

# Police Powers and Responsibilities (Commonwealth Games) Amendment Bill 2017

## Explanatory Notes

### Short title

The short title of the Bill is the Police Powers and Responsibilities (Commonwealth Games) Amendment Bill 2017 (the Bill).

### Policy objectives and the reasons for them

The 2018 Commonwealth Games (the Games) will be hosted on the Gold Coast from 4 to 15 April 2018 with events also being held in Brisbane, Cairns and Townsville. The Games will be the largest international sporting event staged in Australia this decade with over 6600 athletes and officials, 3000 media personnel, 15000 volunteers, up to 1.5 million spectators and a cumulative global audience of 1.5 billion people.

The Gold Coast 2018 Commonwealth Games Corporation (GOLDOC) is primarily responsible for planning and delivering the Games. The Office of the Commonwealth Games (OCG), within the Department of Tourism, Major Events, Small Business and the Commonwealth Games (DTESB), has a key role in the Games and advises the State about Games matters. The Queensland Police Service (QPS) is partnering with the OCG and GOLDOC to plan and deliver the security and public safety response for the Games.

Safety and security is an important aspect of Games planning and is a critical element in the success of the Games. The Games present unique security challenges due to their size, extended duration and international nature and the number and interrelatedness of Games venues. Mass gatherings of people will inevitably form outside venues and in other public areas, including at public transport hubs and networks, and detailed planning is required to ensure the orderly and safe movement of crowds to, into and around venues.

Games security planning is informed by the current general public National Terrorism Threat Level which remains at 'probable' and recent international terror events. Increasingly, the targets for terrorist activity are open public areas and public transport where people are likely to mass gather. Patrons attending the Games will use numerous public areas and public transport sites of this nature. Protecting the community generally is also an important element of security planning for the Games.

Existing legislation does not address the security requirements for the Games. Although the *Major Events Act 2014* (MEA) is expected to apply to the Games, it only provides sufficient powers to create a safe and secure environment within prescribed Games major event areas. The MEA is not designed to address security requirements in other public areas associated with the Games major event where mass gatherings of people will occur, such as designated pedestrian routes to a venue and public transport hubs.

General police powers within the *Police Powers and Responsibilities Act 2000* (PPRA) also do not address the unique security issues associated with the Games in the current security environment. For example, although a police officer may have concerns about a person's behaviour outside a Games major event area, the officer may not have the requisite reasonable suspicion to conduct a search of the person under the PPRA.

The policy objective of the Bill is to provide additional police powers to protect mass gatherings of people in public areas associated with the Games, other than prescribed major event areas. The additional powers will be based on a new type of security area to be called a protective security zone.

A further policy objective of the Bill is to exempt the following searches by police officers from being 'enforcement acts' for the purposes of the PPRA:

- searches of persons, vehicles and premises in protective security zones; and
- searches of persons conducted under the MEA.

The PPRA requires that enforcement acts be entered in an enforcement register. Exempting searches in protective security zones and under the MEA from being recorded in an enforcement register is necessary for operational reasons. Completing enforcement registers can be time consuming and will quickly become unworkable in prescribed major event areas and protective security zones if individual officers are required to perform a large number of searches in a short period of time. Recording these searches could lead to significant delays in the security processing of persons entering major event areas and distract officers from core policing responsibilities in protective security zones, such as monitoring vehicles and crowds for suspicious behaviour and conducting quick security sweeps of premises. Any concern about not recording these searches in an enforcement register is mitigated through usual PPRA procedures which would apply if a search located a suspect item such as a weapon or explosive as the search would be recorded as part of a person's custody record.

Police and defence personnel were required to supplement venue and event security obligations at the 2016 Rio Olympics, the 2014 Glasgow Commonwealth Games and the 2012 London Olympics. In the event that a similar situation arose at the Games, the need for police to record all searches and inspections performed by police officers under the MEA would create delays in security screening. This supports the need for the exemption from recording MEA searches to apply for the Games. It also achieves consistency with other authorised persons under the MEA as basic searches performed by authorised persons other than police officers are not required to be recorded. These searches generally involve using an electronic screening device on a person or inspecting a person's belongings and are considered non-intrusive and routine.

