legal Aid Queensland. Section 411C (Consent of relevant person required) of the PPRA now provides a positive obligation on police to advise the person that they may seek legal advice before providing consent to a police assistance removal order.

In addition, consultation on the amendments to the WWCA was undertaken through an information session with the following organisations:

- Independent Schools Queensland,
- Queensland Foster and Kinship Care,
- Anglican Diocese of Brisbane,
- Scouts Queensland,
- Catholic Schools Queensland,
- Family Day Care Queensland,
- Aboriginal and Torres Strait Islander Legal Service,
- PeakCare Queensland, and
- Queensland Council of Social Service.

In relation to the CSA amendments, stakeholder feedback was taken into account in finalising the Bill.

Consistency with legislation of other jurisdictions

The amendments in the Bill are generally consistent with legislation in other jurisdictions. With respect to police banning notices, in Victoria, police can issue a banning notice where a person is reasonably suspected of committing a specified offence, which includes possessing a prohibited weapon such as a flick knife or a trench knife, in a designated area.

Queensland is the only Australian jurisdiction that does not participate in the ENIPID program, primarily because of the legislative impediments in the PPRA that restrict what the Commissioner of Police can do with forfeited drugs.

Western Australia and the Commonwealth specifically allow for the use of assumed identities for training and administrative purposes via s 48(2)(a)(ii) and (iii) of the *Criminal Investigation (Covert Powers) Act 2012* (WA) and s 15KB(2)(a)(iv) & (v) of the *Crimes Act 1914* (Cwlth) respectively.

In relation to historical backstopping, section 64(3) of the *Criminal Investigation (Covert Powers) Act 2012* (WA) provides for the making of any false or misleading representations about the person for the purposes or in connection with the acquisition or use of the assumed identity by the person.

Regarding the delegation for the authorisation of assumed identities, while NSW maintains the delegation at Assistant Commissioner level, Victoria, Western Australia and South Australia delegate their Commissioner's assumed identity powers to Superintendent level.

With respect to the new offence to wilfully and unlawfully kill or seriously injure a police dog or horse, NSW has a similar offence under section 531, 'Killing or seriously injuring animals used for law enforcement' of the *Crimes Act 1900* punishable by a maximum of five years imprisonment. South Australia has an offence under section 83I of the *Criminal Law Consolidation Act 1935* of 'Causing death or serious harm etc. to working animals' punishable by a maximum of five years imprisonment. The Northern Territory also has an offence of 'Killing or injuring police dogs or police horses' under section 159A of the *Police Administration Act 1978,* punishable by a maximum of five years imprisonment.

Legislation in every jurisdiction in Australia provides for parole, however there are considerable jurisdictional differences in the legislative requirements and processes around parole decision-making.

While the new parole framework for life sentenced multiple or child murderers has been designed to complement the features of Queensland's parole system, other jurisdictions also subject their most serious offenders to additional scrutiny in parole processes.

Western Australia (WA) has a parole framework for serious offenders. Section 14C (Minister may direct suspension of reporting) of the *Sentence Administration Act 2003* (WA) provides that the Minister may direct that a 'designated prisoner' who is a convicted 'mass murderer or serial killer' must not be considered for parole for up to six years.

Another approach in South Australia (SA) is section 77E (Right of review of Board decision to release life prisoners on parole etc.) of the *Correctional Services Act 1982* (SA) which provides a right of review where the Parole Board of South Australia decides to release a life prisoner on parole. The review may be requested by the Attorney-General, Police Commissioner or Commissioner of Victim's Rights.

NBNP or 'No Cooperation, No Parole' legislation has been enacted in SA, Northern Territory, Victoria, and WA. The Queensland NBNP legislation prior to commencement of this Bill was closely aligned to the legislative frameworks in Victoria and WA. Through this Bill, Queensland will be the first jurisdiction with NBNP laws to provide for early consideration of a prisoner's cooperation, for the making of a no cooperation declaration and a new process for seeking reconsideration if a prisoner's cooperation is not satisfactory.

Queensland is the only jurisdiction with a legislated timeframe for parole decisions to be made from receipt of an application. Some jurisdictions alternatively provide for the timeliness of parole decisions by requiring decisions to be made with reference to the prisoner's parole eligibility date. For example, section 137(1) of the *Crimes (Administration of Sentences) Act 1999* (NSW) requires the Parole Authority to decide whether a prisoner is to be released at least 60 days before the prisoner's eligibility date, or up to 21 days before if the matter is deferred. Tasmania and Western Australia's legislation requires a decision to be made prior to the prisoner's eligibility date but does not specify a timeframe. Another alternative approach is adopted in Victoria, where rather than legislating a timeframe, prisoners can apply for parole in advance of their eligibility date (up to three years prior for sentences longer than 10 years, otherwise, 12 months prior). The remaining jurisdictions do not provide for explicit timeframes.

The amendment to extend the time a life-sentenced prisoner can reapply for parole once refused by the Board to three years is consistent with section 143A(3)(c) of the *Sentence Administration Act 2003* (NSW), which provides that the State Parole Authority may decline to consider an offender's case for up to three years at a time after it last considered the grant of parole to the offender.

Publication of certain parole decisions is an approach taken in some other Australian jurisdictions. Section 72(7)(b) of the *Corrections Act 1997* (Tas) requires the Parole Board of Tasmania to publish decisions to release prisoners. The Tasmanian Board publishes all the required decisions on its website. Section 107C of the *Sentence Administration Act 2003* (WA) provides that the Chairperson of the Prisoners Review Board may make public a decision of

the Board, including reasons, if it is in the public interest. The Board's policy manual provides that decisions to release or cancel parole for certain serious offenders will be published. Decisions are published on the Board's website.

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 2021.*

2. Commencement

Clause 2 outlines the provisions of the Act that will commence other than on assent.

Subclause (1) provides that certain amendments are to commence by way of a proclamation. These are clause 11(3) (Amendment of s 193 (Decision of parole board)), clause 21 (Insertion of ch 6, pt 15B (Temporary periods to decide particular parole applications) and clause 23(2) (Amendment of sch 4 (Dictionary)).

Subclause (2) provides for sections that will commence after the expiry of chapter 6, part 15B (Temporary periods to decide particular parole applications). These are clause 11(4) (Amendment of s 193 (Decision of parole board)) and 23(3) (Amendment of sch 4 (Dictionary)).

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

3. Act amended

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

4. Amendment of sch 1 (Prescribed offences)

Clause 4 amends schedule 1, item 6 to include the following Criminal Code (Cwlth) offences as prescribed offences:

- section 272.15A ("Grooming" person to make it easier to engage in sexual activity with a child outside Australia),
- section 471.25A (Using a postal or similar service to "groom" another person to make it easier to procure persons under 16),
- section 474.23A (Conduct for the purposes of electronic service used for child abuse material),
- section 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16),
- section 474.27AA (Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age).

Part 3 – Amendment of Corrective Services Act 2006

5. Act amended

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

6. Insertion of new s 131A

Clause 6 inserts new section 131A, 'Wilfully and unlawfully killing or seriously injuring corrective services dog' after section 131.

131A Wilfully and unlawfully killing or seriously injuring corrective services dog

Section 131A(1)(a) provides that a person, or a prisoner, must not wilfully and unlawfully kill or cause serious injury to a corrective services dog that is being used by a corrective services officer in the performance of the officer's duties. The offence is punishable by a maximum of five years imprisonment.

Section 131A(1)(b) provides that a person, or a prisoner, must not wilfully and unlawfully kill or cause serious injury to a corrective services dog because of, or in retaliation for, its use by a corrective services officer in the performance of the officer's duties. The offence is punishable by a maximum of five years imprisonment.

Section 131A(2) provides that a person, or a prisoner, must not attempt to commit an offence against subsection (1). The offence is punishable by a maximum of five years imprisonment.

Section 131A(3) specifies that an offence against subsection (1) or subsection (2) is a crime.

Section 131A(4) states a court that finds a person, or a prisoner, guilty of a crime under subsection (1) or subsection (2) may, in addition to any penalty that may be imposed, order the person, or a prisoner, to pay to the chief executive a reasonable amount for the treatment, care, rehabilitation and retraining of the corrective services dog concerned or if it is necessary to replace the dog, buying and training the corrective services dog replacement.

Section 131A(5) refers the reader to section 242 (Serious animal cruelty) of the Criminal Code for the definition of *serious injury* and inserts a definition of *unlawfully* specific to this offence.

The definition of person in section 125 for the purposes of Chapter 3 (Breaches of discipline and offences), Part 3 (General offences) of the CSA does not include a prisoner. A specific reference to a prisoner is therefore included in the new offence.

7. Insertion of new ch 5, pts 1AA and 1AB

Clause 7 inserts new Chapter 5, Parts 1AA (Preliminary) and 1AB (Parole declarations).

