

Counter-Terrorism and Other Legislation Amendment Bill 2017

Explanatory Notes

Short title

The short title of the Bill is the Counter-Terrorism and Other Legislation Amendment Bill 2017.

Policy objectives and the reasons for them

The primary objective of the Counter-Terrorism and Other Legislation Amendment Bill 2017 (the Bill) is to amend the *Public Safety Preservation Act 1986* (PSPA), the *Police Powers and Responsibilities Act 2000* (PPRA) and the *Terrorism (Preventative Detention) Act 2005* (TPDA) to enhance public and police officer safety and ensure police are able to respond rapidly and effectively to terrorist acts and other critical incidents which pose a serious risk to life.

Further objectives of the Bill are to enhance the operational effectiveness of surveillance device powers under the PPRA and amend the PSPA and the PPRA to provide power for police to destroy explosives. The final objective of the Bill is to repeal the *Queensland Police Welfare Club Act 1970* (QPWC Act).

Terrorism environment

Australia is facing the most significant ongoing threat from terrorism in our nation's history. From September 2014, nationally, there has been an escalation of terrorist related activity with four terrorist attacks having been committed with three resulting in fatalities. A further 12 imminent planned attacks have been disrupted. As a result of 27 separate counter-terrorism operations, 62 persons have been charged. This increased threat is expected to endure for the foreseeable future. Furthermore, not only is the threat of terrorism increasing, it is becoming harder for law enforcement and intelligence agencies to detect and disrupt.

Contemporary terrorism methodology has seen a shift from hierarchical cells making detailed plans for mass-casualty and infrastructure attacks to low-tech, lone actor, terrorist attacks. Low-tech attacks perpetrated by an individual or small group are exponentially harder to detect and disrupt. There may be no visibility of planning, little or no direct communication between the terrorist group and the attackers and limited time delay between intent and action. These low-tech attacks are often inspired by the terrorist groups' public calls for such acts with the perpetrators having tactical freedom to self-initiate and self-identify their targets based on their capability, size and resources. This is further exacerbated through their use of encryption and anonymising tools to make their use of the internet and social media invisible to intelligence and law enforcement agencies.

The most likely scenario for a terrorist attack in Australia is a low-tech attack perpetrated by an individual or small group. This would involve the use of readily available weapons such as knives, vehicles, firearms or improvised explosive devices (IED). The attack would likely

involve relatively simple tactics such as an armed attack, beheadings, a siege or hostage situation, using a vehicle as a weapon or the use of IED. IED can be assembled with relative ease, and the required precursors for homemade explosives (HME) and information on their construction and use are readily available.

The policy objective and reasons for amendments in the Bill are outlined individually below.

Enhancements to terrorist emergency powers under Part 2A of the PSPA

The objective of amending Part 2A (Terrorist emergency) of the PSPA is to enhance the ability for police to rapidly and effectively respond to threats and acts of terrorism to mitigate or minimise the impacts of such events on the Queensland community.

Part 2A provides police, during a declared terrorist emergency, with the power to search a person and vehicle without warrant, for anything relevant to the terrorist emergency. These search powers ensure police can minimise the risk to persons and maximise the ability for police to manage and resolve the declared terrorist emergency. The search powers enable police to seize anything that may provide evidence of the commission of an offence or anything that the person may use to cause harm to any person.

While the search powers would include electronic devices, such as smart phones and tablet computers, they do not provide specific authority for police to search electronic devices, or information accessible from the devices, for example messages stored in an application such as Facebook. Recent decisions in Queensland's Supreme and District Courts have identified a necessity to ensure that there is clear lawful authority to conduct a search of a mobile phone. The ability to search electronic devices assists in identifying possible offenders through examining any communications that have taken place during the terrorist emergency. Additionally, witnesses often capture footage on these devices which is of immense intelligence, tactical and evidentiary value including the identification of potential offenders and equipment they may possess or have access to, the number and description of all persons inside the premises and the physical layout of the premises. This information is critical for developing situational awareness and for the formulation of tactical plans to manage or resolve the emergency. While most witnesses willingly provide the information, some refuse due to their intention to sell footage to the media or circulate it on social media. The current search powers do not provide police with a power to require a person to provide access information, such as passwords, to enable a search of information stored on, or accessible from, the electronic device.

The search powers under Part 2A of the PSPA enable police to search for anything relevant to the emergency and seize the thing that may provide evidence of the commission of an offence. However, where something is located that is relevant to the emergency but is not evidence of the commission of an offence, there is no specific power for police to acquire and use the thing. For example, a smart phone may contain photographs of persons being held hostage or the physical layout of the premises. This information is of immense intelligence and tactical value in the formulation of tactical plans to manage or resolve the emergency.

International experience has demonstrated the value in having formalised processes relating to the identification and management of persons who have been immediately affected by a suspected terrorist related incident. The positive identification of persons also assists with the identification of offenders who have evacuated from the premises by concealing themselves amongst other affected persons. The PSPA does not provide a power for digital photographs of a person to be taken and used in relation to the reception and identification of persons, including for the purposes of a Terrorist Emergency Reception Centre. Part 2A does provide

police, during a declared terrorist emergency, with a power to require a person to state their name, address and date of birth and provide evidence of the correctness of the details provided. However, in circumstances where a person has been required to provide evidence of their identity and the person fails to comply, or if the officer reasonably suspects that the evidence is false, there is no power for police to electronically take a person's photograph and fingerprints to enable a real-time search to be undertaken to aid in the identification or confirmation of the identity of a person.

Extraordinary emergency situation powers (Part 2 of the PSPA)

Police responding to critical incidents such as hostage events, armed offenders or incidents involving the use of IED, act on minimal information in a time critical and high pressure environment. The identification that the incident is, or may be, an act of terrorism may not be established until some time after the police intervention commences, or even following its resolution. Responses to critical incidents are hampered by the fact police initially responding to the incident may not know the full nature of the incident, the motivation for the attack or persons responsible. Significant threats to community safety are not the sole domain of terrorism, that is, other individuals and groups with no link to terrorism may commit acts of violence for other reasons.

Currently, there is significant inconsistency in the powers available to police to manage and resolve a critical incident that has been declared a terrorist emergency under Part 2A of the PSPA compared to a similar situation which has been declared an emergency situation under Part 2 of the PSPA. For example, during a declared terrorist emergency involving a hostage situation, police have the power to control the evacuation, reception, identification and assessment of persons exiting the incident location. This includes the ability to control the movement of persons, including the power to direct persons to stay at a stated place within a declared area, power to require a person's name, address and date of birth and power to search persons without warrant. Conversely, during a declared emergency situation under Part 2 of the PSPA, police are limited to the power to exclude or evacuate a person from the specified area for the emergency situation and power to search premises and anything found therein or thereon. This inconsistency inhibits a smooth transition of a critical incident progressing from a declared emergency incident to a declared terrorist emergency under the PSPA.

Significant threats to community safety are not the exclusive domain of terrorism. Critical incidents involving hostages, active armed offenders and the use of IED are undertaken by persons not motivated by terrorism. Dependant on the size, complexity and threat to life or safety, there will be occasions where the use of extraordinary police powers are necessary to enable police to rapidly and effectively manage and resolve the incident to prevent or minimise the threat to public safety.

Amendments supporting rapid response

A priority of the 2013 Queensland Police Service's (QPS) restructure included devolving decision making to frontline officers. This included senior sergeants undertaking the role of police forward commanders (PFC) at incidents with responsibility for the command, control and coordination of the response to, and resolution of, an incident. Senior sergeants, as part of the Management Development Program, attend a two-week residential course on Incident Command which includes emergency situation declarations, incident management and use of powers. Where the incident is an emergency situation pursuant to the PSPA, which includes incidents involving explosive devices, firearms or other weapons, the declaration of the incident as an emergency situation enables police to close roads, evacuate persons, enter and

search premises and give help and resource directions. The ability to declare or revoke an incident as an emergency situation pursuant to Part 2 of the PSPA is restricted to a commissioned officer, who is, in practice, a police officer of the rank of inspector. In circumstances where a commissioned officer is not undertaking the role of PFC or where there is no commissioned officer in the locality, a commissioned officer must be contacted and briefed on the incident and if the commissioned officer is satisfied on reasonable grounds that an 'emergency situation' has arisen or is likely to arise, the commissioned officer declares that an emergency situation exists in the area specified by the officer. The commissioned officer then delegates the emergency commander's functions and powers to the PFC. The inability for a senior sergeant to declare an incident as an 'emergency situation' may inhibit the ability for police to respond rapidly to the critical incident.

Part 2 (Emergency situation) of the PSPA enables an emergency commander to declare that an emergency situation exists in respect of an area specified by the commander. However, unlike Part 2A (Terrorist emergency), Part 2 does not specifically state that the declared area can be a description of an area surrounding a moving activity, such as a stated distance around a stated person travelling by foot or vehicle, or a stated vehicle or vessel. This ability to declare an emergency situation for a specified area surrounding a moving activity removes the need for the stated area for the emergency situation to cover an extensive area or necessitate the constant amendment of the stated area. It also enables police to respond rapidly to the emergency once the person or vehicle is located, or in a location which minimises the risk posed to the community, police or offender.

On 23 November 2016, the Commonwealth Parliament passed the *Counter-Terrorism Legislation Amendment Act (No. 1) 2016* (Cwlth). The Act, in part, amended the threshold test for Commonwealth Preventative Detention Orders (PDOs) by replacing the 'imminence test' for the issue of a PDO with a threshold that focuses on the capability of a person to commit a terrorist act, and which could occur, within the next 14 days. The 'imminence test' imposed impractical constraints on police by requiring that the terrorist act would occur in the next 14 days. Police may be aware of individuals who intend to commit a terrorist act and who possess the necessary ability to carry out the attack, but who have no clear timeframe as to when the act is intended to be undertaken. The TPDA currently retains the 'imminence test'. This not only imposes impractical constraints on Queensland police to prevent a terrorist attack in the near future, it may also impede the transition from a Commonwealth PDO to a State PDO. The PDO scheme was designed to enable the transition of the detention of a person from the Commonwealth PDO to a State PDO. This was necessary due to constitutional constraints limiting detention under a Commonwealth PDO to 48 hours.

The object of the TPDA is to enable persons to be taken into custody and detained for a short period of time, up to 14 days, in order to prevent a terrorist act from occurring or to preserve evidence following a recent terrorist act. It currently limits this time for apprehension to the hours between 6am to 9pm. This restricted time to enter premises to take a person into custody under a PDO limits the ability of police to rapidly respond and take a person into custody. Prior to entry into premises to take the person into custody, police must believe on reasonable grounds that the person, the subject of the PDO, is on the premises. This threshold is very high and would virtually necessitate delaying entry into the premises until it was established that the person was there. Additionally, entry of a dwelling between the hours of 9pm and 6am to take a person into custody under a PDO is prevented unless the police officer believes on reasonable grounds that it is not practicable to do so. Given that the purpose of a PDO is to prevent a terrorist act or to preserve evidence following a recent terrorist act, the TPDA should not unnecessarily restrict the time when an entry into premises can occur.