The amendment to exempt the recording of searches by police officers under the MEA will not lapse at the end of the Games and will continue to apply to all future major events prescribed under the MEA. This will reflect the situation prior to the MEA when police officers were not required to record searches at special events under the PPRA. The MEA is infrequently used and, apart from the 2015 AFC Asian Cup, has only been used for the annual Gold Coast 600 and Townsville 400 V8 Supercars motor racing events. The continued application of the exemption from completing enforcement registers for MEA searches is particularly important for future one-off large events of an international nature that may be prescribed as major events under the MEA.

The value of enforcement register entries for MEA searches is also limited for several reasons. Firstly, there is no power in the MEA for a police officer (or authorised officer) to require persons being searched to provide their name and address. Therefore, search entries would be limited to gender, description, time and location only. Secondly, searches under the MEA can only be performed with the consent of the person being searched and no grounds are required to support the search. Therefore, the grounds for the search, which is an important aspect for other enforcement register entries, is not relevant for MEA search entries and devalues the reason for completing the register entry.

Apart from the amendment exempting MEA searches from being enforcement acts for the purposes of the PPRA, the additional police powers contained in the Bill will lapse on 22 April 2018, which is seven days after the conclusion of the Games.

## **Achievement of policy objectives**

The Bill achieves its objectives by amending the PPRA to provide additional police powers to address security requirements in public areas associated with the Games major event (other than prescribed major event areas) where mass gatherings of people will occur, such as designated pedestrian routes to a venue and public transport hubs. The Bill will achieve its objectives by:

- inserting new chapter 19A (sections 619A – 610Q) to provide additional police powers for the Games; and
- amending the definition of ‘enforcement act’ in schedule 6 to exempt searches under the MEA from being enforcement acts for the purposes of the PPRA.

The additional police powers are based on a new type of security area called a protective security zone and are designed to protect areas where people will mass gather for the Games. The Bill includes the following:

- prescribing of protective security zones by regulation;
- declaring of protective security zones by the Commissioner of Police, with the approval of the Minister, if urgent action is required;
- power for a police officer to:
  - search a person in a protective security zone;
  - stop, detain and search vehicles entering or in a protective security zone;
  - enter and search premises, excluding residential premises, in a protective security zone without warrant, however, a police officer can still search a residence with consent of the occupier or if the officer reasonably suspects an offence may be committed in or from the residence and the offence would be likely to endanger the safety of a person;
  - use a firearms and explosives detection dog to search public places and premises that are not residences in a protective security zone; and
  - give a general direction to a person entering or in a public place in a protective security zone to ensure the safety of persons entering or in the zone, and
- exemption from completing enforcement registers for searches conducted by police officers within protective security zones or under the MEA.

The Bill will enable the QPS to provide the required level of safety and security for the Games and allow the State of Queensland to meet its hosting obligations. The powers are a proportionate and considered response to meet the identified security need for the Games and achieve a balance between individual civil liberties and the protection of the community in

general. The Bill will form only one aspect of the policing and public safety response for the Games which will be underpinned by a significant community engagement and information strategy.

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

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

## **Estimated cost for government implementation**

The QPS received additional funding to plan and deliver the security and public safety response for the Games. Implementation of the Bill will form part of the overall security planning and implementation activities being undertaken by the QPS for the Games and no additional funding is required.

## **Consistency with fundamental legislative principles**

The Bill has been prepared with due regard to the fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

**Legislation should have sufficient regard to the rights and liberties of individuals – *Legislative Standards Act 1992, section 4(2).***

Section 619J ‘Power to search persons’ provides that a police officer may stop and detain a person entering or in a protective security zone to conduct a frisk search of the person and/or inspect an article in the person’s possession.

The power for a police officer to search a person in a protective security zone under section 619J is not dependent on a police officer forming a reasonable suspicion of a prescribed circumstance (such as under section 29 ‘Searching persons without warrant’ of the PPRA). Security requirements for the Games have necessitated striking a balance between the rights and liberties of individuals and the protection of the community in general. Whilst the search and inspection power in section 619J could potentially interfere with the rights and liberties of individuals, it is considered imperative in ensuring the safety and security of people within protective security zones and the overall safety and security of the Games major event in the current security environment.