Part 1AA Preliminary

175B Definitions for chapter

Section 175B inserts the following definitions for this part: *commissioner's report, cooperation, homicide offence, no body-no parole prisoner, no cooperation declaration, reconsideration application, restricted prisoner, restricted prisoner declaration, restricted prisoner report, victim's location*.

175C Meaning of *no body-no parole prisoner*

Section 175C provides that a no body-no parole prisoner is a prisoner, serving a sentence of imprisonment for a *homicide offence* (as defined under new section 175B), where either the body or remains of the victim of the homicide offence have not been located, or, because of an act or omission of the prisoner or another person, part of the body or remains of the victim have not been located. The latter would capture, for example, instances where the prisoner may have dismembered the body of the victim and deposited the parts of the body at various locations; or the prisoner may have taken a part of the victim as a trophy or souvenir of their killing.

175D Meaning of *restricted prisoner*

Section 175D defines who is a *restricted prisoner* for the purpose of the new parole framework. *Restricted prisoner* means a prisoner sentenced to life imprisonment for: (a) a conviction of murder and the person killed was a child (i.e. where the victim was under the age of 18); or (b) more than 1 conviction of murder; or (c) 1 conviction of murder and another offence of murder was taken into account; or (d) a conviction of murder and the person has on a previous occasion been sentenced for another offence of murder.

Part 1AB Parole declarations

Division 1 Restricted prisoner declarations

New Division 1 provides for the making of restricted prisoner declarations about restricted prisoners.

175E Making restricted prisoner declaration

Section 175E enables the President of the Board to make a *restricted prisoner declaration*. The effect of the restricted prisoner declaration is that a restricted prisoner may not apply for parole under section 180 of the CSA (Applying for parole order etc.) while the declaration is in force.

175F Restricted prisoner report

Section 175F(1) provides that the chief executive may give the President a *restricted prisoner report*. The report may be provided at any time during the restricted prisoner's sentence of imprisonment. A *restricted prisoner report* includes information about the restricted prisoner which the chief executive considers relevant to the President of the Board deciding whether to make a restricted prisoner declaration.

Section 175F(2) sets a 28-day period within which the chief executive must provide the President a restricted prisoner report if the chief executive receives a notice that the Board has deferred the restricted prisoner's parole application until it receives a report.

175G If restricted prisoner report given to president

Section 175G(1) provides that section 175G applies where the chief executive gives the President of the Board a *restricted prisoner report*.

Section 175G(2) provides that if the chief executive gives the President of the Board a restricted prisoner report, the President must decide whether to make a restricted prisoner declaration. If a restricted prisoner declaration is in force for the prisoner, the President may decide to make a new declaration which would take effect on the day immediately after the day the current declaration ends.

Section 175G(3) provides that after receiving the restricted prisoner report, the President must give the prisoner a written notice stating they have received a report about the prisoner and they must decide whether to make a new declaration (if a current declaration is in force for the prisoner) or a declaration (if a current declaration is not in force for the prisoner). The notice must be provided to the prisoner as soon as practicable.

If a declaration is made for the prisoner, the prisoner cannot apply for parole under section 180 (Applying for parole order etc.) while the declaration is in force. The prisoner may still apply for exceptional circumstances parole under new section 176A.

The prisoner may, within 21 days after the President provides the notice to the prisoner (the *stated period*), make a written submission, and ask that the President consider any material the prisoner considers relevant to the submission.

Section 175G(4) allows the President to extend the *stated period* if they consider it reasonable in the circumstances. This ensures the President has discretion to receive and consider prisoner submissions that are provided late.

175H Deciding to make restricted prisoner declaration

Section 175H(1) enables the President of the Board to make a restricted prisoner declaration where they are satisfied it is in the public interest to do so. There is no limit on the number of declarations that may be made by the President.

Section 175H(2) prescribes the matters to which the President must have regard to when considering the public interest: (a) the nature, seriousness and circumstances of the offence, or offences, for which the prisoner was sentenced to life imprisonment, (b) the risk the prisoner may pose to the public if granted parole, and (c) the likely effect the prisoner's release may have on an eligible person or victim (noting the broad definition of victim in subsection 175H(8) and existing definition of eligible person under the Schedule 4 Dictionary).

Section 175H(3) prescribes additional information to which the President must have regard when considering the public interest: (a) the restricted prisoner report for the prisoner, (b) a submission made by an eligible person under section 188 (Submission from eligible person), (c) any relevant remarks made by a court in a proceeding against the prisoner for the offence

for which the prisoner was sentenced to life imprisonment, and (d) any submission made by the prisoner under section 175G(3)(d).

Section 175H(4) allows the President to have regard to any other matter or information they consider relevant to the public interest.

Section 175H(5) allows the President to defer their decision about whether to make a declaration or to ask for further information to inform their decision. For the avoidance of doubt, individuals will not be compelled to confess guilt or testify against themselves.

Section 175H(6) sets out the period within which the President must decide whether to make a declaration, which is 150 days after receiving the restricted prisoner report for a decision deferred under subsection (5), and 120 days otherwise. These timeframes align with the timeframes for the Board to decide a parole application under section 193(3) (Decision of parole board).

Section 175H(7) provides that a failure by the President to decide whether to make a declaration in the period stated in subsection (6) does not affect the validity of their decision.

Section 175H(8) defines *victim* for the purpose of section 175H.

175I If restricted prisoner declaration made

Section 175I(1) provides that the following information must be included in a restricted prisoner declaration: (a) the reasons for the decision, (b) the day the declaration takes effect, (c) the day the declaration ends, (d) that the prisoner may not apply for parole under section 180 (Applying for parole order etc.) while the declaration is in force, and (e) if the prisoner's application for parole was deferred under section 193AA(2) (Deciding parole applications – restricted prisoner) – that the application for parole be refused.

Section 175I(2) provides that, if a restricted prisoner declaration is in force for the prisoner, the day the declaration takes effect must not be a day before the current declaration ends; otherwise, a day before the day the declaration is made.

Section 175I(3) provides that a declaration must not be longer than 10 years after the day the declaration takes effect.

Section 175I(4) provides that in deciding the term of the declaration the President must be satisfied that the term is in the public interest and have regard to the matters mentioned in section 175H(2) (Deciding to make a restricted prisoner declaration).

Section 175I(5) lists the persons to whom the President must give a copy of the declaration: (a) the prisoner, (b) the chief executive, and (c) the Board. The chief executive may release this information to an eligible person if it is considered appropriate under existing section 325(1)(g).

Section 175I(6) defines *current declaration* for the purpose of section 175I, with reference to 175G (If restricted prisoner report given to President).

175J If restricted prisoner declaration not made

Section 175J(1) provides that section 175J applies where the President of the Board decides not to make a restricted prisoner declaration.

Section 175J(2) lists the persons to whom the President must give written notice of their decision not to make a restricted prisoner declaration: (a) the prisoner, (b) the chief executive, and (c) the Board. The notice must be provided as soon as practicable. The chief executive may release this information to an eligible person if it is considered appropriate under existing section 325(1)(g).

Section 175J(3) requires that if a restricted prisoner's application for parole was deferred until the Board has received a restricted prisoner report (section 193AA(2) Deciding parole applications – restricted prisoner), the notice to the prisoner must state that the application is referred to the Board for hearing and deciding.

Section 175J(4) makes it clear that the President may consider making a declaration about the prisoner if they receive another restricted prisoner report under section 175F (Restricted prisoner report).

Division 2 No cooperation declarations

New Division 2 provides for the making of no cooperation declarations about no body-no parole prisoners.

175K Application of division

Section 175K provides that Division 2 (No cooperation declarations) applies if a no body-no parole prisoner has made an application for a parole order under sections 176 or 180, or if the Board decides to consider whether a no body-no parole prisoner has given satisfactory cooperation.

This section makes clear the new discretion for the Board to initiate consideration of a no body-no parole prisoner's cooperation without waiting for the prisoner to apply for parole.

175L Parole board may make no cooperation declaration

Section 175L provides that the Board must make a no cooperation declaration about a prisoner if the Board is not satisfied the prisoner has given satisfactory cooperation in the investigation of the offence to locate the victim's remains. Cooperation can occur before or after the prisoner has been sentenced.

175M Parole board may request commissioner's report

Section 175M provides for the circumstances when a commissioner's report is required for the Board to consider a no body-no parole matter.

Section 175M(1) provides that this section applies where: (a) a no body-no parole prisoner has applied for parole, (b) the Board has received notice that the prisoner's no cooperation

declaration is to be reconsidered, or (c) the Board has exercised its discretion to consider a no body-no parole prisoner's cooperation at any time after sentencing.

Section 175M(2) provides a requirement that in any of those circumstances, the Board must request in writing a commissioner's report, subject to subsection (3).

Section 175M(3) restricts the Board from commencing consideration of a no body-no parole matter if the prisoner has commenced appeal proceedings against their conviction or sentence until the appeal is finally decided. This has been included because the nature of the appeal may include matters relevant to the prisoner's cooperation.