Chapter 13 (Surveillance device warrants) of the PPRA prohibits information obtained from the use of a surveillance device under an emergency authorisation from being communicated to, or used by, the Australian Security Intelligence Organisation (ASIO) until such time as a Judge has approved the emergency authorisation. Furthermore, the chapter does not enable information obtained from the use of a surveillance device to be used in an application for a PDO or for a proceeding in relation to Commonwealth Control Orders. These restricted powers can inhibit police in preventing terrorist acts or rapidly responding to a terrorist attack.

Clarifying that existing electronic devices can be used as a surveillance device

Over the past few years, surveillance device warrants have authorised the use of existing electronic devices at the target premises, or in the possession of the offender, to be manipulated and used as a surveillance device. This is achieved by either physically or remotely modifying the device, including through the remote installation of software, to enable the existing features of the device to be used as a surveillance device. A recent decision of the Victorian Court of Appeal, upheld that a surveillance device warrant under the *Surveillance Devices Act 2004* (Cwlth), can authorise the covert and remote use of the device as a surveillance device. That Court determined that the authorisation to ‘use’ a surveillance device permits the manipulation of an existing electronic device, including by remotely installing software on the device, to enable the device to be activated and operated as a surveillance device. Furthermore, it was held that the power to connect the device to a system in connection with the operation of the surveillance device includes the establishment of the connection through the installation of software. Queensland’s surveillance device legislation contained in Chapter 13 of the PPRA is substantially similar to the *Surveillance Devices Act 2004* (Cwlth). The decision of the Victorian Court of Appeal is not a binding decision in Queensland.

Surveillance device powers to minimise risk to life or safety

The ability to rapidly acquire and use relevant intelligence obtained from surveillance devices is critical for the effective management and resolution of emergencies in circumstances where there is a significant risk to the life or safety of persons. Police can currently utilise an optical surveillance device, without warrant or authorisation, within a declared area for a declared emergency under the PSPA. Police can also use a listening device, without warrant or authorisation, in circumstances where there is not a reasonable expectation that the conversation being captured is private. However, where an existing device in the target premises is to be used as an optical surveillance device or listening device, or in circumstances where a listening device may capture a private conversation, the use of the device requires authorisation.

Surveillance device powers pursuant to Chapter 13 of the PPRA are significantly limited in their application to declared emergencies under the PSPA. To obtain a surveillance device warrant or emergency authorisation for a listening device or optical surveillance device, the offence being investigated must be a ‘relevant offence’ which is a Queensland offence with a maximum penalty of seven years imprisonment or greater or other specified indictable offences. The surveillance device powers do not apply to terrorism offences as they are Commonwealth offences. Furthermore, many offences relating to siege and hostage situations, in particular, sections 69 (Going armed so as to cause fear), 75 (Threatening violence) and 355 (Deprivation of liberty) of the Criminal Code are not ‘relevant offences’ and therefore, surveillance device warrants or emergency authorisations cannot be made. The main purpose of the PPRA surveillance device powers is to establish procedures for obtaining warrants or emergency authorisations for the use of surveillance devices for up to 90 days to obtain evidence or information of the commission of a relevant offence in Queensland and in

participating jurisdictions. The use of these powers is clandestine in nature with police authorised to do anything reasonably necessary to conceal the fact that surveillance devices had been installed. The subjects of these investigations are unaware of any police interest or actions in relation to their criminal activities. Section 325(1) (Relationship to other laws and matters) of the PPRA clarifies that the Chapter 13 surveillance device powers are not intended to affect or restrict other surveillance device powers being made for regulating the use of surveillance devices within Queensland.

Police are frequently required to take persons into custody who are considered high-risk due to their propensity for violence, threats made, carriage of weapons or their level of criminality. These high-risk persons may be sought for arrest in relation to current investigations or be the subject of a return to prison warrant, mental health order or a PDO. Due to the significant risk they pose, it is necessary for these persons to be apprehended at a location which minimises the risk to the public, family members, associates, police and the subject person. Dwellings contain a range of items which can rapidly be acquired and used as a weapon, for example, knives. Some persons strategically position weapons in premises enabling them to rapidly arm themselves to avoid apprehension. There have been occasions where police have entered the residence of persons to be taken into custody and to avoid apprehension, the subject person has taken other people in the premises, including children, hostage and threatened to harm them unless the subject person is allowed to leave. The ability to use a tracking device to take high risk persons into custody reduces the risk of a hostage or siege incident occurring. Furthermore, selecting a time and location which reduces the person's ability to arm himself or herself with a weapon may limit an incident rapidly escalating into a violent confrontation posing an imminent threat to the life of residents, bystanders or police and necessitating police to respond with the use of lethal force. Physical surveillance of these persons is not always effective due to their awareness of police methodologies and counter-surveillance techniques undertaken to identify or lose surveillance personnel. While the use of a tracking device would enable police to covertly monitor the location of persons until they are at an appropriate location to be apprehended, existing surveillance device powers are restricted to 'relevant offences' and do not enable the use of a tracking device to be authorised for these purposes.

Enhancing operational effectiveness of PPRA surveillance device powers

Police are regularly required to pass across neighbouring properties to discretely gain access to premises where the surveillance device is to be installed (the target premises). Section 332 (What a surveillance device warrant authorises) of the PPRA provides that the warrant authorises entry to the stated premises where a surveillance device will be used and other stated premises, which includes yards, adjoining or providing access to the target premises. This necessitates police to specify the route to be undertaken to gain access to the target premises. Where circumstances prevent police from undertaking the specified route to the target premises, police must return to the issuing authority to have the warrant varied. The only option available to police to overcome unforeseen delays due to routes being compromised, is to nominate all adjoining properties which may provide access to the target premises. However, this unnecessarily authorises police to enter every premises surrounding the target premises.

Where a surveillance device is to be used in relation to a stated object, class of object or the conversations, activities or geographical location of a person, a warrant authorises entry onto any premises where the object or person is reasonably believed to be, or is likely to be. However, where the surveillance device is to be used in relation to a vehicle, entry is authorised only onto the stated premises, and other stated premises adjoining or providing access to the premises. This is a consequence of 'vehicle' being contained within the definition of premises.

While the legislation recognises the mobility of an object or person, it does not provide the same flexibility to a vehicle. In circumstances where a vehicle is moved after the surveillance device warrant is issued, the warrant cannot be executed and police either have to wait for the vehicle to return to the specified premises or are required to return to the issuing authority and have the warrant varied. This can cause a significant delay with the investigation. Furthermore, a surveillance device warrant authorises the temporary removal of an object from premises for the purpose of the installation, maintenance or retrieval of a surveillance device and the return of the object to the premises. Surveillance device powers do not provide this flexibility for a vehicle. The ability to remove a vehicle from a public place or premises provides for a safe and secure working environment where police can carry out the installation, maintenance or retrieval of the device.

Power to dispose of explosives

In addition to the threat posed by the use of IED by persons committing acts of terrorism, recent incidents in Queensland have amplified concerns about the dangers that HME pose to the community and emergency services personnel. In some cases, HME may be as powerful as an equivalent weight of trinitrotoluene (TNT). The danger of some HME may be exacerbated through their instability making them likely to explode without warning. Although the reported use of HME in Queensland is low, its use has considerably increased over recent years as evidenced by the growth in calls for service of the QPS Explosive Ordnance Response Team (EORT) and the increase in reported explosives related offences. The EORT is tasked with providing a specialist response to incidents involving explosives, acts of terrorism and chemical, biological and radiological incidents. Significantly, calls for services from the EORT have had a 63% increase over the 2005 to 2011 period and a 160% increase over the 2012 to 2015 period.

Most HME incidents involving police are dealt with under the PSPA which provides a framework for the resolution of emergency situations including an incident involving a bomb or other explosive device that may cause damage to property or injury to a person. However, there is no specific legislative authority allowing a police officer to dispose of explosives or cause damage to property as a consequence of the explosive's disposal. This contrasts with legislative authorities afforded to other agencies. For example, the *Fire and Emergency Services Act 1990* allows an authorised fire officer to destroy property in a hazardous materials emergency.

Queensland Police Welfare Club Act

The Queensland Police Welfare Club (the Club) was formed in 1934 with the objective of promoting social welfare for its members. The QPWC Act was enacted for the purpose of administering the Club and allowed the Police Minister to appoint office-bearers and auditors, authorise a general committee and set up a framework for the conduct of meetings. The Club was deregistered as an association on 6 January 1998 and was ultimately wound up by receivers in 2004-05. As the Club is now defunct, the justification for retaining the QPWC Act no longer exists. Repealing the QPWC Act will not prevent the Club being re-established through the *Associations Incorporation Act 1981* if required in the future.

Achievement of policy objectives

The Bill achieves the objectives by amending the following Acts:

- *Public Safety Preservation Act 1986*;
- *Terrorism (Preventative Detention) Act 2005*; and
- *Police Powers and Responsibilities Act 2000*.

The Bill also repeals the *Queensland Police Welfare Club Act 1970*.

Public Safety Preservation Act 1986

The Bill amends the PSPA to enhance the terrorism emergency powers under Part 2A of the PSPA by:

- Clarifying that the power to search a person includes a power to search an electronic device and information accessible by the device although not stored on the device. The search power, however, does not provide unfettered access to information stored on the device, or accessible from the device. As the search power is restricted to information relevant to the emergency, this confines the search to the period of, or leading up to, the emergency. Searching of information or photographs well before this period would be outside the lawful authority of the search and any evidence obtained may be excluded from any subsequent prosecution.
- Providing police with the power to require a person to provide access codes or assistance (fingerprint lock) to operate the device or access information accessible from the device. Failure to comply with the requirement, without a reasonable excuse, will be an offence with a maximum penalty of 40 penalty units or 12 months imprisonment. The offence provision specifically excludes self-incrimination as a reasonable excuse for non-compliance. In circumstances where a person fails to comply with the requirement, police can seize the electronic device for forensic examination. While the provision excludes the search of the device from being an enforcement act under the PPRA, the search and seizure powers are still subject to the existing PPRA safeguards provided under Chapter 20 (Standard safeguards) and Chapter 21, Part 3 (Dealing with things in the possession of police service). The Bill also restricts the use of evidence obtained from an electronic device following compliance with an access requirement in a criminal proceeding not related to a declared emergency situation or terrorist emergency, unless the proceeding relates to an indictable offence with a maximum penalty of at least seven years imprisonment or an offence against section 218B (Grooming children under 16) of the Criminal Code.
- Ensuring that a power to search or seize a storage device includes the power to:
 - use the device to gain access to information stored on the device or accessible from the device, such as information stored on a cloud;
 - examine information to find out whether the information may be relevant to an emergency;
 - use a device to make a copy of the information on the device or accessible from the device that is relevant to an emergency or evidence of an offence; and
 - use the storage device to send a copy of information that may be relevant to the emergency for the purpose of managing or resolving the emergency.
- Providing police with the power to take and use a person's biometric information to establish or confirm the identity of the person, including potential offenders. The power to take a person's biometric information is limited to the period of the operation of the declared terrorist emergency. The person's biometric information that is in the possession of the QPS, is to be destroyed, as soon as is reasonably practicable, when it is no longer

needed for an investigation or prosecution or for an inquiry or inquest or for a proposed inquiry or inquest.