Protective security zones are planned for areas where mass gatherings of people are expected for the Games (other than prescribed Games major event areas). The power in section 619J will assist police to maintain the safety and security of people in protective security zones by allowing police officers to quickly and immediately search persons within the zones. If nothing is located during a search or inspection, the person can immediately move on and the police officer can redirect his or her attention as required, for example, to general crowd control measures including monitoring crowds for suspicious behaviour. If the search or inspection locates an illegal item, the police officer can take any necessary action to deal with the person or situation in accordance with existing PPRA provisions. It should be noted that not every person in a protective security zone will be searched and the power will only be used as required for safety and security purposes.

Usual safeguards in sections 624, 625, 626, 628 and 637 of the PPRA will apply to a search of a person under section 619J. These include ensuring minimal embarrassment to the person, taking reasonable care to protect the dignity of the person and, unless urgent, the search being conducted by a police officer of the same sex as the person being searched. Also, section 619J(4) requires that, if reasonably practicable, the police officer must, before conducting the search or inspection, give the person a reasonable explanation about the powers to be exercised and ask for the person's cooperation.

The power in section 619J, like other powers in new chapter 19A, should also be viewed in the context of the significant community engagement and communication strategy that the QPS has already commenced for the Games and the central messaging from GOLDOC and other agencies that will increase in the lead up to the Games. It is reasonable to expect that persons attending the Games will know they may be searched in the Games precinct. People will also be encouraged to avoid bringing larger bags and bulky items to Games events and this will reduce the need to conduct searches. It should be noted that a person will not be able to enter a Games major event area unless they consent to a search (see section 18(5) of the MEA).

Section 619K 'Power to stop, detain and search vehicles' provides a police officer with the power to stop a vehicle entering or in a protective security zone or detain a vehicle in a protective security zone and require the person in control of the vehicle to allow it to be searched.

In a similar way to the power to search a person in section 619J, section 619K will enable a police officer to search a vehicle entering or in a protective security zone to maintain the safety of persons in the zone. Whilst this search power could potentially interfere with the rights and liberties of individuals, it is considered imperative in ensuring the safety and security of people within protective security zones and the overall safety and security of the Games major event in the current security environment. It will enable police officers to quickly search vehicles for explosives and weapons.

Usual safeguards in sections 627 'General provision about searches of vehicles' and 628 'Dealing with persons who obstruct search of person or vehicle' of the PPRA will apply to a vehicle search under section 619K.

Section 619M 'Use of firearms and explosives detection dogs' authorises a police officer to, without warrant, use a firearms and explosives detection dog to carry out explosives detection in relation to a person entering or in a protective security zone or a thing in a place in a protective security zone, or on land associated with the place.

New section 619M effectively applies relevant parts of sections 35 'Use of detection dogs in particular places' and 36 'Police officers and detection dogs may enter and remain on particular places' of the PPRA for explosives detection in a protective security zone. For carrying out explosives detection under section 619M, a firearms and explosives detection dog and any police officer may enter and remain on a place in a protective security zone. However, the power does not authorise a police officer to enter or remain in a residence, or carry out explosives detection in relation to a person or thing in a residence, other than with the consent of the occupier of the residence or if a police officer reasonably suspects an offence may be committed in the residence and the offence would be likely to endanger the safety of a person.

The use of firearms and explosives detection dogs could potentially interfere with an individual's rights and liberties. However, the potential breach of the fundamental legislative principle is considered justified in the circumstances. Use of these detection dogs in protective security zones will enable police to conduct security sweeps to ensure the safety and security of the zones and the large number of people expected to use them.

Section 619P 'Power to give direction' authorises a police officer to give a direction to a person entering or in a public place in a protective security zone if the officer is reasonably satisfied it is necessary to give the direction for the safety of persons entering or in the zone.

A direction could potentially interfere with the rights and liberties of an individual who is subject to the direction but this is considered justified in the circumstances. The power to give a direction will support the overall safety and security of protective security zones and will provide police with an additional option to, where necessary, manage the large numbers of people expected in protective security zones. For example, people in a protective security zone may move in waves from public transport set-down points to venues or gather in large numbers whilst waiting for public transport at a public transport hub.

A direction can only be given in a public place in a protective security zone. This means that a direction will not be able to be given to person in a residence within a protective security zone. Section 633 'Safeguards for oral directions or requirements' also applies to a police officer giving a direction to a person under section 619P. This means that if the person fails to comply with the direction, the police officer must, if practicable, warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse and that he or she may be arrested for the offence. After the warning, the police officer must give the person a further reasonable opportunity to comply with the direction.