Section 175M(4) provides that the notice must include a proposed hearing day for the matter.

Section 175M(5) provides that the commissioner must comply with the request and provide a report at least 28 days prior to the proposed hearing day.

As per the definition of commissioner's report provided under section 175B, the report contains a statement of whether the prisoner has given any cooperation in the investigation of the offence to identify the victim's location and if the prisoner has given any cooperation, an evaluation of the: (i) nature, extent and timeliness of the prisoner's cooperation, (ii) truthfulness, completeness and reliability of any information or evidence provided by the prisoner in relation to the victim's location, and (iii) the significance and usefulness of the prisoner's cooperation.

Section 175M(6) provides that the Board must notify the chief executive of a request made to the commissioner.

175N Parole board must notify no body-no parole prisoner

Section 175N provides that the no body-no parole prisoner must be notified when the Board receives a commissioner's report about the prisoner. This requirement has been included to ensure the prisoner is made aware the Board is considering their cooperation in the event the Board exercises its discretion to commence the matter on its own initiative.

Section 175N(2) provides matters that must be included in the notice to the prisoner. The prisoner will be made aware that the Board has received a commissioner's report about the prisoner, that the Board must consider whether the prisoner has cooperated satisfactorily and that the prisoner may make a submission to the Board within 21 days of receiving the notice.

Section 175N(3) provides a clear discretion for the Board to allow the prisoner to make a submission later than the 21 days.

175O Deciding if satisfactory cooperation

Section 175O sets out the matters for the Board to consider in its determination of whether a prisoner's cooperation is satisfactory.

Section 175O(1)(a) provides the matters the Board must have regard to in its decision. These are:

(i) The commissioner's report, which includes an evaluation of any cooperation the prisoner has provided including the nature and extent, timeliness, truthfulness,

completeness and reliability, and the significance and usefulness of the cooperation.

(ii) Any information the Board has about the prisoner's capacity to provide cooperation. This may include mental capacity, such as where a prisoner has a cognitive or other impairment that impacts on their ability to provide cooperation. This may also include the prisoner's capacity to cooperate based on their role in the offending.

(iii) Relevant sentencing remarks.

(iv) Any transcript from a proceeding against the prisoner that the prisoner asks the board to consider.

Section 175O(1)(b) provides a discretion for the Board to have regard to other information it considers relevant.

Section 175O(2) provides a definition for *transcript*.

175P If prisoner does not give satisfactory cooperation

Section 175P provides for the process if the Board decides the prisoner has not cooperated satisfactorily, and therefore the Board makes a no cooperation declaration.

Section 175P(1) states that this section applies where the Board makes a no cooperation declaration about a prisoner.

Section 175P(2) prescribes the matters that must be stated in a no cooperation declaration.

Section 175P(3) provides that a copy of the no cooperation declaration must be provided to the prisoner and the chief executive as soon as practicable.

Section 175P(4) provides that the no cooperation declaration ceases if the prisoner is no longer a no body-no parole prisoner. This has been included to account for a scenario where the victim's remains are located after a prisoner has already been given a no cooperation declaration.

175Q If prisoner gives satisfactory cooperation

Section 175Q provides that if the Board determines that the prisoner has given satisfactory cooperation, the Board must give the prisoner and the chief executive a notice stating prescribed matters. These include: that if a no cooperation declaration was in force for the prisoner, that the declaration ends and the prisoner may apply for parole, subject to sections 176 and 180. A prisoner who has yet to reach their parole eligibility date will still be subject to the restrictions on applying for parole set out in section 180.

175R Prisoner may make reconsideration application

Section 175R provides a process for a prisoner to apply for reconsideration after they have been issued with a no cooperation declaration. This has been included to ensure a prisoner continues to be incentivised with an opportunity to have their no cooperation declaration reconsidered.

Section 175R(1) states that the section applies to a no body-no parole prisoner who is the subject of a no cooperation declaration.

Section 175R(2) provides that at any time after receiving a no cooperation declaration, the prisoner can make a reconsideration application. The application is made to the President or a Deputy President of the Board. The application seeks the decision-maker's approval for the Board to reconsider the no cooperation declaration made about the prisoner.

Section 175R(3) states the application is to be made in the approved form.

Section 175R(4) provides information that may be stated in the application. This information relates to the reasons the President or a Deputy President may approve reconsideration of the prisoner's no cooperation declaration.

Section 175R(5) provides a definition for *additional information*.

175S Deciding reconsideration application

Section 175S provides for the President or a Deputy President to decide a reconsideration application made under section 175R.

Section 175S(1) states that section 175S applies if a no body-no parole prisoner makes a reconsideration application.

Section 175S(2) states that the President or a Deputy President must either refuse or grant the reconsideration application.

Section 175S(3) provides the reasons a reconsideration application may be granted. These are:

(a) The prisoner has provided additional information to police.
(b) There has been a change in the investigation of the offence to identify the victim's location to justify the Board's reconsideration. An example is provided where the decision-maker is aware another prisoner (such as a co offender) has provided information to identify the victim's location.
(c) There has been a material change in the prisoner's capacity to provide cooperation. Capacity might relate to mental capacity, or the prisoner's capacity to provide cooperation based on their role in the offending.
(d) For another reason, it would be appropriate in the interests of justice for the Board to reconsider the prisoner's application.

This two-step process for reconsideration has been included to ensure matters that are reconsidered by the Board reach a threshold. The President or Deputy President deciding the reconsideration application will have a clear discretion to refuse reconsideration where a prisoner has taken no additional steps towards cooperation.

Section 175S(4) provides a requirement for the decision-maker to notify the prisoner, chief executive, and the Board if reconsideration is granted.

Section 175S(5) states that notice provided under subsection (4) must state that the Board will reconsider the no cooperation declaration made about the prisoner.

Section 175S(6) states that the decision-maker must notify the prisoner if the application is refused. The notice must state the prisoner's reconsideration application has been refused.

Section 175S(7) refers to the definition of *additional information* contained in section 175R(5).

175T Discretion to call meeting to reconsider

Section 175T provides a broad discretion for the President or a Deputy President to allow reconsideration of a no body-no parole prisoner's cooperation without the prisoner having to apply under section 175R.

Section 175T(1) states that the President or Deputy President may call a meeting of the Board to reconsider a no cooperation declaration at any time after the declaration is made.

Section 175T(2) provides that without limiting the discretion, the President or Deputy President may have regard to the matters set out in section 175S(3) when deciding to call a meeting of the Board to reconsider a no cooperation declaration.

Section 175T(3) and (4) provides notice requirements where the President or Deputy President has exercised their discretion to call a meeting of the Board to reconsider a no cooperation declaration. These notice requirements are aligned with those under section 175S(4) where the President or Deputy President grants a reconsideration application.

175U If reconsideration application granted or meeting called

Section 175U provides for the process if the President or Deputy President grants reconsideration of a prisoner's cooperation, either upon application by the prisoner (section 175S) or on own motion (section 175T).

Section 175U(1) provides that the Board must meet to consider the prisoner's no cooperation declaration if notified by the President or Deputy President that reconsideration of the prisoner's cooperation has been approved. This notification will be provided under section 175S(4) or 175T(3). As per section 175M(1)(b), if a meeting to reconsider the prisoner's no cooperation declaration is called, the Board must request a commissioner's report.

Section 175U(2) provides that if the Board is now satisfied with the prisoner's cooperation, the Board must notify the prisoner that the no cooperation declaration is no longer in force, and the prisoner can now apply for parole, subject to sections 176 or 180. If the prisoner applies for parole, an eligible person will be notified and provided an opportunity to make a written submission to the Board under existing section 188.

Section 175U(3) makes it clear that if the Board is still not satisfied with the prisoner's cooperation, the Board must notify the prisoner that the no cooperation declaration continues to be in force.

8. Amendment of s 176 (Applying for an exceptional circumstances parole order)

Clause 8 inserts a requirement that section 176 (Applying for an exceptional circumstances parole order) is now subject to new section 176B.

9. Insertion of new ss 176A and 176B

Clause 9 inserts new sections 176A (Deciding applications made by a restricted prisoner) and 176B (Applications made by no body-no parole prisoner).

176A Deciding applications made by restricted prisoner

Section 176A creates a higher threshold for exceptional circumstances parole where a restricted prisoner is subject to a restricted prisoner declaration. This is the only way a restricted prisoner subject to a restricted prisoner declaration can be released on parole while the declaration is in force.

Section 176A(1) provides that section 176A applies if a restricted prisoner applies for an exceptional circumstances parole order and a restricted prisoner declaration is in force for the prisoner.