The Bill inserts new Division 4 (Extraordinary emergency powers) into Part 2 (Emergency situation) of the PSPA to provide police with the power to control movement of persons; search a person without warrant; require a person's name, address and date of birth; collect and use biometric information; and require access information to enable a search to be conducted on an electronic device. The purpose of these powers is to minimise the risk to public safety and provide police with powers to effectively manage and resolve significant emergency situations involving hostages, armed offenders and IED. Not all incidents will necessitate the use of the powers, for example, a siege situation only involving a person threatening self-harm or a hostage situation only involving a few persons where police can distinguish the offender from the victims. Significant safeguards ensure that these powers are only available and used where it is necessary including:

- an emergency situation has to have been declared under section 5 of the PSPA;
- the stated area within which the powers can be exercised must be the smallest area necessary to effectively deal with the situation, within the declared area for the emergency situation;
- the emergency commander can only authorise the use of the powers if satisfied on reasonable grounds:
 - that the emergency situation involves or may involve an explosive, or that a person's life or safety is seriously endangered by an act of another person, for example, being held hostage; and
 - the emergency commander is satisfied on reasonable grounds that the use of one or more of the powers is necessary to effectively deal with the emergency due to the scale or complexity of the situation;
- as soon as is reasonably practicable after the authorisation, an assistant commissioner must be informed of the authorisation;
- the emergency commander must note on the emergency certificate when the authorisation was given, the authorisation area for the exercise of powers, the powers that may be used and the circumstances necessitating the authorisation;
- the emergency commander must revoke the authorisation when satisfied that the powers are no longer necessary to effectively deal with the emergency;
- the Commissioner must give the Minister a report, within three months, stating:
 - the nature of the emergency situation;
 - when and why the authorisation was given;
 - when it was revoked;
 - the powers relied on;
 - why they were relied on;
 - how they were exercised; and
 - whether a terrorist emergency was subsequently declared for the emergency; and
- the Minister must table a report in the Legislative Assembly on the exercise of the extraordinary emergency powers within six months of the emergency ending.

The Bill also amends the PSPA to support rapid police responses to emergency situations by:

- Devolving the ability to declare an emergency situation to approved senior sergeants; and
- Clarifying that the area specified by the emergency commander for the declaration of an emergency situation can be an area surrounding a moving activity, such as a stated distance around a stated person travelling by foot or vehicle, or a stated vehicle or vessel.

The Bill further amends the PSPA to enable a commissioned officer to authorise the use of surveillance devices within the declared area or in a stated place for a declared emergency under the PSPA. This includes using an existing device as a surveillance device and authorises the doing of anything necessary to enable the device to be used as a surveillance device. Safeguards include:

- Authorisation can only occur in circumstances where the commissioned officer reasonably suspects that the life, health or safety of any person, including responding police, may be seriously endangered and the use of the surveillance device would assist in reducing the risk;
- Authorisation and use of a surveillance device can only occur during the operational period of the emergency;
- Revocation of the authorisation when the commissioned officer is satisfied that the use of the device is no longer needed to help reduce the risk to life, health or safety;
- Requiring the completion of a register of authorisations stating the date and time the authorisation was given, the name of the authorising commissioned officer and the grounds on which the authorisation was made;
- Requiring the Commissioner to report annually to the Minister on the number of authorisations given for the financial year; and
- Requiring the Minister to table the report in the Legislative Assembly.

The Bill also amends the PSPA to provide an emergency commander in an emergency situation with the power to dispose of explosives and authorise damage that may result in the disposal process. If the destruction is likely to cause structural damage to a building, prior approval is to be obtained from a police officer of at least the rank of assistant commissioner. Where it is not practicable to obtain the assistant commissioner's prior authorisation, the incident commander is to notify an assistant commissioner as soon as practicable.

Terrorism (Preventative Detention) Act 2005

The Bill amends the TPDA to address legislation impacting on a rapid response by:

- Replacing the 'imminence test' for the issue of a PDO with a threshold that focuses on the capability of a person to commit a terrorist act, and that the terrorist act could occur, in the next 14 days;
- Reducing the threshold for entry into the premises from 'believes on reasonable grounds' to 'suspects on reasonable grounds' that the person, the subject of the PDO, is on the premises; and
- Removing the restrictions on entry of a dwelling between 9pm and 6am to take a person into custody under a PDO.

Police Powers and Responsibilities Act 2000

The Bill amends the PPRA to clarify that a surveillance device warrant or emergency authorisation can authorise the use of an existing device as a surveillance device. This includes the covert manipulation of the existing device either physically or remotely, including through the remote installation of software, to enable the existing features of the device to be used as a surveillance device.

The Bill also amends the PPRA to amend the surveillance device powers in Chapter 13 to enable a commissioned officer to authorise the installation and use of a tracking device to assist in taking persons into lawful custody in circumstances where taking the person into custody may pose a serious risk to the safety of any person and using the device will help in minimising the risk. Additional safeguards include:

- A tracking device authorisation cannot authorise entry into a dwelling;
- The authorisation can only be given or extended by no more than 48 hours on each occasion;
- The commissioned officer must consider the grounds afresh for each extension;
- After giving or extending the authorisation, the commissioned officer must make a written record stating the date and time the authorisation or extension was given and the grounds necessitating the giving of the authorisation or extension;
- Existing storage and destruction requirements for Chapter 13 apply to a tracking device authorisation;
- The Commissioner must report annually on the number of tracking device authorisations or extension that were given and the effectiveness of the use of the tracking device in reducing the risk to the safety of persons;
- The Minister must table the report in the Legislative Assembly; and
- The Public Interest Monitor must regularly inspect records relating to authorisations and report six monthly to the Minister on the extent of compliance by the QPS with the requirements of Chapter 13 of the PPRA.

The Bill amends Chapter 13 of the PPRA to address restrictions impacting on rapid police response by removing the prohibition restricting the communication to, or use by, ASIO of the information gained under an emergency authorisation for the use of a surveillance device until such time as a Judge has post-approved the emergency authorisation.

The Bill further amends Chapter 13 of the PPRA to enhance the operational effectiveness of surveillance device powers by:

- Removing the need for a surveillance device warrant to specify neighbouring premises over which police may cross to gain access to the target premises, unless covert entry into a building is required to gain access to the target premises;
- Providing separate definitions for ‘premises’ and ‘vehicles’ to remove the requirement to specify the premises to be entered to install a surveillance device into a vehicle; and
- Enable a vehicle to be temporarily removed from its location to provide for a safe and secure working environment to install, retrieve or maintain a surveillance device.

The Bill also amends Chapter 13 of the PPRA to enable the use of information obtained from surveillance devices to be used in relation to applications for PDOs and Prohibited Contact Orders (PCOs) and in proceedings relating to PDOs or PCOs in another jurisdiction or the Commonwealth. The amendments also permit the use of information obtained from a surveillance device to be used during proceedings in relation to Commonwealth Control Orders.

The Bill amends the PPRA to provide approved police officers with the power to destroy explosives when it is not reasonably practicable to, or it is dangerous to, take the explosive to a property point or police station. Where practicable, before destroying the explosive, the officer is to photograph the explosive where it is found.

Queensland Police Welfare Club Act 1970

The Bill repeals the QPWC Act.

Alternative ways of achieving policy objectives

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

Estimated cost for government implementation

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

It is uncommon for claims for compensation to be made as a result of police disposing of HME. Any claims for compensation for damage caused to property may be dealt with through existing compensation provisions within the PSPA and PPRA and any cost incurred will be met through existing budget allocation. It is not envisioned that these amendments will result in increased claims for compensation as these amendments simply reinforce that current practices used to dispose of explosives are lawful.

Consistency with fundamental legislative principles

The Bill has been drafted with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA). The proposed amendments achieve an appropriate balance between individual rights and liberties and the protection of the broader Queensland community during emergencies. There are, however a number of provisions of the Bill that may be perceived to be inconsistent with the fundamental legislative principles, particularly in regard to apparent breaches of rights and liberties LSA section 4(2)(a).

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

Police Powers and Responsibilities Act 2000

Surveillance device warrants

A number of amendments are proposed to the surveillance provisions of the PPRA to increase the effectiveness and safety of their application. These amendments are outlined below:

Power to cross neighbouring property to install or retrieve surveillance device

An amendment is proposed which will enable police to access adjoining or neighbouring properties for the purposes of installing or retrieving a surveillance device without specifying which properties will be crossed in the warrant. Police are regularly required to pass across neighbouring properties to discretely gain access to premises where the surveillance device is to be installed. Current provisions require a surveillance device warrant to specify what properties may be crossed in installing the device.

It may be considered that a person's right to protection of property from trespass are breached by this amendment as police will potentially enter neighbouring premises without the safeguards that the premises are specified in a warrant. The intent and effect of the existing provisions however are unlikely to be altered by the amendment. It merely provides added flexibility for police to choose the route which is the safest to all involved and the most operationally sound considering all circumstances on the day in question. The trespass is still undertaken with the authority of a judicial warrant and if covert entry into a building is required to gain access to the target premises, the surveillance device warrant must specify the premises to be entered.

The ability for police to cross adjoining and neighbouring properties without the need to specify the premises is reflective of search warrant powers and covert search warrant powers under sections 157 (Power under search warrant) and 219 (Powers under covert search warrant) of the PPRA. These powers do not require other places to be specified where police are to pass over, through, along or under to enter the relevant place.