**Legislation should confer power to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer – *Legislative Standards Act 1992*, s 4(3)(e).**

Section 619L 'Power to enter and search premises' provides a police officer with the power to enter and search any premises in a protective security zone without a warrant.

Police officers will have a limited power to enter and search premises in a protective security zone without a warrant. The search power does not authorise a police officer to enter premises, or part of premises, where a person resides ('a residence'), other than with the consent of the occupier of the residence or if a police officer reasonably suspects an offence may be committed in or from the residence and the offence would be likely to endanger the safety of a person. The power to enter and search extends to yards of premises and residences within protective security zones.

The inconsistency with the fundamental legislative principle is considered justified as it will enable police to search premises for explosives and weapons to ensure protective security zones are secure for the large numbers of people using the zones. This in turn will support the safety and security of the Games major event.

Section 619L provides clarification about what does not form part of a residence (subsection (4)) and about the occupier's consent. Section 619L(5) clarifies that if the power to enter arose only because of the occupier's consent, the power is subject to any conditions of the consent

and ceases if the consent is withdrawn. Section 619L(6) further states that the consent may provide consent for re-entry and is subject to the conditions of the consent.

**Legislation should allow the delegation of administrative power only in appropriate cases and to appropriate persons – *Legislative Standards Act 1992, s 4(3)(c)*.**

**Legislation should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly – *Legislative Standards Act 1992, s 4(4)(b)*.**

Section 619H ‘Declaring protective security zones’ authorises the commissioner, by written order, to declare an area of land or water, other than a Games major event area, to be a protective security zone for a stated period.

Protective security zones will be prescribed by regulation under section 619G. However, section 619H allows protective security zones to be declared by the commissioner by written order if urgent action is required. Unless exceptional circumstances exist, the commissioner is required to seek the approval of the Minister before making the declaration and a copy of the commissioner’s written order is required to be tabled in Parliament by the Minister within 14 sitting days after the order is made.

It is necessary to allow for protective security zones to be declared urgently so adequate security can be maintained in or near places of mass gatherings associated with the Games. The commissioner can only make the declaration if reasonably satisfied that declaring the area to be a protective security zone is necessary for the safety and security of persons entering or in the area, the Games major event organiser has been advised and urgent action is required to make the declaration. This is considered to be an appropriate case for the delegation of a legislative power and the commissioner is an appropriate person to make the declaration as the commissioner is well placed to assess the security needs for the Games.

The power for the commissioner to make an order under section 619H is not intended to usurp the authority of Parliament or the Governor in Council. It is expected that this section will only be used if urgent action is required to declare an area as a protective security zone immediately or in circumstances where there is not enough time to make a regulation under section 619G.

It is foreseeable that section 619H may be used to facilitate urgent contingency arrangements if a prescribed protective security zone is no longer able to be used as planned. For example, a suspected explosive device may be located in a prescribed protective security zone intended for use as the designated pedestrian approach to a Games major event area. As the prescribed protective security zone can no longer be used, an alternative pedestrian approach to the major event area must be used instead. Declaring the alternative pedestrian approach as a protective security zone will enable police officers to use the same powers, thus ensuring the safety of pedestrians moving to, from and around the Games major event area.

## Consultation

Public consultation was not undertaken on the Bill as the additional police powers are considered essential for the safety and security of the Games in the current security environment. There is an international expectation that Queensland will provide a high level of safety and security for the Games and the additional police powers will allow the State to meet that expectation. The powers are limited to protective security zones, will only apply to Games related areas and will expire one week after the Games end (apart from the amendment to schedule 6 relating to searches under the MEA).

Consultation was undertaken with the OCG in development of the Bill. Advice about the Bill was also provided to the Commonwealth Games Regulation Working Group which is facilitated by the DTESB to assist in the development of a regulation under the MEA for the staging of the Games. The Working Group comprises representatives from:

- GOLDOC;
- QPS;
- Department of Transport and Main Roads;
- Department of National Parks, Sport and Racing;
- Queensland Health;
- Queensland Fire and Emergency Services;
- City of Gold Coast;
- Cairns Regional Council;
- Townsville City Council;
- Stadiums Queensland; and
- Commonwealth Office for Sport.

All representatives on the Working Group supported the additional police powers.