Section 176A(2) provides that the Board must refuse to grant exceptional circumstances parole for the prisoner unless certain criteria are met, namely (a) the prisoner is not physically able to cause harm to another person because they have a diagnosed medical condition and are in imminent danger of dying or are otherwise incapacitated, (b) the prisoner has demonstrated that they do not pose an unacceptable risk to the public, and (c) the parole order is justified in the circumstances.

Section 176A(3) requires that if the Board grants the prisoner parole, it must give the chief executive written notice of its decision. The notice must be provided as soon as practicable after the decision is made. An eligible person will be notified by the chief executive of this decision under existing section 324A.

176B Applications made by no body-no parole prisoner

Section 176B states that if a prisoner is a no body-no parole prisoner, and there is a no cooperation declaration in force for that prisoner, the prisoner cannot apply for an exceptional circumstances parole order under section 176. This provision does not change the current restriction on a no body-no parole prisoner applying for parole (under existing section 193A).

10. Amendment of s 180 (Applying for parole order etc.)

Clause 10 amends section 180(2) (Applying for parole order etc.) to expand the circumstances where a prisoner cannot make a parole application in addition to those already provided for under section 180(2).

Subclause (1) inserts into section 180(2) two new circumstances where a prisoner cannot make a parole application under section 180(1), namely, if the prisoner is a restricted prisoner and a restricted prisoner declaration is in force for the prisoner, or if the prisoner is a no body-no parole prisoner and a no cooperation declaration is in force for the prisoner.

Subclause (2) renumbers the section 180(2) subsections as a consequence of subclause (1).

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

Clause 11 amends section 193 which provides general provisions about deciding applications for parole.

Subclause (1) replaces the heading of section 193 to be (Deciding parole applications – general).

Subclause (2) inserts a new subsection 193(1A). This new section provides a process for dealing with a parole application made a prisoner that is both a restricted prisoner (section 175D) and a no body-no parole prisoner (section 175C). Section 193(1A) provides that the application should be dealt with first under section 193A (Deciding parole applications—no body-no parole prisoner). Only if the Board does not make a no cooperation declaration, does the application then need to be dealt with under section 193AA (Deciding parole applications—restricted prisoner). This is because if a no cooperation declaration is made about the prisoner, a further restricted prisoner declaration is not required.

Subclause (3) inserts a new provision section 193(3A) which provides that section 193(3) is subject to Chapter 6, Part 15B (Temporary periods to decide particular parole applications). Subclause (3) will commence on proclamation along with Chapter 6, Part 15B.

Subclause (4) provides for section 193(3A) to be omitted. This subclause will commence after Chapter 6, Part 15B expires.

Subclause (5) amends section 193(5A)(a) to extend the period a life-sentenced prisoner can be restricted from reapplying for parole following a refusal of their application from 12 months to up to 3 years.

Subclause (6) omits section 193(6) as a consequence of the insertion of Division 2 (No cooperation declarations).

12. Replacement of s 193A (Deciding particular applications where victim's body or remains have not been located)

Clause 12 replaces and renames section 193A with section 193A (Deciding parole applications – no body-no parole prisoner) and inserts new section 193AA (Deciding parole applications – restricted prisoner). The existing No Body, No Parole framework provided for in section 193A has mostly been moved into new Chapter 5, Part 1AA (sections 175B and 175C) and Part 1AB, Division 2 (sections 175K to 175U).

193A Deciding parole applications—no body-no parole prisoner

Section 193A(1) states that this section applies where a no body-no parole prisoner makes a parole application.

Section 193A(2) provides that if the Board has made a no cooperation declaration about the prisoner, and the declaration has not ceased, the prisoner's parole application must be refused.

Section 193A(3) provides that if the prisoner has been given a notice under section 175Q (because the Board was satisfied with their cooperation) the Board can go on to consider the

prisoner's parole application in accordance with section 193. This provision will ensure that if a prisoner has already had their cooperation considered as satisfactory by the Board, the no body-no parole process does not need to be repeated.

Section 193A(4) provides that if subsections (2) or (3) do not apply, the prisoner's parole application must be deferred, and the Board must request a commissioner's report about the prisoner. This provision will capture no body-no parole prisoners who have not previously had their cooperation considered by the Board when they apply for parole.

193AA Deciding parole applications—restricted prisoner

Section 193AA(1) provides that section 193AA applies to a restricted prisoner's parole order application.

Section 193AA(2) requires that the Board notify the President and the chief executive that a restricted prisoner has applied for parole. It also specifies the information which must be included in the notice to the chief executive. This results in the parole application process being paused (including any notification requirement under section 188) while the President considers whether to make a restricted prisoner declaration in relation to the prisoner.

Section 193AA(3) enables the Board to defer making a decision until it obtains any information it considers necessary to make the decision. This is consistent with existing section 193C (Deferring decision to obtain information about terrorism links) which enables the Board to defer making a decision about a prisoner with links to terrorism.

Section 193AA(4) provides that if the application was deferred and the Board receives notice that the President has made a restricted prisoner declaration about the prisoner, their parole application is automatically refused.

Section 193AA(5) requires the Board to refuse to grant a restricted prisoner's parole application, *unless* satisfied the prisoner does not pose an unacceptable risk to the public. This reverses any potential presumption for parole, and instead starts from the basis that the Board must refuse a prisoner's parole application.

13. Insertion of new ss 229A to 229C

Clause 13 inserts new sections 229A (Functions of president), 229B (Delegation of particular function president), and 229C (Functions of deputy president).

229A Functions of president

Section 229A provides new functions for the President of the Board.

Section 229A(1) states that the President has the functions given under this or another Act.

Section 229A(2) provides that the President has the power to do all things necessary and convenient to perform their functions.

This section supports the new functions of the President in relation to restricted prisoner declarations and the reconsideration of no cooperation declarations.

229B Delegation of particular function of president

Section 229B provides the President with the power to delegate certain functions to the Deputy President.

Section 229B(1) applies where the President cannot independently consider and decide whether to make a restricted prisoner declaration about a prisoner.

Section 229B(2) provides that the President must delegate the President's functions to a Deputy President under section 229B(3) where the President becomes aware of a direct or an indirect interest the President has that could conflict with the proper performance of the President's decision to make a declaration.

Section 229B(3) provides that the President must delegate to the Deputy President the function of the President under Chapter 5, Part 1AB.

Section 229B(4) provides a definition for *function* and *interest* specific to this section.

229C Functions of deputy president

Section 229C provides new functions for a Deputy President of the Board.

Section 229C(1) states a Deputy President has the functions given under this or another Act.

Section 229C(2) provides that a Deputy President has the power to do all things necessary and convenient to perform their functions.

This section supports the new functions of the Deputy President in relation to the reconsideration of no cooperation declarations.

14. Replacement of s 230 (Conduct of business)

Clause 14 amends section 230 to provide discretion for the President to conduct their consideration of whether to make a restricted prisoner declaration in the way the President considers appropriate and for the President or a Deputy President to conduct their consideration of a reconsideration application in the way the President or Deputy President considers appropriate.

This discretion aligns with the existing discretion under section 230 for the Board to conduct its business, including its meetings as it considers appropriate.

15. Amendment of s 233 (Meetings generally)

Clause 15 replaces section 233(2) with a new provision that provides for a meeting of the Board to be called by the President or a Deputy President for reconsideration of a no cooperation declaration under section 175U, or otherwise by the President, or in the President's absence, a Deputy President.

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

Clause 16 amends section 234 to provide more flexible minimum quorum requirements for the Board to consider certain prescribed matters.

Subclause (1) replaces subsection 234(1) to provide that the quorum requirements provided for in subsection 234(2) are to apply to meetings of the Board to consider (a) a prescribed prisoner's parole application, and (b) a no body-no parole prisoner's satisfactory cooperation under section 175M. This amendment ensures the additional quorum requirements apply to no body-no parole matters that are initiated by the Board as well as those initiated by a prisoner's parole application.

Subclause (1) also replaces subsection 234(2) to provide that the following members must be present at a Board meeting to consider a matter specified in subsection 234(1): (a) the President, a Deputy President or a professional Board member, (b) at least one community member, and (c) at least one permanent Board member. A permanent Board member is defined in section 221(1) to be the police representative/s and public service representative/s.

Subclause (2) omits the requirements under sections 234(3) to (6) to provide that specific quorum requirements are only mandated for a prescribed prisoner's applications for parole.

Subclause (3) renumbers section 234(7) as a result of subclause (2).

Subclauses (2) and (3) have previously been passed by the Parliament of Queensland but are yet to commence as permanent amendments to the CSA (clause 37(2) of the *Corrective Services and Other Legislation Amendment Act 2020* - CSOLAA). Subclauses (2) and (3) have been included in this Bill to ensure their permanent commencement.

Subclause (2) and (3) are in force as a temporary amendment to section 234 under section 4 of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*. The temporary provision will expire at the end of the COVID-19 public health emergency.