Power to install surveillance device in vehicle and move vehicle for this purpose

The PPRA is proposed to be further amended to provide separate definitions for ‘premises’ and ‘vehicles’ to enable a vehicle to be treated the same as an object or class of object is currently treated by not requiring an address to be specified in the surveillance device warrant. These amendments will allow entry onto any premises where the vehicle is reasonably believed to be or is likely to be. This takes into account the mobility of a vehicle and removes the inefficiency associated with warrants becoming invalidated due to a vehicle changing location.

The Bill also clarifies that to install a surveillance device in a vehicle the vehicle may be moved for the purposes of installing the device in a safe and secure location. The power to move and install a surveillance device in a vehicle may be seen as impinging on a person’s right to privacy and protection of private property from trespass, as it expands the already permitted interference with personal property by police. The amendment is, however, justified due to the moving of the vehicle and the installation of the surveillance device in the vehicle is under the authority of a Judicial warrant.

Use of existing device

The Bill amends the PPRA to clarify that a surveillance device warrant or emergency authorisation can authorise the use of an existing device within the target premises or in possession of the target person, as a surveillance device. This includes the covert manipulation of the existing device either physically or remotely, including through the remote installation of software, to enable the existing features of the device to be used as a surveillance device.

While use of this power would involve dealing with a person’s property without their consent, it provides a modern, practical and efficient way of achieving the warrant’s objectives without increasing the risk of detection. The amendment does not in any way expand the use of surveillance devices or the information gathered, it merely acknowledges the pervasiveness of electronic devices already within homes and the potential operational advantage that may be gained by making use of them in this way.

Commissioned officer to authorise use of Tracking Device

A further amendment proposed to the PPRA authorises the use of a tracking device to assist police in taking high-risk persons into custody. The amendment would enable a commissioned officer to authorise the installation and use of such a device in circumstances where taking the person into custody may pose a serious risk to the safety of any person and using the device will help in minimising the risk.

This may be seen as a breach of a person’s right to privacy as it enables police to track the movements of a person without obtaining a warrant. The amendments are justified, however, as the risk to police, the public and the high-risk wanted person or their family often necessitates police utilising surveillance teams to identify a suitable location to take the person into custody.

It is noted, however, the use of the power is limited to a time period of 48 hours and applies only in circumstances when an attempt is being made to apprehend a person and all other means are likely to result in greater risk to safety. The tracking device enables police to, for example, monitor the movements of a person until they are in a location suitable for apprehension away from the public or other persons that may be harmed. Furthermore, the use of a tracking device in this manner will not be for evidence gathering purposes but to allow specialist police to monitor the movements of a person from a safe distance until they deem it safe enough to attempt to take the person into custody.

Additional safeguards include:

- a tracking device authorisation cannot authorise entry into a dwelling;
- the authorisation can only be given or extended by no more than 48 hours on each occasion;
- the commissioned officer must consider the grounds afresh for each extension;
- after giving or extending the authorisation, the commissioned officer must make a written record stating the date and time the authorisation or extension was given and the grounds necessitating the giving of the authorisation or extension;
- existing storage and destruction requirements for Chapter 13 apply to a tracking device authorisation;
- the Commissioner must report annually on the number of tracking device authorisations or extensions that were given and the effectiveness of the use of the tracking device in reducing risk to the safety of persons;
- the Minister must table the report in the Legislative Assembly; and
- the Public Interest Monitor must regularly inspect records relating to authorisations and report six monthly to the Minister on the extent of compliance by the QPS with the requirements of Chapter 13 of the PPRA.

Exchange of Information with ASIO

The Bill amends the PPRA to remove the current prohibition restricting the provision of information to the ASIO which was gained under an emergency authorisation for the use of a surveillance device until such time as a Judge has post approved the emergency authorisation communication.

The amendment may be seen to impinge upon a person's right to privacy as it enables the disclosure and use of information obtained from an emergency authorisation prior to use of the device being authorised by a Judge. Counter-terrorism responses are built upon partnerships between State police services and Commonwealth agencies, including ASIO. This amendment removes impediments to working collaboratively with partner agencies to prevent or resolve acts of terrorism.

The Commonwealth, South Australia and Western Australia do not currently restrict the provision of protected information obtained under an emergency authorisation to ASIO or restrict ASIO's use of the information.

Use of information obtained from surveillance device

The Bill also amends Chapter 13 of the PPRA to enable the use of information obtained from a surveillance device to be used in relation to applications for PDOs, PCOs and in related proceedings in other jurisdictions or the Commonwealth. The amendments also permit the use of information obtained from a surveillance device to be used during proceedings in relation to Commonwealth Control Orders.

This may be considered to impact on the privacy of an individual as it expands the lawful ways in which personal information may be used. Use of information in this way, is however, warranted as any privacy concerns are outweighed by the serious risk to public safety that may be presented in matters involving PDOs or PCOs. The object of a PDO is to enable persons to be taken into custody and detained for a short period of time, up to 14 days, in order to prevent a terrorist act from occurring or to preserve evidence following a recent terrorist act. The high risk to life and safety that such situations present creates a need for any information gathered in relation to such matters to be able to be used to prevent their occurrence.

Furthermore, enabling such information to be utilised by other jurisdictions is necessary to help prevent the threat of terrorism in those areas and gives regard to the potential for networking of persons and plans across jurisdictional barriers.

Homemade explosives

A further proposed amendment provides power for an approved police officer (such as members of the EORT) to destroy explosives when it is too dangerous, or not reasonably practicable, to take the explosive to a property point or police station. This power would be able to be utilised even when potential criminal proceedings for an offence involving the explosive have not yet been commenced. This raises the possibility of natural justice and procedural fairness being impinged upon by the destruction of material that may have later afforded evidence relating to criminal charges.

The power in section 715B is considered justified as it would apply when failure to destroy an explosive could place property, and the lives of the public and emergency service workers at risk by an attempt to move or store an explosive at a police property point or station. To further reduce the chance of harm only an approved police officer authorised by the police commissioner with the necessary experience, expertise or training would determine that the explosive should be destroyed and carry out the destruction.

The concern that evidence of the explosives could be destroyed prior to any criminal charge is decided is outweighed by the public interest in having the explosive destroyed in circumstances where it is not reasonably practicable or an explosive is too dangerous to move or store. However, this concern is limited by the new subsection (2) of section 715B that provides that before destroying an explosive, a police officer must, if reasonably practicable, photograph the explosive where it is found. Photographing the explosive is in addition to the existing practice of specialist police officers from the EORT taking both pre-blast and post-blast destruction samples of the area in which the explosive is destroyed. These samples are used to confirm the type of explosive that has been destroyed.

Additionally, the general right to compensation where a person suffers a loss because their property has been damaged by the Crown is maintained through the existing compensation scheme in the PPRA. This compensation scheme also provides that a person who is dissatisfied with the Minister's decision regarding the level of compensation may apply to the court for compensation.

Public Safety Preservation Act 1986 (PSPA)

Senior Sergeant to declare emergency situation

Proposed amendments to the PSPA devolve the ability to declare or revoke an emergency situation under Part 2 of the PSPA from a commissioned officer to senior sergeants approved by the Commissioner as having the necessary skills and experience.

This may be considered to impinge on LSA section 4(3)(c) relating to power only being delegated in appropriate cases and to appropriate persons. It is argued, however, that senior sergeants are an appropriate level for the delegation. 'Senior Sergeant' is currently the rank typically in charge of a police station, and that of the position of District Duty Officer which provides supervision and assistance to operational officers within a police district. It is already common practice for senior sergeants to undertake the role of PFC at critical incidents and undertake responsibility for the command, control and coordination of the response to, and resolution of, such incidents.

The amendment will minimise the possibility of delays in a policing response which may arise due to the necessity to contact and brief a commissioned officer, who is unlikely to be present at the scene, of the incident. Currently the commissioned officer would then have to declare the emergency situation distally and delegate the emergency commander's powers to the PFC. This amendment will be of particular benefit to regional and remote communities where the most senior officer is generally a senior sergeant with a commissioned officer often being several hundred kilometres and several hours in travel time from the incident location.

This change would bring Queensland in line with Victoria and New South Wales where senior sergeants have the power to declare an emergency situation.

Destruction of explosives

Another amendment to the PSPA provides an additional power for the police emergency commander, or any police officer acting on their instructions, to destroy an explosive found in the area specified for the emergency situation. This may occur even if structural damage is likely to result from the destruction. The potential for personal property to be damaged by such an action may be considered to impinge on civil rights.

This power is, however, considered justified in the circumstances as any failure to safely deal with explosives in an emergency situation could place property and the lives of the public and emergency service workers at risk. This risk is deemed to outweigh the impact caused by damage to property. Furthermore, prior approval of an officer of at least the rank of Assistant Commissioner is required if structural damage is expected to ensue.

The general right to compensation where a person suffers a loss because their property has been damaged by the Crown is maintained through the existing compensation scheme in the PSPA. In this regard, where property has been damaged or destroyed through the use of the power, the existing compensation provisions provide that compensation may be paid by the State to the person.

Extraordinary Emergency Powers

A new subdivision is proposed to be inserted into the PSPA to provide police with powers for controlling particularly dangerous situations that have not been declared terrorist emergencies. These powers would apply to situations where an emergency situation has been declared and the emergency commander believes that the incident involves explosives or the life of a person or persons is seriously endangered (such as hostage situations). While these powers, outlined below, may be considered to impinge on rights and liberties, they are considered justified when considering the serious nature of the emergency involved coupled with the safeguards surrounding their use.

The proposed new Extraordinary emergency powers of the PSPA can only be authorised by the emergency commander if the officer is satisfied on reasonable grounds that:

- an emergency situation has been declared under Part 2 of the PSPA; and
- the emergency commander is satisfied on reasonable grounds that the emergency situation involves or may involve an explosive, or that a person's life or safety is seriously endangered by an act of another person; and
- the emergency commander is satisfied on reasonable grounds that the use of one or more of the powers is necessary to effectively deal with the emergency due to the scale or complexity of the situation; and
- a terrorist emergency under Part 2A of the PSPA has not been declared.

The emergency commander must notify an assistant commissioner, as soon as is reasonably practicable after giving the authorisation, and note on the emergency certificate when the authorisation was given, the authorisation area for the exercise of powers, the powers that may be used and the circumstances necessitating the authorisation.

The powers are limited in that the emergency commander, or the police officer acting on the commander's instructions, can only give a direction to a person who is within the area specified in respect of the emergency situation and if the officer is satisfied that giving the direction is necessary:

- for the safety of the person or another person; or
- to effectively manage the movement of a person to a safe area; or
- to effectively receive, identify or assess the person; or
- otherwise to effectively deal with the emergency situation.

Additionally, the emergency commander must ensure the direction is withdrawn when satisfied the direction is no longer reasonably necessary.