The QPS Commonwealth Games Group liaises with GOLDOC about Games security. GOLDOC understands and supports the QPS position that additional police powers are required to facilitate a safe and secure Games.

## Consistency with legislation of other jurisdictions

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

## Notes on provisions

### *Clause 1 Short title*

Clause 1 states that, when enacted, the Bill may be cited as the *Police Powers and Responsibilities (Commonwealth Games) Amendment Act 2017*.

### *Clause 2 Commencement*

Clause 2 provides that section 5(2) and (4) commence on 23 April 2018. The effect of this clause is that immediately after the expiration of new chapter 19A, schedule 6 'Dictionary' of the PPRA will be amended to omit definitions only applicable to chapter 19A and amend the definition of 'explosives detection' to remove the reference to chapter 19A. This will avoid the necessity for a later Bill to amend the PPRA to omit or amend these definitions after the expiration of chapter 19A.

### *Clause 3 Act amended*

Clause 3 provides that the Act will amend the PPRA.

### *Clause 4 Insertion of new ch 19A*

Clause 4 inserts new chapter 19A into the PPRA. The new chapter includes new sections 619A to 619Q which are discussed below.

### **Section 619A Purpose of chapter**

New section 619A states the purpose of chapter 19A is to provide police officers with special powers during the Games major event period to promote the safety and security of persons attending any event, function or activity that is part of the Games and the safety of other members of the public.

### **Section 619B Definitions for chapter**

New section 619B provides definitions for terms used in chapter 19A.

### **Section 619C Meaning of entering protective security zone**

New section 619C provides that a reference in chapter 19A to a person or vehicle entering a protective security zone includes a reference to a person or vehicle attempting to enter the protective security zone or a person or vehicle about to enter the protective security zone.

### **Section 619D Application of chapter**

New section 619D provides for the application of chapter 19A. The chapter will apply if the Games is prescribed as a major event under the *Major Events Act 2014* (MEA).

### **Section 619E Exemption from recording information in enforcement registers**

New section 619E provides that chapter 21, part 2, division 3 (sections 677 – 682) of the PPRA does not apply in relation to a police officer who is exercising a power under chapter 19A. The effect of this section is that details of any search of a person, vehicle or place conducted under chapter 19A will not be required to be recorded in an enforcement register.

Exempting these searches from being recorded in an enforcement register is necessary for operational reasons. Completing enforcement registers can be time consuming and will quickly become unworkable in protective security zones where police officers may perform a large number of searches in a short period of time. Protective security zones will be located in areas where mass gatherings of people are expected for the Games. To maintain security in these areas, it will be necessary to conduct quick security sweeps and, in some circumstances, search persons quickly. In most circumstances, it will be operationally impracticable to record details of each individual search of a person, vehicle or place in an enforcement register. There is also no power to require persons being searched to provide their name and address which may make it difficult to later identify an individual search in the register.

### **Section 619F What is a *protective security zone***

New section 619F outlines what is a protective security zone. A protective security zone is an area prescribed by regulation under section 619G as a protective security zone or an area declared under section 619H as a protective security zone. A protective security zone may include an area associated with the Games and public transport infrastructure or a part of the public transport network associated with, or used to transport members of the public to or from, the Games.

### **Section 619G Prescribing protective security zones**

New section 619G outlines that a regulation may prescribe an area of land or water, other than a Games major event area, to be a protective security zone for a stated period. The regulation must include a map of the protective security zone.

Section 619G also requires that the exact location of the boundary of the protective security zone must be held in digital electronic form by the QPS and a map showing the exact location of the boundary must be able to be accessed, free of charge, on the designated website.

If a protective security zone is prescribed by regulation, the provisions of chapter 19A will apply. This is unlike the MEA which requires a regulation that prescribes a major event to also prescribe the provisions of the MEA that apply to the major event and a major event area.

A protective security zone cannot be an area that is a Games major event area. However, a protective security zone can include an area that is a prescribed controlled area under the MEA for the Games. Controlled areas are not relevant to the safety and security of persons but restrict commercial activities that may be undertaken in controlled areas including by restricting advertising and ambush marketing.

### **Section 619H Declaring protective security zones**

New section 619H authorises the commissioner, by written order, to declare an area of land or water, other than a Games major event area, to be a protective security zone for a stated period. However, the commissioner can only declare an area of land or water to be a protective security zone if reasonably satisfied the declaration is necessary for the safety and security of persons entering or in the area, the Games major event organiser has been advised of the proposed declaration and urgent action is required to declare the area to be a protective security zone.