Sections 37(1), (2) and (4) of the CSOLAA provided for subclause (2) and (3) as a permanent amendment to section 234. However, as per section 2(1)(a) of CSOLAA the permanent amendment cannot commence until the COVID-19 public health emergency ceases.

Given the continued uncertainty around the end of the COVID-19 emergency, clause 16 (2) and (3) provides for this amendment to be permanently enacted upon commencement of this Bill. It also omits the temporary COVID-19 amendment (see Part 5) and the permanent (but yet to commence) amendment from CSOLAA (see Part 4).

17. Insertion of new ch 5, pt 2, div 4A

Clause 17 inserts new section 235A (Parole board must publish particular information).

235A Parole board must publish particular information

Section 235A(1) provides that a regulation may prescribe information the Board is required to publish on its website.

Section 235A(2) provides that a regulation may prescribe the following information: (a) certain decisions about a prisoner or a class of prisoner, and (b) specified details of the decision.

18. Amendment of s 324A (Right of eligible persons to receive particular information)

Clause 18 amends section 324A which provides the information which the chief executive must give an eligible person about a prisoner to whom the eligible person is registered.

Subclause (1) inserts 'whether or not a no cooperation declaration was made about the prisoner' as information the chief executive is required under subsection 324A(1) to provide an eligible person registered to the prisoner.

Subclause (2) amends subsection 324A(2)(a) to provide that the chief executive must give this information to an eligible person as soon as practicable after the chief executive becomes aware of the information.

19. Amendment of s 350 (Proceedings for offences)

Clause 19 amends section 350 (Offences) as a consequence of the insertion of section 131A (Wilfully and unlawfully killing or seriously injury a corrective services dog).

Subclause (1) amends the heading of section 350 to Proceedings for offences – general as a consequence of the insertion of clause 20.

Subclause (2) amends section 350(1) to provide that a proceeding for an offence against the CSA, other than an offence against section 122 or 131A, is a summary proceeding under the *Justices Act 1886*.

20. Insertion of new ss 350A to 350C

Clause 20 inserts new sections 350A, 350B and 350C about proceedings for the new indictable offence against section 131A (Wilfully and unlawfully killing or seriously injury a corrective services dog). The proceedings sections are intended to have the same effect as though the new offence is an indictable offence under Chapter 58A (Indictable offences dealt with summarily), section 552A (Charges of indictable offences that must be heard and decided summarily on prosecution election) of the Criminal Code.

Section 350A Proceeding for offence against s 131A

Section 350A provides for an offence against section 131A (Wilfully and unlawfully killing or seriously injury a corrective services dog) to be dealt with summarily.

Section 350A(1) states a charge of an offence against section 131A must be heard and decided summarily if the prosecution elects to have the offence heard and decided summarily.

Section 350A(2) provides that a Magistrates Court that summarily deals with the charge for the offence must be constituted by a magistrate, and has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose, and may hear and decide the charge at any place appointed for holding a magistrates court within the district in

which the accused person was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

Section 350A(3) provides that a Magistrates Court must abstain from dealing summarily with the charge if satisfied, on an application made by the prosecution and the defence, that because of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

Section 350A(4) states if the Magistrates Court abstains from jurisdiction:

- the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily,
- the proceeding for the charge must be conducted as a committal proceeding,
- a plea of the defendant at the start of the hearing must be disregarded,
- the evidence already heard by the court is taken to be evidence in the committal proceeding, and
- the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

Section 350B Maximum penalty for offence against s131A dealt with summarily

Section 350B provides the maximum penalty for an offence against section 131A (Wilfully and unlawfully killing or seriously injury a corrective services dog) that is dealt with on summary conviction.

Where the Magistrates Court is a court constituted by a magistrate imposing a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A—100 penalty units or 4 years imprisonment. Otherwise a maximum penalty of 100 penalty units or 3 years imprisonment applies.

Section 350C Appeal against decision to decide charge against s 131A summarily

Section 350C provides for appeals on summary conviction or sentence of an offence against section 131A (Wilfully and unlawfully killing or seriously injury a corrective services dog).

Section 350C(1) states that the section applies if a person is summarily convicted or sentenced for an offence against section 131A.

Section 350C(2) states the grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.

Section 350C(3) provides the grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily.

Section 350C(4) provides that on an appeal against sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

21. Insertion of new ch 6, pt 15B

Clause 21 inserts a new Chapter 6, Part 15B (Temporary periods to decide particular parole applications).

351G Application of part

Section 351G states the new Chapter 6, Part 15B (Temporary periods to decide particular parole applications) applies to an existing parole application and a new a parole application, despite section 193(3). This section makes it clear that for the temporary extension period, the extended timeframes for parole decisions prescribed by this part will apply to all parole applications made under section 180 (existing and new parole applications), despite the timeframes prescribed in section 193(3).

351H Definitions for part

Section 351H provides definitions of *existing parole application*, *new parole application* and *temporary extension period*.

351I Existing parole applications

Section 351I provides that for the temporary extension period, the Board must decide an existing parole application within 180 days of receipt, or, if the Board defers the application to seek further information in accordance with section 193(2), 210 days.

351J New parole applications

Section 351J provides that for the temporary extension period, the Board must decide a new parole application within 180 days of receipt, or, if the Board defers the application to seek further information in accordance with section 193(2), 210 days.

351K Expiry of part

Section 351K provides that Chapter 6, Part 15B (Temporary periods to decide particular parole applications) expires 390 days after commencement (on proclamation). This period has been chosen to account for an application made on the last day of the temporary extension period (180 days from commencement) which can take up to 210 days with a deferral.

351L Saving of operation of part

Section 351L provides that this part is declared to be a law to which section 20A of the *Acts Interpretation Act 1954* applies. The purpose of this section is to save the operation of the temporary extension periods so that they will apply to existing and new parole applications made but not decided before the temporary extension period ends.

22. Insertion of new ch 7A, pt 15

Clause 22 inserts a new Chapter 7A, Part 15 (Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2021).

490ZC Definition for part

Section 490ZC provides that references to the amending act in this part are references to the *Police Powers and Responsibilities and Other Legislation Amendment Act 2021*.

490ZD Application of ch 5, pts 1AA and 1AB

Section 490ZD provides that the new restricted prisoner and no body-no parole prisoner provisions apply whether the prisoner was convicted of or sentenced for the offence before or after the commencement.

490ZE Existing applications for parole order

Section 490ZE states that from commencement, the following provisions apply to all parole applications made but not yet decided before commencement under section 176 or 180: Chapter 5, Parts 1AA (Preliminary) and 1AB (Parole declarations), sections 176A (Deciding applications made by restricted prisoner) and 176B (Applications made by no body-no parole prisoner), section 180 (Applying for parole order etc.), sections 193 (Deciding parole applications – general) to 193AA (Deciding parole applications – restricted prisoner), sections 229A (Functions of President) to 229C (Functions of Deputy President), section 234 (Meetings about particular matters relating to parole orders), and section 324A (Right of eligible persons to receive particular information).

23. Amendment of sch 4 (Dictionary)

Clause 23 inserts definitions into the dictionary contained in Schedule 4 of the CSA.

Subclause (1) inserts definitions for *additional information, commissioner's report, cooperation, current declaration, homicide offence, no body-no parole prisoner, no cooperation declaration, reconsideration application, restricted prisoner, restricted prisoner declaration, restricted prisoner report* and *victim's location*.

Subclause (2) inserts definitions for *existing parole application, new parole application* and *temporary extension period.* Subclause (2) will commence on proclamation along with Chapter 6, Part 15B (Temporary periods to decide particular parole applications).

Subclause (3) provides for the definitions inserted by subclause (2) to be omitted. This subclause will commence after Chapter 6, Part 15B expires.

Part 4 – Amendment of Corrective Services and Other Legislation Amendment Act 2020

24. Act amended

Clause 24 states that this part amends the *Corrective Services and Other Legislation Amendment Act 2020.*

25. Amendment of s 2 (Commencement)

Clause 25 omits sections 37(1), (2) and (4) from the commencement provisions for the *Corrective Services and Other Legislation Amendment Act 2020*. This has been included as a result of clause 16(2) and (3).

26. Omission of s 37 (Amendment of s 234 (Meetings about particular matters relating to parole orders))

Clause 26 omits section 37(1), (2) and (4) of the *Corrective Services and Other Legislation Amendment Act 2020*. Clause 16(2) and (3) provide for the same amendment to commence on assent of this Bill. Section 37(3) has already commenced.

Part 5 – Amendment of Corrective Services (COVID-19 Emergency Response) Regulation 2020

27. Regulation amended

Clause 27 states that this part amends the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*.

28. Omission of s 4 (Modification of Corrective Services Act 2006, s 234 (Meetings about particular matters relating to parole orders))

Clause 28 omits section 4 of the *Corrective Services (COVID-19 Emergency Response) Regulation 2020*.