The use of the powers in this part are subject to the following reporting conditions:

- the Commissioner must report to the Minister regarding the exercise of extraordinary emergency powers under an extraordinary emergency authorisation within three months after the authorisation ends; and
- the Minister must table a report in the Legislative Assembly about the exercise of the powers within six months after the authorisation ends.

The proposed amendments provide for the following new powers:

Control the movement of persons

During an extraordinary emergency situation police may direct a person within the authorisation area not to enter or to go to or stay at a stated area. This power may be seen to impinge on common law and human rights to freedom of movement however is considered warranted in the circumstances.

This power may be necessary in the management of a situation for many reasons including, managing the volume of people in a certain space, separating people suspected of being a threat, and keeping persons from a place of harm. These powers are already contained in the PSPA in relation to terrorist emergencies, however not all emergencies of this type will be, or will be identifiable as, a terrorist emergency and, as such, are required to be extended to extraordinary emergencies.

Safeguards for the use of this power include:

- the power may only be used during the period of the extraordinary emergency declaration and only if necessary for the safety of persons or management of the situation;
- the power is only used within the authorisation area;
- the officer must ensure the direction is withdrawn when it is no longer reasonably necessary;
- the person is not considered to be under arrest; and
- a direction given is not an enforcement act under the PPRa.

Search of person without warrant

A further amendment allows for police to stop, detain, and search a person and anything in their possession without warrant within the authorisation area of an extraordinary emergency situation. The officers may seize anything reasonably suspected that the person may use to do harm to another or of being a thing that may afford evidence of the commission of an offence. The Bill also clarifies that this power includes the power to search electronic devices.

While these amendments may impinge right to privacy, they may be seen as warranted when consideration is given to the limited circumstances in which these powers can be utilised and the need to rapidly identify potential offenders and protect persons who are within the declared area.

These powers can only be authorised by an emergency commander upon being satisfied on reasonable grounds that certain preconditions exist in relation to the nature and seriousness of the threat posed. The powers can only be authorised during a declared emergency and can only apply within the area specified for the emergency situation.

The ability to search persons enables police to seize any items that may be used to harm people. The ability to search electronic devices assists in identifying possible offenders through examining any communications that have taken place during the emergency. Additionally, witnesses often capture footage on these devices which is of immense intelligence, tactical and evidentiary value through identifying potential offenders, equipment they may possess or have access to, the number and description of all persons inside the premises and the physical layout of the premises. This information is critical for developing situational awareness and for the formulation of tactical plans to manage or resolve the emergency.

Furthermore, all standard safeguards of Chapter 20 of the PPRa apply to the exercise of this power including those relating to searches and seizure of property as do the safeguards and reporting arrangements in relation to use of extraordinary emergency powers.

Power to require name, address and date of birth

A further proposed provision provides an emergency situation officer with the power to require the name, address and date of birth of a person in the authorisation area. While again impinging on civil liberties this power is necessary for the control and resolution of a dangerous emergency situation.

The power to identify persons within the authorisation area may be necessary to rapidly identify suspects, or rule out suspicion against other persons. The speed with which persons of interest can be identified and separated from others may be critical in the management of an incident and the minimisation of harm.

Importantly, these powers can only be authorised during a declared emergency situation and their use is limited to within the area of the declared emergency.

Power to take biometric information

The proposed amendments provide the emergency commander or a police officer acting under the commander's instruction, with a power to take a person's biometric information to establish or confirm their identity. This enables digital photographs to be taken to establish the identity of a person and for fingerprints to be taken to enable real time search of the fingerprints on the National Automated Fingerprint Identification System to confirm identity.

While this too could be considered a breach of privacy it is considered warranted in the circumstances. Obtaining rapid information regarding the identity of persons in an emergency situation is pivotal to its safe resolution. It is not uncommon for persons to either refuse or be unable to provide proof of their name and address, or for them to provide false information. It also occurs that intelligence or information regarding a person may be recorded under another name and, therefore, not discoverable by use of the name given.

A number of limitations and safeguards are built into the proposed amendments to minimise the impact of these provisions:

- the power is limited to a person who is within a declared area;
- a person's biometric information must be destroyed as soon as is reasonably practicable following the completion of any investigation or court matter arising out of the incident; and
- fingerprints may only be taken in the circumstances in which:
 - the person has not provided evidence of their name, address and date of birth; or
 - the emergency situation officer reasonably believes the personal details are false; or
 - the emergency situation officer reasonably believes that evidence of the person's personal details is false.

Power to require access information

The power to search a person in an extraordinary emergency includes searching an electronic device. The proposed amendments will allow a police officer to require a person to provide access codes, passwords, encryption keys or provide assistance to operate an electronic device. The officer may then search the device for anything relevant to the emergency situation.

This power may be seen as impinging upon the rights and liberties and, in certain circumstances, against the right to avoid self-incrimination. The amendments are necessary, however, due to the critical nature of the incidents being responded to and the necessity for police to identify potential offenders. A search of electronic equipment is vital for the acquisition of intelligence to enable police to effectively manage and resolve the declared emergency.

The search power, however, does not provide unfettered access to information stored on the device, or accessible from the device. As the search power is restricted to information relevant to the emergency, this confines the search to the period of, or leading up to, the emergency. Searching of information, or photographs, well before this period would be outside the lawful authority to undertake the search and any evidence obtained may be excluded from any subsequent prosecution.

The use of this power is also subject to all the safeguards outlined above in relation to extraordinary emergencies.

Powers in relation to Declared Terrorist Emergency

The above amendments in relation to the power to search person without warrant, power to collect biometric information, power to require access information, and power to search storage devices are also proposed in relation to declared terrorist emergencies.

The proposed amendments contain similar powers, circumstances for use, and safeguards as those outlined above for extraordinary emergency situations yet would be applicable in the case of terrorist emergencies.

Authorisation of surveillance device by commissioned officer without warrant

The Bill further amends the PSPA to enable a commissioned officer to authorise the use of a surveillance device during a declared emergency within a declared area or in a stated place. This includes using an existing device as a surveillance device and authorises the doing of anything necessary to enable the device to be used as a surveillance device. The surveillance device may be used in the way outlined in the PPRA for surveillance device warrants.

While this amendment may be considered a breach of civil liberties, it is warranted when consideration is given to the critical nature of the circumstances in which the power may be used. The ability to rapidly acquire and use relevant intelligence obtained from surveillance devices is critical for the effective management and resolution of emergencies in circumstance where there is a significant risk to the life or safety of persons.

Police can currently utilise an optical surveillance device, without warrant or authorisation, within a declared area for a declared emergency under the PSPA. Police can also use a listening device, without warrant or authorisation, in circumstances where there is not a reasonable expectation that the conversation being captured is private. However, where an existing device in the target premises is to be used as an optical surveillance device or listening device, or in circumstance where a listening device may capture a private conversation, the use of these devices currently requires authorisation. This amendment would remove this limitation improving the operational effectiveness of surveillance device powers.

Safeguards to offset this breach include:

- authorisation can only occur in circumstances where the commissioned officer reasonably suspects that the life, health or safety of any person may be seriously endangered and the use of the surveillance device would assist in reducing the risk;
- authorisation and use of a surveillance device can only occur during the operational period of the emergency;
- the commissioned officer must revoke the authorisation when satisfied that the use of the device is no longer needed to help reduce the risk to life, health or safety. Alternatively the authorisation ends when the emergency ends;
- the Commissioner will keep a register of authorisations stating the date and time the authorisation was given, the name of the commissioned officer and the grounds on which the authorisation was made;
- the Commissioner to report annually to the Minister on the number of authorisations given for the financial year; and
- the Minister to annually table a report in the Legislative Assembly on the number of authorisations given for the financial year.

Terrorism (Preventative Detention) Act 2005 (TPDA)

Replacement of the 'imminence threshold test' with a 'capability threshold test'

Amendments are made to the TPDA to create a more operationally practical test for the issuing of a PDO. The amendments replace the current 'imminence test', which requires that the terrorist act would occur in the next 14 days, with a threshold test that focuses on the capability of a person to commit a terrorist act which could occur within the next 14 days.

The provision may be perceived as impinging on civil liberties as it expands on the possible circumstances in which a PDO, and the consequential associated powers, may be used. The amendment is considered justified, however, as the 'imminence test' imposed impractical constraints on police as police may be aware of individuals who intend to commit a terrorist act and who possess the necessary ability to carry out the attack, but there may be no clear timeframe as to when the act is intended to be undertaken. The proposed 'threshold test' continues the original intent of the provision while providing a more practical framework for its application.

This amendment replicates amendments made to the Commonwealth PDO scheme in November 2016 and captures the essence of the original imminence test by having both a preparedness component and a temporal component. The preparedness component is that the terrorist act is capable of being carried out. The temporal component is that it could occur within 14 days. Furthermore, the amendment ensures operational utility between the Commonwealth's and Queensland's PDO Scheme.

Any application of the PDO provisions will remain subject to all safeguards and limitations as contained in the TPDA including:

- making application to the Supreme Court to revoke or amend an order;
- making application to the Supreme Court for compensation;
- commissioner to report to the Minister within three months after an application for a PDO is made;
- Minister to table a report in the Legislative Assembly within six months of the application for a PDO being made.

Power to enter premises for enforcing Preventative Detention Orders

A further amendment is made to the TPDA to reduce the threshold for entry into a premises from 'believes' to 'suspects' on reasonable grounds that the person, the subject of the PDO, is on the premises. Additionally, the clause removes the restrictions on entry to a dwelling between 9pm and 6am to take the person into custody under the PDO.

These amendments may impinge on civil liberties as they expand the circumstances in which police may enter a premises for the purpose of taking a person into custody. The amendments are justified, however, when consideration is given to the reasons for police action in these circumstances. The purpose of a PDO is to prevent an imminent terrorist act or preserve evidence following a recent terrorist act. As such, reducing the threshold for entry to a premises from 'believes on reasonable grounds' to 'suspects on reasonable grounds' makes the provisions more practically applicable in the case of a terrorist emergency. Furthermore, use of the 'reasonable suspicion' threshold is consistent with other powers under the PPRA.

The restriction on entry to a premises at night time to enforce a PDO is proposed to be removed. Given that the purpose of a PDO is to prevent an imminent terrorist act or to preserve evidence following a recent terrorist act the current restriction on the hours of day in which police are

permitted to act reduces their ability to respond to such emergencies and increases risk to life. There may also be a range of tactical reasons why it may be operationally beneficial to enter the dwelling between 9pm and 6am, particularly in regard to the safety of police officers or other persons involved.

Consultation

Consultation on a consultation draft of the Bill was undertaken with the following key community stakeholders:

- Bar Association of Queensland;
- Office of the Information Commissioner;
- Queensland Council for Civil Liberties;
- Queensland Law Society; and
- The Public Interest Monitor.