The commissioner must obtain the Minister's approval to make an order, unless the commissioner is reasonably satisfied a delay in obtaining the Minister's approval would be likely to substantially compromise the safety and security of persons entering or in the area. If the commissioner makes the order without the Minister's approval, the commissioner must

inform the Minister about the making of the order and its terms as soon as practicable after the order is made. The Minister must table an order in the Legislative Assembly within 14 sitting days after the order is made although a failure by the Minister to table an order does not affect the order's validity. The order has effect when it is published on the designated website or at a later time stated in the order.

It is expected that this section will only be used if urgent action is required to declare an area as a protective security zone immediately or in circumstances where there is not enough time to make a regulation under section 619G. It is necessary to allow for protective security zones to be declared urgently so that adequate security can be maintained in or near places of mass gatherings associated with the Games. This will be particularly necessary to facilitate urgent contingency arrangements if a prescribed protective security zone is no longer able to be used as planned.

Similarly to a protective security zone prescribed by regulation, a protective security zone declared by the commissioner cannot be an area that is a Games major event area. However, it can include an area that is a prescribed controlled area under the MEA for the Games. If a protective security zone is declared by the commissioner, the provisions of chapter 19A apply to the zone.

**Section 619I Provisions applying to Games major event area prevail over provisions applying to protective security zone**

New section 619I applies if there is an overlap between a Games major event area and a protective security zone. This section provides that in the area of the overlap, the provisions of the MEA that apply to the Games major event area prevail over the provisions of chapter 19A that apply within the zone to the extent of any inconsistency. It is not expected that there will be any overlap between Games major event areas and protective security zones, although many protective security zones will adjoin Games major event areas. However, this section is required to remove any doubt in areas where there may be an inadvertent overlap.

**Section 619J Power to search persons**

New section 619J provides that a police officer may stop and detain a person entering or in a protective security zone to conduct a frisk search of the person and/or inspect an article in the person's possession. To conduct the search or inspection, the police officer may use an electronic detection device, including a metal detector, on the person or the person's possessions.

Section 619J(4) provides that the police officer must, if reasonably practicable before conducting the search or inspection, give the person a reasonable explanation about the powers to be exercised and ask for the person's cooperation. Usual safeguards in sections 624, 625, 626, 628 and 637 will apply to a search or inspection conducted under section 619J. These safeguards include ensuring minimal embarrassment to the person, taking reasonable care to protect the dignity of the person and, unless urgent, the search being conducted by a police officer of the same sex as the person being searched.

Frisk search is defined in schedule 6 of the PPRA to mean a search of a person conducted by quickly running the hands over the person's outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person, such as a jacket or backpack. Section 619J does not permit unclothed searches as referred to in chapter 20, part 3, division 2 'Searches involving removal of clothing' of the PPRA. However,

if other provisions of the PPRA are triggered, a more thorough search may be necessary in some circumstances. For example, police may receive credible information that a person in a protective security zone is secreting a weapon on his or her person but a frisk search by a police officer fails to locate the weapon. In these circumstances, the police officer could rely on section 29 ‘Searching persons without warrant’ of the PPRA to conduct a more thorough search in a location suitable for such a search.

The search power will allow police officers to quickly and immediately search a person within a protective security zone to ensure the safety of all persons within the zone. If nothing of interest is located, the person can immediately proceed on his or her way. If an illicit item is located, the police officer can take any necessary action to deal with the person or situation in accordance with existing provisions of the PPRA.

### **Section 619K Power to stop, detain and search vehicles**

New section 619K provides a police officer with the power to stop a vehicle entering or in a protective security zone or detain a vehicle in a protective security zone and require the person in control of the vehicle to allow it to be searched. Subsection 619K(2) outlines the actions a police officer can take for searching the vehicle.

In a similar way to the power to search a person in section 619J, section 619K will enable a police officer to immediately search a vehicle to maintain the safety and security of persons in a protective security zone. Usual safeguards in sections 627 ‘General provision about searches of vehicles’ and 628 ‘Dealing with persons who obstruct search of person or vehicle’ of the PPRA will apply to a vehicle search under section 619K.