Clause 16 of the Bill will enact this provision as a permanent amendment to section 234, commencing on assent (see clause 16(2) and (3)).

Part 6 – Amendment of Police Powers and Responsibilities Act 2000

29. Act amended

Clause 29 states that this part amends the *Police Powers and Responsibilities Act 2000.*

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

Clause 30 amends section 21B to include the following Criminal Code (Cwlth) offences as prescribed internet offences:

- section 474.23A (Conduct for the purposes of electronic service used for child abuse material),
- section 474.25C (Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16),

- section 474.27AA (Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age).

31. Amendment of s 283 (Deciding application)

Clause 31 amends section 283 to expand the reasons for which the chief executive officer may grant an authority to acquire or use an assumed identity, with or without conditions.

Section 283(2)(a)(i) restates that an assumed identity can be authorised because it is necessary for an investigation or intelligence gathering in relation to criminal activity.

Section 283(2)(a)(ii) provides that an assumed identity can be authorised because it is necessary for the training of persons for the purpose mentioned in subparagraph (i).

Section 283(2)(a)(iii) provides that an assumed identity can be authorised for an administrative function in support of a purpose mentioned in subparagraph (i) or (ii).

32. Amendment of s 302 (Assumed identity may be acquired and used)

Clause 32 inserts section 302(3) to expressly state that the authority to acquire or use an assumed identity also authorises (a) the making (by the person to whom the authority applies) of any false or misleading representation about the person for the purposes of, or in connection with, the acquisition or use of the assumed identity by the person; and (b) the use by the person of the assumed identity to obtain evidence of the identity.

33. Amendment of s 318 (Delegation – commissioner)

Clause 33 amends section 318(1) to provide the Commissioner may delegate any of the Commissioner's powers under Chapter 12, 'Assumed identities' in relation to the: granting, variation and cancellation of authorities; conducting reviews under section 287; authorising the making of an application to the independent member for a birth certificate approval for an assumed identity; making applications under section 292; and making requests under section 294 or 307, to a senior officer.

The clause also inserts new section 318(4) to define 'senior officer' as a deputy commissioner of the police service; or (b) an assistant commissioner of the police service; or a superintendent of the police service who is responsible for covert operations.

The amendment broadens the previous delegation that was limited to a deputy commissioner or an assistant commissioner of the police service. This will ensure the approval of assumed identities continues to happen in a timely manner by appropriately experienced senior police.

34. Amendment of ch 15, hdg (Powers and responsibilities relating to investigations and questioning for indictable offences)

Clause 34 omits from the heading the words 'investigations and questioning for indictable offences' and inserts 'particular investigations and questioning'.

35. Amendment of ch 15, pt 2, div 2, hdg (Removal of persons from lawful custody)

Clause 35 amends the heading by including the words 'in prison or detention centre' after 'custody'. This will help to distinguish division 2 from new division 3A 'Removal of person from lawful custody to help police'.

36. Amendment of s 399 (Application for removal of persons from lawful custody)

Clause 36 amends the heading by including the words 'in prison or detention centre' after 'custody'. This will help to distinguish section 399 from new section 411B 'Application for police assistance removal order'.

37. Insertion of new ch 15, pt 2, div 3A

Clause 37 inserts new Division 3A, 'Removal of persons from lawful custody to help police'.

New Division 3A contains the legislative framework that permits police to remove a person who is in the Police Commissioner's custody under section 8 of the *Corrective Services Act 2006* from a watch-house and take them to a place other than a police establishment for the purposes of assisting police.

411A Definitions for division

Section 411A inserts the following definitions for the division: *assistance period, criminal activity, police assistance removal order, relevant person,* and *relevant police officer*.

411B Application for police assistance removal order

Section 411B(1) applies the section to a person (adult) who having been admitted to a police watch-house, is in the commissioner's custody as per section 8 of the *Corrective Services Act 2006,* and before being taken to a corrective services facility, wishes to provide information to help police investigate an offence or gather intelligence in relation to criminal activity. The person must not be a suspect for the offence the subject of the investigation or an offence involved in the criminal activity, and is able to provide particular information only by being removed from the watch-house and taken to another place, other than a police establishment.

Section 411B(2) provides that a police officer may apply to a magistrate for a police assistance removal order for the removal of the person in custody (the relevant person) to the custody of a police officer to enable the person to provide information to help the police service investigate an offence or gather intelligence in relation to criminal activity.

Section 411B(3) specifies that before making an application for a police assistance removal order, a police officer must obtain the approval of a police officer of at least the rank of detective superintendent. The 'Note' in the section reminds police they must also gain the consent of the person being removed (s 411C) and have a magistrate make the removal order (s 411D).

Section 411B(4) states the application must be made in person and sworn and state the grounds on which the order is sought.

Section 411B(5) states the magistrate may refuse to consider the application until the police officer gives the magistrate all the information required about the application in the way the magistrate requires. The section provides an example that a magistrate may require additional information to be given by statutory declaration.

411C Consent of relevant person required

Section 411C(1) requires that before applying for a police assistance removal order, a police officer must obtain the written consent of the relevant person.

Section 411C(2) provides that a police officer must inform the relevant person that they may seek legal advice before deciding whether to give consent to be removed to the custody of a police officer for the purposes of a police assistance removal order.

Section 411C(3) provides that the relevant person's consent must also, if reasonably practicable, be electronically recorded by the police officer.

Section 411C(4) clarifies that the relevant person may refuse to consent to the electronic recording of the consent.

411D Making, and effect, of police assistance removal order

Section 411D(1) provides that a magistrate may make a police assistance removal order only if the magistrate is satisfied the relevant person has consented to be removed into the custody of a police officer for the purposes of an investigation of an offence or intelligence gathering in relation to criminal activity on the basis that the person is not a suspect for the offence the subject of the investigation or an offence involved in the criminal activity.

Section 411D(2) stipulates if a police assistance removal order is made, the relevant person cannot, during the assistance period, be questioned by a police officer about an offence the person has been charged with or the commission of an offence the person is suspected of being involved in.

411E What police assistance removal order must state

Section 411E states that a police assistance order must state the following:

- the name of the relevant person and the watch-house in which the person is in custody,
- the name of the police officer (the relevant police officer) who will have control of the relevant person while the person is absent from the watch-house,
- that the watch-house manager must release or arrange for the release of the relevant person into the custody of the relevant police officer,
- the reason for the relevant person's removal,
- the places, if known, to which the relevant person is to be taken during the assistance period,
- that the relevant person must be returned to the watch-house as soon as reasonably practicable after the assistance period ends or the relevant person withdraws consent to help the police service, and

- any other conditions the magistrate considers appropriate.

411F Assistance period

Section 411F provides a police officer may keep a relevant person in custody under a police assistance removal order for no more than 8 hours (the assistance period) unless the assistance period is extended.

411G Application for extension of assistance period

Section 411G(1) states a police officer may apply for an order extending the assistance period before the period ends.

Section 411G(2) provides the application must be made to a magistrate, or a justice of the peace at a magistrates court, or if neither of those are available, another justice of the peace other than a justice of the peace (commissioner for declarations).

411H Further consent of relevant person required

Section 411H(1) states that before applying for an extension of the assistance period under section 411G, a police officer must obtain the further written consent of the relevant person to the extension of the assistance period.

Section 411H(2) allows that the relevant person may seek legal advice before deciding whether to give consent to the extension of the assistance period.

Section 411H(3) provides the relevant person's consent must also, if reasonably practicable, be electronically recorded by the police officer.

Section 411H(4) clarifies that the relevant person may refuse to consent to the electronic recording of the consent.

411I When assistance period may be extended

Section 411I(1) states a magistrate or justice may extend the assistance period for a relevant person if satisfied the relevant person has given consent for the assistance period to be extended and the extension of the assistance period is reasonably necessary.

Section 411I(2) stipulates an order may extend the assistance period for a reasonable time of not more than eight hours.

Section 411I(3) provides there may be only one extension of the assistance period for a police assistance removal order.

411J Withdrawal of consent

New section 411J provides that a relevant person may withdraw consent to help the police service under the division at any time.

The section further states that if a relevant person withdraws consent after the person is taken into custody under a police assistance removal order, the relevant officer must return the person to the watch-house as soon as reasonably practicable.

38. Amendment of s 602C (Police officer may give initial police banning notice)

Clause 38 amends section 602C to include 'possessing a knife in contravention of the *Weapons Act 1990*, section 51' as an example of disorderly, threatening, or violent behaviour.

39. Amendment of s 612 (Assistance in exercising powers)

Clause 39 omits example 3, 'A police officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device', from section 612(1). The omission of this example along with amendments to the *Police Powers and Responsibilities Regulation 2012* will make it clear that an authorised monitor of surveillance device equipment can work without the constant supervision of a police officer.

40. Amendment of s 707 (Alternative to destruction if drug matter is thing used in the commission of a drug offence)

Clause 40 amends section 707(3) to expand the ways the commissioner may dispose of drug matter.