The stakeholders were advised that any comment they wished to make in relation to the draft Bill would be kept confidential and used for the purposes of informing Cabinet. The consultation process was undertaken confidentially to ensure stakeholders could make free and frank comment on the proposed Bill without concern that their responses, whether supportive or otherwise, would be made public.

Four stakeholders made submissions in relation to the Bill.

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

- Ensuring that any record or report obtained as a result of a tracking device authorisation is subject to the retention and destruction requirements prescribed in section 354 (Dealing with record obtained by the use of surveillance devices) of the PPRA.
- Amendments to the PPRA to enable police to destroy explosives at the scene where it is too dangerous to move or store the explosives were redrafted to clarify that only police officers prescribed by the Commissioner will be able to destroy the explosive. To be prescribed, a police officer must have the necessary experience or expertise to destroy the explosives or must have successfully completed a course of training in destruction of explosives approved by the Commissioner.
- The reporting requirements in relation to the exercise of extraordinary emergency powers have been enhanced to require the Commissioner, within three months of the authorisation ending, to give a report to the Minister stating:
 - the nature of the emergency situation for which the extraordinary emergency authorisation was given;
 - when and why the extraordinary emergency authorisation was given;
 - when it was revoked;
 - the extraordinary powers relied on, why they were relied on and how they were exercised; and
 - whether a terrorist emergency was declared in relation to the incident.

The Minister is required to table a report in the Legislative Assembly about the exercise of powers within 6 months after the authorisation ends.

Consistency with legislation of other jurisdictions

Public Safety Preservation Act 1986

Clauses 30 and 31 amend the PSPA to enable senior sergeants, approved by the Commissioner, to declare or revoke an emergency situation under Part 2 of the PSPA. The ability for a police officer at the rank of senior sergeant to declare an emergency is consistent with emergency management powers in Victoria and New South Wales.

Terrorism (Preventative Detention) Act 2005

Clause 45 amends section 8 (Basis for applying for, and making, a preventative detention order) of the TPDA to replace the ‘imminence test’ for the issue of a PDO with a threshold that focuses on the capability of a person to commit a terrorist act, and which could occur, within the next 14 days. This amendment replicates amendments made to the Commonwealth PDO scheme in November 2016.

Clause 46(3) amends section 41 (Power to enter premises) of the TPDA to remove the restrictions on entry of a dwelling between 9pm and 6am to take the person into custody under the PDO. Tasmania and the Northern Territory do not restrict entry of the premises between 9pm and 6am.

Police Powers and Responsibilities Act 2000

Clause 15 inserts the new tracking device authorisations into Chapter 13 (Surveillance devices) of the PPRA. This power enables a commissioned officer to authorise the use of a tracking device, for periods of up to 48 hours, to enable a high-risk person to be taken into custody. However, the authorisation does not permit the covert entry into a dwelling to install or retrieve the tracking device. While no other jurisdiction has such a scheme, the Commonwealth *Surveillance Devices Act 2004* enables a Queensland superintendent to authorise the use of a tracking device by Queensland police, without warrant, for up to 90 days for the investigation of a Commonwealth offence with a maximum penalty of 3 years imprisonment or greater. However, the authorisation does not enable entry onto premises, or interference with the interior of a vehicle, without permission. South Australian surveillance device powers enable a superintendent to authorise the installation of a tracking device where the vehicle or thing is in a public place or in the lawful custody of police and the subsequent use of the device for the investigation of an offence for up to 90 days. Western Australian surveillance device powers enable a law enforcement officer, without further authorisation, to install a tracking device on a vehicle in a public place and use the surveillance device in the course of their duty as a law enforcement officer.

Clause 16 amends section 352 (Prohibition on communication or publication of protected information) of the PPRA to remove the prohibition restricting the communication to, or use by, ASIO of the information gained under an emergency authorisation for the use of a surveillance device until such time as a Judge has post approved the emergency authorisation. The Commonwealth, South Australia and Western Australia do not restrict the provision of protected information obtained under an emergency authorisation to ASIO or restrict ASIO’s use of the information.

Clause 9 of the Bill amends section 332 (What a surveillance device warrant authorises) to remove the need for a surveillance device warrant to specify neighbouring yards over which police may cross to gain access to the target premises. This is reflective of South Australian surveillance device legislation.

Clause 9(10) amends section 332 (What a surveillance device warrant authorises) of the PPRA to enable the removal of a vehicle from a public place or premises to provide for a safe and secure working environment where police can carry out the installation, maintenance or retrieval of the surveillance device. The power to remove a vehicle to enable the installation, maintenance or retrieval of a surveillance device is consistent with surveillance device powers of the Commonwealth, New South Wales and the Australian Capital Territory.

Notes on provisions

Part 1 Preliminary

Clause 1 Short title

Clause 1 provides that, when enacted, the Bill will be cited as the *Counter-Terrorism and Other Legislation Amendment Act 2017*.

Part 2 Amendment of Police Powers and Responsibilities Act 2000

Clause 2 Act amended

Clause 2 provides that Part 2 amends the *Police Powers and Responsibilities Act 2000*. It also signposts that additional minor amendments to the PPRA are contained in schedule 1 of the Bill.

Clause 3 Amendment of ch 13, hdg (Surveillance device warrants)

Clause 3 amends the heading for Chapter 13 (Surveillance device warrants) of the PPRA from ‘Surveillance device warrants’ to ‘Surveillance devices’. This is as a result of clause 15 inserting tracking device authorisation into Chapter 13. Chapter 13 now provides powers in relation to surveillance device warrants, emergency authorisations and tracking device authorisations and the heading is amended to reflect that the chapter deals with more than surveillance device warrants.

Clause 4 Amendment of s 321 (Purposes of ch 13)

Clause 4(1) amends section 321 of the PPRA, which sets out the purposes of Chapter 13 of the PPRA as a consequence of clause 15 inserting new Part 3A (Tracking device authorisations) into Chapter 13 of the PPRA and clause 39 which inserts new Part 3B (Surveillance devices) into the PSPA. New subsection (aa) provides that a purpose of Chapter 13 is to enable senior officers of the QPS to make tracking device authorisations. New subsection (ab) establishes that the purposes of Chapter 13 include enabling retrieval warrants to be obtained to retrieve a tracking device installed under a tracking device authorisation or surveillance devices installed under the new surveillance device powers under the PSPA.

Subclause 4(2) renumbers section 321 of the PPRA following the insertion of the new subsections.

Clause 5 Amendment of s 322 (Definitions for ch 13)

Clause 5(1), in conjunction with clause 27 (Amendment of sch 6 (Dictionary)) moves, with some minor modifications, the definitions of ‘emergency authorisation’, ‘retrieval warrant’ and ‘surveillance device warrant’ from section 322 to the dictionary in schedule 6.

Clause 5 also redefines the meaning of ‘premises’ by separating vehicle from the definition to, in conjunction with clauses 9, 11, 12 and 15, remove the necessity for a surveillance device warrant to specify the premises that can be entered to install a surveillance device in a vehicle. This treats a vehicle in the same fashion that an object is treated in Chapter 13. This takes into account the mobility of a vehicle and removes the inefficiency associated with warrants becoming invalidated due to a vehicle changing location. The clause also clarifies that a ‘place’ does not include a vehicle.

Subclause 5(3) amends the definition of ‘tracking device’ to ensure that a tracking device can be used to find or monitor the geographical location of a vehicle.

Clause 6 Insertion of new s 324A

Clause 6 inserts new section 324A (References to installation of surveillance device) to clarify that a reference in Chapter 13 of the PPRA to installation of a surveillance device is taken to include a reference to doing anything to an existing device, including the covert manipulation of the device either physically or remotely and including the remote installation of software, to enable the device to be used as a surveillance device. This clause, in conjunction with clauses 8, 9(8), 10, 14 and 15 (new section 348B), clarify that a surveillance device warrant, emergency authorisation or tracking device authorisation can authorise an existing device within the target premises, in possession of a person or in a vehicle or object, as a surveillance device or type of surveillance device.

Clause 7 Amendment of s 325 (Relationship to other laws and matters)

Clause 7 inserts a new subsection into section 325 of the PPRA to clarify that a tracking device authorisation only authorises the installation, use and retrieval of a tracking device within Queensland. Tracking device authorisations do not fall within the mutual recognition scheme for the cross-border application of surveillance device powers in participating jurisdictions.

Subclause 7(2) renumbers the subsections in section 325 as a result of the insertion of a new subsection by subclause 7(1).

Clause 8 Amendment of s 331 (What must a surveillance device warrant contain)

Clause 8 amends subsection 331(1)(b) of the PPRA by replacing subsections (vi) and (vii). Subsection (vi) originally provided that where a surveillance device warrant authorises the use of an optical surveillance device warrant in a dwelling, the surveillance device warrant must state the parts of the dwelling that the optical surveillance device can be installed. As a result of amendments made by the Bill clarifying that a surveillance device warrant authorises the use of an existing device as a surveillance device, police have no control of the placement of an existing device, such as a security camera, or where the existing device is portable. Subsection (vi) has been redrafted to remove the requirement for the surveillance device warrant to state where an optical surveillance device may be installed in a dwelling when an existing device is authorised to be used as a surveillance device. However, this does limit the ability for a Judge from stating additional conditions in the surveillance device warrant. Furthermore, the QPS’s Surveillance Device Warrant – Standing Operating Procedures (Classified) sets out specific procedures to be adopted in circumstances where sexual activity or any state of undress is captured by a surveillance device.

The redrafting of subsection 331(1)(b)(vii) of the PPRA, in effect, extends the existing subsection to require where the warrant authorises the use of a surveillance device in a vehicle or class of vehicle, the warrant must state the vehicle or class of vehicle. This amendment is a consequential amendment as a result of vehicle being separated from the definition of ‘premises’ for the purposes of Chapter 13 of the PPRA.

Clause 9 Amendment of s 332 (What a surveillance device warrant authorises)

Clause 9(1) amends subsection 332(1)(b), as a result of the amendments separating vehicle from the definition of ‘premises’, to enable a surveillance device warrant to authorise the use of a surveillance device in or on a stated vehicle or class of vehicle. Vehicle was separated from the definition of ‘premises’ to remove the necessity for a surveillance device warrant to

specify the premises that can be entered to install a surveillance device in a vehicle. This treats a vehicle in the same fashion that an object is treated in Chapter 13 and takes into account the mobility of a vehicle and removes the inefficiency associated with warrants becoming invalidated due to a vehicle changing location.