### **Section 619L Power to enter and search premises**

New section 619L provides a police officer with the power to enter and search any premises in a protective security zone without a warrant. The police officer must use only the amount of force reasonably necessary in the circumstances. The power does not authorise a police officer to enter premises, or part of premises, where a person resides (‘a residence’), other than with the consent of the occupier of the residence or if a police officer reasonably suspects an offence may be committed in or from the residence and the offence would be likely to endanger the safety of a person. Section 619L(4) provides clarification about what does not form part of a residence.

Section 619L(5) clarifies that if the power to enter arose only because of the occupier’s consent, the power is subject to any conditions of the consent and ceases if the consent is withdrawn. Section 619L(6) further states that the consent may provide consent for re-entry and is subject to the conditions of the consent.

The powers in sections 619L and 619M will allow police officers to conduct security sweeps of premises within protective security zones in order to detect explosives and weapons. This will ensure protective security zones are deemed safe for the large number of persons expected to use the zones and to ensure security arrangements are not compromised. The power extends to yards of premises and residences within protective security zones.

### **Section 619M Use of firearms and explosives detection dogs**

Section 619M authorises a police officer to, without warrant, use a firearms and explosives detection dog to carry out explosives detection in relation to a person entering or in a protective security zone or a thing in a place in a protective security zone, or on land associated with the

place, whether or not the thing is in the physical possession of a person. ‘Explosives detection’ is defined by reference to existing section 34 ‘Definitions for pt 3’ of the PPRA and includes ‘walking or placing a firearms and explosives detection dog in the vicinity of a person to ascertain whether the firearms and explosives detection dog can detect the scent of explosives or firearms on the person’ and ‘walking or placing a firearms and explosives detection dog in, on, or in the vicinity of, a vehicle or a thing to ascertain whether the firearms and explosives detection dog can detect the scent of explosives or firearms in or on the vehicle or thing’.

Section 619M(2) states that for carrying out explosives detection under section 619M(1), a firearms and explosives detection dog and any police officer may enter and remain on a place in a protective security zone. However, sections 619M(1) and (2) do not authorise a police officer to enter or remain in a residence to carry out explosives detection in relation to a person or thing in a residence other than with the consent of the occupier of the residence or if a police officer reasonably suspects an offence may be committed in the residence and the offence would be likely to endanger the safety of a person.

Section 619M(4) clarifies that if the power to enter or remain in a residence, or carry out explosives detection in relation to a person or thing in a residence, arose only because the occupier of the place consented to the exercise of the power, the power is subject to any conditions of the consent and ceases if the consent is withdrawn. Section 619M(5) further states that the consent to entry may provide consent for re-entry and is subject to the conditions of the consent.

Section 619M(6) provides that for the purpose of subsection (3)(b), a police officer may form a reasonable suspicion that a person in the residence has a thing, or there is a thing in the residence, that may be explosives or firearms if the firearms and explosives detection dog indicates it has detected explosives or firearms

- on the person, or on or in a thing in the person’s physical possession;
- on or in a thing, not in the person’s physical possession but which the police officer reasonably suspects is connected with the person, in the residence; or
- in the residence.

Subsection (6) is not exhaustive in outlining the circumstances in which a police officer may form a reasonable suspicion for the purposes of subsection (3)(b). A police officer may form a reasonable suspicion based on other information and observations.

Section 619M(7) confirms that section 619M applies despite any other law.

### **Section 619N Protection from liability for acts done by firearms and explosives detection dogs**

New section 619N extends the application of section 38 ‘Protection from liability for acts done by detection dogs’ of the PPRA to a police officer using a firearms and explosives detection dog to carry out explosives detection under chapter 19A, part 3, division 2.

### **Section 619O Effect of division on use of firearms and explosives detection dogs under search warrants**

New section 619O clarifies that chapter 19A, part 3, division 2 does not limit the powers of a police officer to use a firearms and explosives detection dog to carry out explosives detection in conducting a search of a place under a search warrant or without a search warrant. This is a

similar section to section 39 'Effect of part on use of detection dogs under search warrants' which applies for chapter 2, part 3 of the PPRA.