In addition to the option of giving the drug matter to the chief executive (corrective services) for training purposes under the *Corrective Services Act 2006*, chapter 6, part 13A, the commissioner may dispose of the drug matter by giving it to the chief executive officer of the Australian Federal Police, a police service of another State or an entity established under the law of the Commonwealth or a State to investigate corruption or crime for the purposes of an illicit drug profiling program or project.

41. Amendment of s 803 (Protection of methodologies)

Clause 41 amends section 803(1) to include 'or staff member' after 'officer'. This means that a QPS staff member cannot be required to disclose police methodologies unless the court is satisfied disclosure of the information is necessary for the reasons set out in sections 803(1)(a)-(c).

42. Amendment of schedule 6 (Dictionary)

Clause 42 amends the schedule 6 'Dictionary'.

Subclause 1 inserts the following definitions into the schedule 6 Dictionary: *assistance period, police assistance removal order, relevant police officer and staff member*.

Subclause 2 refers the reader to chapter 15, part 2, division 3A, section 411A for the definition of *criminal activity* relating to police assistance removal orders.

Subclause 3 amends the definition of '*enforcement act*' to include 'the custody of a person under a police assistance removal order.

Subclause 4 refers the reader to chapter 15, part 2, division 3A, section 411B for the definition of *relevant person* relating to police assistance removal orders.

Subclause 5 amends the definition of *relevant person* by renumbering paragraphs (da) to (f) as paragraphs (e) to (g).

Part 7 – Amendment of Police Powers and Responsibilities Regulation 2012

43. Regulation amended

Clause 43 states that this part amends the *Police Powers and Responsibilities Regulation 2012.*

44. Amendment of sch 9, s 14 (Security of facilities used under a surveillance device warrant)

Clause 44 amends schedule 9, section 14 to make it clear that a person, authorised by the senior officer to whom the warrant was issued, can use the monitoring equipment whether or not a police officer is present while the person is using the equipment.

Subclause 1 amends the heading to of section 14 to 'Security of monitoring premises and facilities used under a surveillance device warrant'.

Subclause 2 amends section 14(1) so that the section applies to premises (the monitoring premises) containing monitoring equipment under a surveillance device warrant.

Subclause 3 amends section 14(2) from 'The premises must —' to 'The monitoring premises must —'.

Subclause 4 makes a minor amendment to section 14(3) by replacing 'The' with 'An' so the subsection refers to 'An authorised person'.

Subclause 5 amends the first mention of 'premises' in section 14(3)(a) and (b) to 'monitoring premises'.

Subclause 6 omits section 14(3)(b)(v) and inserts 14(3)(b)(v) 'an authorised monitor' and 14(3)(b)(vi) 'any other person the authorised person permits to be in the premises for helping in the investigation.'

Subclause 7 inserts section 14(5) which contains the definitions of *authorised monitor, authorised person* and *monitoring equipment* for the section.

45. Insertion of new sch 9, s 47A

Clause 45 inserts new section 47A into schedule 9, 'Custody of person under police assistance removal order – Act 679(1).

The new section prescribes the information about a person that is subject to a police assistance removal order that must be included in the register of enforcement acts, as follows:

- when and where the order was made,
- the name of the relevant person,
- the watch-house from which the relevant person was taken into custody under the order,
- the time the relevant person was taken into custody under the order,
- each place to which the relevant person was taken under the order, and
- the time the relevant person was returned to the watch-house.

Part 8 – Amendment of Police Service Administration Act 1990

46. Act amended

Clause 46 states that this part amends the *Police Service Administration Act 1990.*

47. Amendment of s 1.4 (Definitions)

Clause 47 inserts a definition of *unlawfully* into section 1.4, 'Definitions'.

48. Amendment of s 10.21B (Killing or injuring police dogs and police horses)

Clause 48 amends the simple offence of 'Killing or injuring police dogs and police horses'.

Subclause 1 amends the heading of section 10.21B to 'Unlawfully killing or injuring police dogs and police horses'.

Subclause 2 amends section 10.21B(1) to omit 'without lawful excuse' and replace it with 'unlawfully'.

49. Insertion of new s 10.21BA

Clause 49 inserts new section 10.21BA, 'Wilfully and unlawfully killing or seriously injuring police dog or police horse' after section 10.21B.

10.21BA Wilfully and unlawfully killing or seriously injuring police dog or police horse

Section 10.21BA(1) provides that a person must not wilfully and unlawfully kill or cause serious injury to a police dog or police horse: (a) that is being used by a police officer in the performance of the officer's duties, or (b) because of, or in retaliation for, its use by a police officer in the performance of the officer's duties.

The offence is punishable by a maximum penalty of five years imprisonment.

Section 10.21BA(2) provides that a person must not attempt to commit the offence against subsection (1). An attempt to commit the offence is punishable by a maximum penalty of five years imprisonment.

Section 10.21BA(3) specifies that an offence against subsection (1) or subsection (2) is a crime.

Section 10.21BA(4) states a court that finds a person guilty of a crime under subsection (1) or subsection (2) may, in addition to any penalty that may be imposed, order the person to pay to the commissioner a reasonable amount for the treatment, care, rehabilitation and retraining of the police dog or police horse concerned, or if it is necessary to replace the police dog or police horse, buying and training its replacement.

Section 10.21BA(5) refers the reader to section 242, 'Serious animal cruelty' of the Criminal Code for the definition of *serious injury*.

50. Amendment of s 10.23 (Proceedings for offences)

Clause 50, subclause 1 amends the heading of s 10.23 to include the word '– general' after offences.

Subclause 2 amends section 10.23(1) by omitting 'Proceedings for prosecution in respect of an offence against this Act are to be taken in a summary manner under the *Justices Act 1886*' and inserting 'Subject to section 10.23A, proceedings for prosecution in respect of an offence against this Act are to be taken in a summary manner under the *Justices Act 1886*'.

Subclause 3 amends section 10.23(1)(a) to include offences against section 10.21B and 10.21BA.

Subclause 4 amends section 10.23(3) by excluding an offence against section 10.21BA from the statutory time limit.

51. Insertion of new ss 10.23A to 10.23C

Clause 51 inserts new sections 10.23A, 10.23B and 10.23C about proceedings for the new indictable offence against section 10.21BA, 'Wilfully and unlawfully killing or seriously injuring police dog or police horse'. The proceedings sections are intended to have the same effect as though the new offence is an indictable offence under Chapter 58A, 'Indictable offences dealt with summarily', section 552A, 'Charges of indictable offences that must be heard and decided summarily on prosecution election' of the Criminal Code.

10.23A Proceeding for offence against s 10.21BA

Section 10.23A(1) states a charge of an offence against section 10.21BA must be heard and decided summarily if the prosecution elects to have the offence heard and decided summarily.

Section 10.23A(2) provides that a Magistrates Court that summarily deals with the charge for the offence must be constituted by a magistrate, and has jurisdiction despite the time that has elapsed from the time when the matter of complaint of the charge arose, and may hear and decide the charge at any place appointed for holding a magistrates court within the district in which the accused person was arrested on the charge or served with the summons for the charge under the *Justices Act 1886*.

Section 10.23A(3) provides that a Magistrates Court must abstain from dealing summarily with the charge if satisfied, on an application made by the prosecution and the defence, that because

of the nature or seriousness of the offence or any other relevant consideration the defendant, if convicted, may not be adequately punished on summary conviction.

Section 10.23A(4) states if the Magistrates Court abstains from jurisdiction:

- the court must stop treating the proceeding as a proceeding to hear and decide the charge summarily, and
- the proceeding for the charge must be conducted as a committal proceeding, and
- a plea of the defendant at the start of the hearing must be disregarded, and
- the evidence already heard by the court is taken to be evidence in the committal proceeding, and
- the *Justices Act 1886*, section 104 must be complied with for the committal proceeding.

10.23B Maximum penalty for offence against s 10.21BA dealt with summarily

Section 10.23B(1) states a person is liable on summary conviction under section 10.23A to a maximum penalty of (a) if the Magistrates Court is a court constituted by a magistrate imposing a drug and alcohol treatment order under the *Penalties and Sentences Act 1992*, part 8A—100 penalty units or 4 years imprisonment; or (b) if the Magistrates Court is constituted by a magistrate other than a magistrate mentioned in paragraph (a)—100 penalty units or three years imprisonment.

10.23C Appeal against decision to decide charge against s 10.21BA summarily

Section 10.23C(1) states that the section applies if a person is summarily convicted or sentenced for an offence against section 10.21BA.

Section 10.23C(2) states the grounds on which the person may appeal include that the Magistrates Court erred by deciding the conviction or sentence summarily.

Section 10.23C(3) provides the grounds on which the Attorney-General may appeal against sentence include that the Magistrates Court erred by deciding the sentence summarily.