Subclause 9(2) redrafts subsection 332(2)(a)(ii) to remove the necessity for a surveillance device warrant to specify neighbouring premises over which police may cross to gain access to the target premises. This includes the opening of gates and crossing through open structures such as car ports and pergolas to access the target premises. It would also include entering common areas of unit complexes such as foyers and lifts to gain access to the target unit. This amendment overcomes the necessity for police to go back to the issuing Judge to have the surveillance device warrant varied when access to the target premises could not be achieved by the specified route. However, the amendment proposed in subclause (6) ensures that the warrant still requires premises to be specified in circumstances where covert entry into a building is required to gain access to the target premises.

Subclause 9(3) amends subsection 332(2)(b)(i) to ensure that where a surveillance device warrant authorises the use of a surveillance device in a vehicle or class of vehicle, the warrant authorises the installation, use and maintenance of the device in the stated vehicle or vehicle of a stated class. This amendment was necessary due to the separation of vehicle from the definition of 'premises'.

Subclause 9(4) redrafts subsection 332(2)(b)(ii) to expand its application to ensure where a surveillance device warrant authorises the use of a surveillance device in a vehicle or class of vehicle, the warrant also authorises entry onto any premises where the vehicle is or is likely to be and other premises adjoining or providing access to those premises. This treats a vehicle in the same fashion that an object is treated and takes into account the mobility of a vehicle and removes the inefficiency associated with warrants becoming invalidated due to a vehicle changing location.

Subclause 9(4) also inserts new subsection 332(2)(b)(iii) to provide for a power of entry into a stated vehicle or stated class of vehicle to install, use or maintain a surveillance device in the vehicle or in or on an object or class of object which is or likely to be in the vehicle. This amendment is necessary due to the separation of vehicle from the definition of premises.

Subclause 9(5) amends subsection 332(2)(c)(ii) to change the reference to subsection (3) to subsection (4) as a result of the insertion of new subsection (2A) by subclause 9(6) and the renumbering of the subsections by subclause 9(12).

Subclause 9(6) inserts new subsection (2A) into section 332 of the PPRA to require a surveillance device warrant to specifically authorise the covert entry onto premises adjoining or providing access to the target premises for the purposes of installing, using or maintaining a surveillance device in the target premises. For example, subsection 332(2)(a)(ii), as amended by subclause 9(2), would enable police to cross over a neighbour's yard to gain access to the target premises to install a surveillance device without the need for the neighbouring premises to be specified in the surveillance device warrant. However, if a neighbouring unit had to be covertly entered to give access to a shared roof cavity to gain access to the target premises to install a surveillance device, the surveillance device warrant would need to specifically authorise the entry into the neighbouring unit for the purposes of installing the device.

Subclause 9(7) makes a technical amendment to subsection 332(3) of the PPRA to reflect current drafting practices.

Subclause 9(8) redrafts the existing example of preparatory actions reasonably necessary to facilitate the installation of the surveillance device in subsection 332(3)(a) of the PPRA and inserts new examples (ii) and (iii) of preparatory actions reasonably necessary to facilitate the use of an existing device as a surveillance device.

Subclause 9(9) redrafts subsection 332(3)(d) of the PPRA to provide a power for the temporary removal of a vehicle, in addition to an object, from premises, including a public place, for the purposes of installing, maintaining or retrieving a surveillance device or enhancement equipment. For example, this power would enable police to remove the target vehicle parked on a road and take it to a safe and secure working environment to install the surveillance device and then return the vehicle to the parking space it was taken from.

Subclause 9(10) redrafts existing subsection 332(3)(f) of the PPRA in accordance with current drafting practices. Subclause 9(10) also redrafts subsection 332(3)(g) to expand the existing provision allowing the connection of a surveillance device or enhancement equipment to a telephone system, to enabling the device or equipment to be connected to any object or system that may be used to transmit information or use of the object or system in relation to the operation of the device or equipment. New section 332(3)(g) also enables an existing device that is being used as a surveillance device to be connected to an object or system, either by physical connection or through covertly uploading software onto the device, to enable information to be transmitted in any form and the use of the object or system in relation to using the existing device as a surveillance device.

Subclause 9(11) amends subsection 332(6) of the PPRA to clarify subsections (2) and (4) (of the renumbered section) apply to a surveillance device warrant subject to any conditions stated in the warrant.

Subclause 9(12) renumbers the subsections in section 332 as the result of the insertion of a new subsection by subclause 9(6).

Clause 10 Insertion of new s 332A

Clause 10 inserts new section 332A (Surveillance device warrant authorises use of existing device) into Chapter 13 of the PPRA to clarify that where a surveillance device warrant authorises the use of a surveillance device, the surveillance device warrant also authorises the use of an existing device that is on the premises, in the possession of a person or in or on a vehicle, object or class of vehicle or object as a surveillance device.

Subclause 10(3) clarifies that the use of the existing device as a surveillance device includes a power to do anything that is necessary to or in relation to the existing device to enable it to be used as a surveillance device. This includes the covert manipulation of the device either physically or remotely and including the remote installation of software onto the device to enable the device to be used as a surveillance device.

Clause 11 Amendment of s 336 (Application for retrieval warrant)

Clause 11 redrafts subsection 336(1)(a) of the PPRA as a result of the Bill separating vehicle from the definition of ‘premises’, to enable retrieval warrants to be applied for in relation to a surveillance device or enhancement equipment that was lawfully installed in or on a vehicle.

Subclause 11(1) further redrafts subsection 336(1)(a) of the PPRA to enable retrieval warrants to be applied for in relation to a tracking device that was lawfully installed under a tracking device authorisation under the PPRA. It also enables retrieval warrants to be applied for in

relation to a surveillance device that was lawfully installed under a surveillance device authorisation under the PSPA.

Subclause 11(2) makes a consequential amendment to subsection 336(1)(b) of the PPRA as a result of the separation of vehicle from the definition of ‘premises’ for the purposes of Chapter 13 of the PPRA.

Clause 12 Amendment of s 339 (What must a retrieval warrant contain)

Clause 12 makes a consequential amendment to subsection 339(1)(b)(iv) of the PPRA as a result of the separation of vehicle from the definition of ‘premises’ for the purposes of Chapter 13 of the PPRA. The provision requires a retrieval warrant to state the vehicle from which the surveillance device is to be retrieved.

Clause 13 Amendment of s 340 (What a retrieval warrant authorises)

Clause 13 amends subsection 340(1)(d) to enable a retrieval warrant to authorise the temporary removal of a vehicle from any place, including a public place, to enable the retrieval of any surveillance device or enhancement equipment installed in or on the vehicle.

Clause 14 Insertion of new s 343A

Clause 14 inserts new section 343A (Emergency authorisation authorises use of existing device) into Chapter 13 of the PPRA. New section 343A clarifies an emergency authorisation that authorises the use of a surveillance device also authorises the use of an existing device on the premises, in the possession of a person or in or on a vehicle, object or class of vehicle or object as a surveillance device.

Subsection 343A(3) clarifies that the use of the existing device as a surveillance device under an emergency authorisation includes a power to do anything that is necessary to or in relation to the existing device to enable it to be used as a surveillance device. This includes the covert manipulation of the device either physically or remotely and including the remote installation of software onto the device to enable the device to be used as a surveillance device.

Subsection 343A(3)(b) ensures the new section 343A is subject to any conditions of the emergency authorisation.

Clause 15 Insertion of new ch 13, pt 3A

Clause 15 inserts new Part 3A (Tracking device authorisations) into Chapter 13 of the PPRA, containing new sections 348A to 348E to provide a scheme for a senior officer of the QPS to authorise the use of a tracking device, within Queensland, to take a high risk person into custody if the use of a tracking device will minimise the serious risk to the safety of any person.

Section 348A (Power to give tracking device authorisation) enable a senior officer (commissioned officer) of the QPS to authorise the use of a tracking device for 48 hours to find or monitor the location of person who is to be taken into custody. Persons can be required to be taken into custody for a range of purposes, including, arrest in relation to current investigations, be the subject of a return to prison warrant, mental health order or be the subject of a PDO.

Subsection 348A(1)(b) sets out the grounds upon which the commissioned officer must be satisfied to give the authorisation. The commissioned officer may give the tracking device authorisation if satisfied on reasonable grounds that taking the person into custody poses a serious risk to the safety of any person and the use of the tracking device will help in taking

the person into custody at a time or location that minimises the risk. A commissioned officer can, but not limited to, be satisfied on reasonable grounds that a person poses a significant risk to the safety of persons due to their propensity for violence, threats made, carriage of weapons, level of criminality and escalating erratic behaviour. Due to the significant risk they pose, it is necessary for these persons to be apprehended at a location which minimises the risk to the safety of the public, family members, associates, police and the person themselves. The ability to use a tracking device to take high risk persons into custody reduces the risk of a hostage or siege incident occurring. Furthermore, selecting a time and location which reduces the person's ability to arm themselves with a weapon may limit an incident rapidly escalating into a violent confrontation posing an imminent threat to the life of residents, bystanders or police.

Subsection 348A(3) limits the authorisation period for a tracking device authorisation to a maximum period of 48 hours.

Subsections 348A(4) and (5) sets out what a tracking device authorisation permits by the application of section 332 (What a surveillance device warrant authorises) of the PPRA.

Subsection 348A(5) prevents a tracking device authorisation from authorising entry into a dwelling to install or retrieve a tracking device or enhancement equipment.

Subsection 348A(6) establishes that a tracking device authorisation also authorises the use of the tracking device and any enhancement equipment for the purposes of retrieving the tracking device and any enhancement equipment.

Section 348B (Tracking device authorisation authorises use of existing device) clarifies a tracking device authorisation that authorises the use of a surveillance device also authorises the use of an existing device on the premises, in the possession of a person or in or on a vehicle, object or class of vehicle or object as a tracking device.

Subsection 348B(3) clarifies that the use of the existing device as a tracking device under a tracking device authorisation includes a power to do anything that is necessary to or in relation to the existing device to enable it to be used as a tracking device. This includes the covert manipulation of the device either physically or remotely and including the remote installation of software onto the device to enable the device to be used as a tracking device.

Subsection 348B(3)(b) ensures the new section 348B is subject to any conditions of the emergency authorisation.

Section 348C (Record of tracking device authorisation) sets out the requirements for a written record to be made in relation to giving of a tracking device authorisation.

Section 348D (When tracking device authorisation ends) sets out the circumstances when a tracking device authorisation ends.