### **Section 619P Power to give direction**

New section 619P authorises a police officer to give a direction to a person entering or in a public place in a protective security zone if the officer is reasonably satisfied it is necessary to give the direction for the safety of persons entering or in the zone. The power extends to a person in control of a vehicle and includes the power to direct the person to move to a stated place in, or leave, the protective security zone. The direction may be given to a person individually or to a group of persons generally and may be given in an amplified way.

The power for a police officer to give a general direction to a person in a protective security zone is required to promote the safety of persons in the zone. It is expected that there will be large numbers of people in protective security zones at various times, including waves of people moving from public transport set-down points to venues or waiting for public transport at a public transport hub. An example of a direction that a police officer may give would include directing a group of people in a protective security zone not to move further forward until advised to do so by a police officer, to allow a crowded area closer to the major event area to clear. A further example is if a small group of people stop on a pedestrian thoroughfare to view something causing the free flow of pedestrians through the thoroughfare to be blocked. A police officer could direct the group to move to the side of, or further along, the thoroughfare to maintain the flow of pedestrians.

The power may be distinguished from the power of a police officer to give a move on direction to a person under part 5 'Directions to move on' of the PPRA. A move on direction is based on the effect of a person's behaviour or presence and is not necessarily related to safety. However, a direction under section 619P is for the safety of persons entering or in the protective security zone.

Section 633 'Safeguards for oral directions or requirements' applies to a police officer giving a direction to a person under section 619P. This means that if the person fails to comply with the direction, the police officer must, if practicable, warn the person it is an offence to fail to comply with the direction unless the person has a reasonable excuse and that he or she may be arrested for the offence. After the warning, the police officer must give the person a further reasonable opportunity to comply with the direction. Failure to comply with the direction would constitute an offence under section 791 'Offence to contravene direction or requirement of police officer' of the PPRA.

### **Section 619Q Expiry of chapter**

New section 619Q provides that chapter 19A expires on 22 April 2018, which is seven days after the conclusion of the Games. The majority of Games major event areas are not expected to continue beyond the conclusion of the Games on 15 April 2018. However, activities in some areas may continue beyond this date, for example, the Games Village is expected to operate for some days after the Games finish. The seven day period before the expiry of the chapter will allow for a zone to be prescribed or declared for this period if circumstances require it.

*Clause 5 Amendment of sch 6 (Dictionary)*

Clause 5 amends schedule 6 ‘Dictionary’ to insert relevant definitions for terms referred to in chapter 19A.

Clauses 5(1), (3) and (5) commence upon assent of the Bill. Clause 5(1) omits the existing definition of ‘explosives detection’ because this definition has been extended in clause 5(3) as a result of new chapter 19A.

Due to the effect of clause 2 of the Bill, clauses 5(2) and (4) commence on 28 April 2018. The effect of these clauses is that definitions relevant to chapter 19A will be omitted after the expiration of chapter 19A and the original definition of ‘explosives detection’ will be reinstated. This will mean that these amendments to schedule 6 will occur automatically after the expiration of chapter 19A and will not need to be progressed in a separate Bill.

Clause 5(5) also amends the definition of ‘enforcement act’ in schedule 6 to exempt searches under the MEA from being enforcement acts. The effect of this amendment is that chapter 21, part 2, division 3 (sections 677 – 682) of the PPRA will not apply to searches of persons under the MEA which means that police officers will not be required to enter details of these searches in an enforcement register. This exemption will apply for the Games and for all future major events prescribed under the MEA.

The exemption is required because it is unworkable at a prescribed major event, where large numbers of people may be searched, for police officers to be required to enter details of each search in an enforcement register. Completing enforcement registers can be time consuming and will quickly become operationally impracticable in prescribed major event areas and protective security zones if individual officers are required to perform a large number of searches in a short period of time. The necessity to record these searches may cause significant delays in the security processing of persons entering a major event area and distract officers from core policing responsibilities in protective security zones. However, if a search located a suspect item such as a weapon or explosive, usual PPRA procedure will apply and the search will be recorded as part of the custody record.

The value of enforcement register entries for MEA searches is also limited for several reasons. Firstly, there is no power in the MEA for a police officer (or authorised officer) to require persons being searched to provide their name and address. Therefore, search entries would be limited to gender, description and location only. Secondly, searches under the MEA can only be performed with the consent of the person being searched and no grounds are required to support the search. Therefore, the grounds for the search, which is an important aspect for other enforcement register entries, is not relevant for MEA search entries and devalues the reason for completing the register entry.