Section 10.23C(4) provides that on an appeal against sentence relying on a ground that the Magistrates Court erred by proceeding summarily, the court deciding the appeal may, if it decides to vary the sentence, impose the sentence the court considers appropriate up to the maximum sentence that could have been imposed if the matter had been dealt with on indictment.

Part 9 – Amendment of Working with Children (Risk Management and Screening) Act 2000

52. Act amended

Clause 52 states that this part amends the *Working with Children (Risk Management and Screening) Act 2000.*

53. Amendment of sch 2 (Current serious offences)

Clause 53(1)-(5) removes from Schedule 2 (Current serious offences) the repealed Criminal Code (Cwlth) offences of:

- possessing, controlling, producing, distributing or obtaining child pornography material outside Australia (section 273.5),
- using a postal or similar service for child pornography material (section 471.16),
- possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service (section 471.17),
- using a carriage service for child pornography material (section 474.19), and
- possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service (section 474.20).

Clause 53(6) amends Schedule 2 (Current serious offences) by inserting the following entries for the Criminal Code (Cwlth):

- 270.3 Slavery offences,
- 270.6A Forced labour offences,
- 270.7B Forced marriage offences,
- 270.7C Offence of debt bondage,
- 271.2 Offence of trafficking in persons,
- 271.3 Trafficking in persons—aggravated offence,
- 271.5 Offence of domestic trafficking in persons,
- 271.6 Domestic trafficking in persons—aggravated offence,
- 271.7B Offence of organ trafficking—entry into and exit from Australia,
- 271.7C Organ trafficking—aggravated offence,
- 271.7D Offence of domestic organ trafficking,
- 271.7E Domestic organ trafficking—aggravated offence,
- 271.7F Harbouring a victim,
- 271.7G Harbouring a victim—aggravated offence,
- 272.15A "Grooming" person to make it easier to engage in sexual activity with a child outside Australia,
- 274.2 Torture,
- 471.25A Using a postal or similar service to "groom" another person to make it easier to procure persons under 16,
- 474.23A Conduct for the purposes of electronic service used for child abuse material,
- 474.25C Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16, and
- 474.27AA Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age.

Clause 53(7)-(9) amends the existing entries for sections 270.7, 272.10 and 474.25B of the Criminal Code (Cwlth) in Schedule 2 to reflect their current titles.

54. Amendment of sch 3 (Repealed or expired serious offences)

Clause 54 amends Schedule 3 (Repealed or expired serious offences) by inserting the following repealed or amended Criminal Code (Cwlth) offences:

- 270.7 Deceptive recruiting for sexual services,
- 272.10 Aggravated offence—child with mental impairment or under care, supervision or authority of defendant,

- 273.5 Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia,
- 471.16 Using a postal or similar service for child pornography material,
- 471.17 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service,
- 474.19 Using a carriage service for child pornography material,
- 474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service, and
- 474.25B Aggravated offence—child with mental impairment or under care, supervision or authority of defendant.

55. Amendment of sch 4 (Current disqualifying offences)

Clause 55(1)-(6) amends Schedule 4 (Current disqualifying offences) by removing the following repealed or expired Criminal Code (Cwlth) offences:

- deceptive recruiting for sexual services (section 270.7),
- possessing, controlling, producing, distributing or obtaining child pornography material outside Australia (section 273.5),
- using a postal or similar service for child pornography material (section 471.16),
- possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service (section 471.17),
- using a carriage service for child pornography material (section 474.19), and
- possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service (section 474.20).

Clause 55(7) amends Schedule 4 to add the following entries for the Criminal Code (Cwlth):

- 270.3 Slavery offences if the offence was committed against a child,
- 270.6A Forced labour offences if the offence was committed against a child,
- 270.7 Deceptive recruiting for labour or services if the offence was committed against a child,
- 270.7B Forced marriage offences if the offence was committed against a child,
- 270.7C Offence of debt bondage if the offence was committed against a child,
- 271.2 Offence of trafficking in persons if the offence was committed against a child,
- 271.3 Trafficking in persons—aggravated offence if the offence was committed against a child,
- 271.5 Offence of domestic trafficking in persons if the offence was committed against a child,
- 271.6 Domestic trafficking in persons—aggravated offence if the offence was committed against a child,
- 271.7C Organ trafficking—aggravated offence only if an offender was or could have been liable as mentioned in section 271.7C(1)(a),
- 271.7E Domestic organ trafficking—aggravated offence only if an offender was or could have been liable as mentioned in section 271.7E(1)(a),
- 271.7G Harbouring a victim—aggravated offence,
- 272.15A "Grooming" person to make it easier to engage in sexual activity with a child outside Australia,
- 274.2 Torture if the offence was committed against a child,

- 471.25A Using a postal or similar service to "groom" another person to make it easier to procure persons under 16,
- 474.23A Conduct for the purposes of electronic service used for child abuse material,
- 474.25C Using a carriage service to prepare or plan to cause harm to, engage in sexual activity with, or procure for sexual activity, persons under 16, and
- 474.27AA Using a carriage service to "groom" another person to make it easier to procure persons under 16 years of age.

Clause 55(8)-(9) amends the existing entries for sections 272.10 and 474.25B of the Criminal Code (Cwlth) in Schedule 4 to reflect their current titles.

56. Amendment of sch 5 (Repealed or expired disqualifying offences)

Clause 56 amends Schedule 5 (Repealed or expired disqualifying offences) by inserting the following amended or repealed Criminal Code (Cwlth) offences as they were in force prior to their amendment or repeal:

- 270.7 Deceptive recruiting for sexual services only if an offender was or could have been liable as mentioned in section 270.8,
- 272.10 Aggravated offence—child with mental impairment or under care, supervision or authority of defendant,
- 273.5 Possessing, controlling, producing, distributing or obtaining child pornography material outside Australia,
- 471.16 Using a postal or similar service for child pornography material,
- 471.17 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a postal or similar service,
- 474.19 Using a carriage service for child pornography material,
- 474.20 Possessing, controlling, producing, supplying or obtaining child pornography material for use through a carriage service, and
- 474.25B Aggravated offence—child with mental impairment or under care, supervision or authority of defendant.

Part 10 – Other amendments

57. Legislation amended

Clause 57 provides a schedule of other amendments to the *Corrective Services Act 2006*, *Police Powers and Responsibilities Act 2000, Police Powers and Responsibilities Regulation 2012* and the *Terrorism (Preventative Detention) Act 2005*.

Schedule 1 Other amendments

Corrective Services Act 2006

1. Section 306C(b) is amended to clarify that the low alcohol limit is 0.02g.

Police Powers and Responsibilities Act 2000

1. Section 419(4) is amended to reflect the culturally correct terms for a first nations person. Accordingly, Aborigine and Torres Strait Islander is replaced with Aboriginal person and Torres Strait Islander person.

2. Section 419(4) – the note is amended to reflect the culturally correct terms for first nations people. Accordingly, the terms Aboriginal people and Torres Strait Islanders is replaced with Aboriginal peoples and Torres Strait Islander peoples.

3. Section 420 is amended to replace the reference to Aboriginal people and Torres Strait Islanders, in the heading of the section, with Aboriginal peoples and Torres Strait Islander peoples. This reflects the culturally correct terms for first nations peoples.

4. Section 420(1)(b) is amended to reflect the culturally correct terms for a first nations person. Accordingly, Aborigine or Torres Strait Islander is replaced with Aboriginal person or Torres Strait Islander person.

5. Schedule 6 is amended by replacing the reference to Aborigine or Torres Strait Islander in the definition of *support person* in paragraph (a) with Aboriginal person or Torres Strait Islander person. This reflects the culturally correct terms for a first nations person.

6. Schedule 6 is amended by replacing the reference to Aborigine or a Torres Strait Islander in the definition of *support person* in paragraph (b)(v) with Aboriginal person or a Torres Strait Islander person. This reflects the culturally correct terms for a first nations person.

Police Powers and Responsibilities Regulation 2012

1. Schedule 9, section 25 'Questioning of Aboriginal people and Torres Strait Islanders' heading is amended by replacing it with 'Aboriginal peoples and Torres Strait Islander peoples'. This reflects the culturally correct terms for first nations peoples.

2. Schedule 9, section 25(1) is amended by replacing the reference to 'Aboriginal person or Torres Strait Islander' with 'or Torres Strait Islander person'. This reflects the culturally correct terms for first nations peoples.

3. Schedule 9, section 33(3)(b)(iii) 'Detention period extension application' is amended by replace the reference to 'Torres Strait Islander' with 'Torres Strait Islander person'. This reflects the culturally correct terms for first nations peoples.

Terrorism (Preventative Detention) Act 2005

1. Section 46(12) is amended to correctly reference the *Corrective Services Act 2006* as a consequence of an amendment included in the *Corrective Services and Other Legislation Amendment Act 2020*.