Subsections 348D(2) and (3) clarify that despite the tracking device authorisation ending pursuant to subsection (1), the authorisation can authorise the retrieval of the tracking device and any enhancement equipment and operation of the device and equipment for the purposes of retrieval. Note, section 348A(5)(b)(ii) prevents the retrieval of the tracking device and equipment from a dwelling. If the device and equipment needs to be retrieved from a dwelling an application for a retrieval warrant must be made under section 336 of the PPRA. However, subsection 348D(4) enables the retrieval of the device and equipment from premises, including a dwelling, if the presence of the police officer on the premises is not an offence. For example, a crime scene has been declared for the dwelling and the device is to be retrieved from a vehicle parked in the garage which is part of a dwelling.

Section 348E (Extension of tracking device authorisation) enables a commissioned officer to extend the authorisation by no more than 48 hours each time. The commissioned officer must consider the grounds afresh on each occasion and be satisfied on reasonable grounds that taking the person into custody poses a serious risk to the safety of any person and the use of the tracking device will help minimise the risk.

Subsection 348E(3) sets out the requirements for a written record to be made in relation to the extension of the tracking device authorisation.

Clause 16 Amendment of s 352 (Prohibition on communication or publication of protected information)

Clause 16 amends section 352 of the PPRA to remove the prohibition restricting the communication to ASIO, or the use of the information by ASIO, gained under an emergency authorisation for the use of a surveillance device until such time as a Judge has post approved the emergency authorisation. Counter-terrorism responses are built upon partnerships between State police services and Commonwealth agencies, including ASIO. This amendment removes impediments to working collaboratively with partner agencies to prevent or resolve acts of terrorism.

Clause 17 Amendment of s 353 (Permitted use of protected information)

Clause 17(1) and (2) amends section 353 of the PPRA to enable information obtained from the use of a surveillance device to be used for applications for final orders for PDOs and PCOs under the TPDA or proceedings relating to a matter under preventative detention legislation in another jurisdiction or the Commonwealth or for use during proceedings in relation to Commonwealth Control Orders.

Subclause 17(3) amends section 353 of the PPRA by inserting new subsection (3A) to permit the use of information from a surveillance device for an application for initial orders for PDOs or PCOs under the TPDA or equivalent application in another jurisdiction or the Commonwealth. The amendment ensures that subsection 353(2), which restricts the communication or use of protected information from an emergency authorisation, does not apply to these applications.

Subclause 17(4) renumbers the subsections in section 353 as a result of the insertion of a new subsection by subclause 17(3).

Subclause 17(5) inserts new subsection 353(6) to provide the meaning for the terms ‘corresponding preventative detention law’ and ‘relevant order’ for the purposes of section 353.

Clause 18 Amendment of s 354 (Dealing with records obtained by use of surveillance devices)

Clause 18(1) amends the section heading to reflect that section deals with reports as well as records.

Subclause 18(2) redrafts section 354 of the PPRA to ensure that any record or report obtained as a result of a tracking device authorisation is subject to the retention and destruction requirements prescribed in section 354.

Subclauses 18(3) corrects cross references as a result of the redrafting of the section.

Subclause (4) renumbers the subsections as a result of the redrafting of section.

Clause 19 Amendment of s 358 (Annual reports)

Clause 19 amends section 358 of the PPRA to include in the commissioner's annual report to the Minister on prescribed matters relating to Chapter 13 of the PPRA information on the number of tracking device authorisations and extensions that were given for the financial year and for each tracking device authorisation, a statement about whether or not the use of the tracking device helped in minimising the serious risk to safety in taking the persons into custody. This report is subsequently tabled by the Minister in the Legislative Assembly.

Subclause 19(2) renumbers the subsections in section 358(1) as a result of the insertion of a new subsection by subclause 19(1).

Clause 20 Amendment of s 359 (Keeping documents connected with warrants and emergency authorisations)

Clause 20(1) amends section 359 of the PPRA to change the section heading as the section now also requires the keeping of documents relating to tracking device authorisations.

Subclause 20(2) amends section 359 to require the Commissioner to keep each written record made in compliance with the specified sections relating to tracking device authorisations and extensions.

Clause 21 Replacement of s 361 (Register of warrants and emergency authorisations)

Clause 21 redrafts section 361 of the PPRA by replicating the existing provisions and extending the commissioner's register keeping requirements to include tracking device authorisations which must form part of the register of covert acts kept under chapter 21, part 2 of the PPRA.

Clause 22 Amendment of s 667 (Application of sdiv 3)

Clause 22 amends section 667 of the PPRA by redrafting subsection 667(f) in line with contemporary drafting practices. The clause also extends the application of subdivision 3 (Covert acts under chapters 11 and 13) of chapter 21 of the PPRA to include the exercise of powers under a tracking device authorisation.

Clause 23 Insertion of new s 669A

Clause 23 inserts new section 669A (Information to be included in register for tracking device authorisations) into the PPRA. Section 669A prescribes the information about tracking device authorisations that must be recorded in the register for tracking device authorisations.

Clause 24 Amendment of s 677 (Application of div 3)

Clause 24 amends section 667 of the PPRA by including in the definition of 'enforcement act' tracking device authorisation to exclude tracking device authorisation from being an enforcement act. This amendment excludes information of an act done by a police officer while exercising powers under a tracking device authorisation from being included in the register of enforcement acts as it is already required to be included in the register of covert acts.

Clause 25 Insertion of new ch 21, pt 3, div 4A

Clause 25 amends Chapter 21 (Administration) by inserting a new Division 4A (Dealing with explosives) in Part 3 and creates new section 715A (Commissioner may authorise police officers to destroy explosives) and section 715B (Destruction of explosives).

Section 715A (Commissioner may authorise police officers to destroy explosives) enables the commissioner to authorise police officers who have the necessary experience or expertise to be able to destroy explosives or has satisfactorily completed a course of training about the destruction of explosives approved by the commissioner. This provision will ensure that only police officers who have the necessary experience, expertise or training are approved to move or destroy explosives under section 715B.

Section 715B (Destruction of explosives) Subsection establishes that section 715B of the PPRA applies to a relevant thing that is an explosive. Subsection (2) provides a power for an approved police officer to move and destroy explosives when it is not reasonably practicable to, or it is dangerous to, take the explosive to a property point or police station. Subsection (3) provides that before destroying the explosive, a police officer must, if reasonably practicable, photograph the explosive where it is found. Subsection (4) provides that the section applies even though a proceeding for an offence in which an explosive may be relevant has not been started or if started has not been decided. Subsection (5) restricts the application of the section if a declaration is made for an emergency situation, terrorist emergency or Chemical, Biological and Radiological emergency under the PSPA in relation to the explosive. In such circumstances the new subsection 8(1)(j) of the PSPA will apply to provide police with a power to destroy explosives.

Whilst it is acknowledged that police usually dispose of explosives during an emergency situation under the PSPA, there are occasions when police need to destroy explosives when an emergency declaration is not required. For example, explosives may be located in bushland and there are no concerns about the safety of the public or for property. In those circumstances, there would be no requirement for an emergency declaration to be declared in order to safely dispose of the explosive.

Clause 26 Insertion of new s 724A

Clause 26 creates a new section 724A (Evidentiary provision about explosives). Section 724A provides that a certificate signed by the commissioner and stating that a police officer was on a stated day an approved police officer is evidence of what it states unless the contrary is proved. The provision will ensure that in any prosecution where an approved police officer has destroyed explosives under section 715B, the signed evidentiary certificate is sufficient evidence of what it states unless the contrary is proved.

Clause 27 Amendment of sch 6 (Dictionary)

Clause 27 amends Schedule 6 (Dictionary) by, in part, amending the definition of ‘explosive’ for chapter 21, part 3, and by providing a definition of ‘approved officer’. The definition of ‘explosive’ includes a thing that an approved officer reasonably believes is an explosive. The new definition of ‘approved officer’ means a police officer who has been authorised by the commissioner under section 715A as having the necessary experience or expertise to be able to destroy explosives under section 715B, or has satisfactorily completed a course of training about the destruction of explosives approved by the commissioner. This provision will ensure that only police officers who have the necessary experience, expertise or training are approved to move or destroy explosives under section 715B.

Clause 27 also amends Schedule 6 (Dictionary) by replacing the definitions of ‘chapter 13 application’, ‘emergency authorisation’, ‘place’, ‘retrieval warrant’ and ‘surveillance device warrant’. The definition of ‘chapter 13 application’ has been redrafted to include an emergency authorisation and the approval of the use of a surveillance device under an emergency authorisation. The redrafting and moving of the definitions of ‘emergency authorisation’,

‘retrieval warrant’, and ‘surveillance device warrant’ from the definition section for Chapter 13 to the Dictionary in Schedule 6 are technical amendments to reflect current drafting practices. The redrafting of the definition of ‘place’ is to provide a separate definition for Chapter 13 from the rest of the PPRA due to the separation of vehicle from the definition of ‘place’ in Chapter 13.

Clause 27 inserts new definitions for ‘authorisation period’ and ‘tracking device authorisation’. The insertion of ‘authorisation period’ and ‘tracking device authorisation’ is to signpost that the meaning of the particular terms are contained within the specified sections.

Subclause 27(3) amends the definition of ‘covert act’ to include the exercise of powers under the PPRA for an emergency authorisation or tracking device authorisation as a consequence of clause 22 amending section 667 of the PPRA providing that requirements for the register covert acts register applies to exercise of powers under an emergency authorisation or tracking device authorisation.

Subclause 27(4) amends the definition of ‘covert act’ to include the revocation of a surveillance device warrant or retrieval warrant.

Part 3 Amendment of Public Safety Preservation Act 1986

Clause 28 Act amended

Clause 28 provides that Part 3 amends the *Public Safety Preservation Act 1986*. It also signposts that additional minor amendments to the PSPA are contained in schedule 1 of the Bill.

Clause 29 Amendment of s 3A (Extraterritorial application of Act)

Subclause 29(1) amends section 3A(3) of the PSPA by replacing commissioned officer with senior officer. This amendment is a consequential amendment as a result of clause 30(1) replacing who can declare an emergency situation from a commissioned officer to a senior officer.

Subclause 29(2) amends section 3A of the PSPA by redrafting subsection 3A(6) to ensure that an emergency situation declaration for a moving activity including the use of powers under an extraordinary emergency authorisation for the moving activity can be made before the moving activity enters Queensland from either another jurisdiction or from outside the Coastal Waters of the State. For example, the amendment would allow immediate response once the moving activity crosses a state boundary into Queensland. It would also enable the use of the powers in response to an incident on a vessel in the Territorial Sea in the adjacent area for Queensland. The amendment would also ensure that the declaration and authorisation do not cease just because the moving activity temporarily leaves Queensland.

Clause 30 Amendment of s 5 (Declaration of emergency situation)

Clause 30 amends section 5 of the PSPA to enable senior officers, who are senior sergeants, approved by the commissioner as having the necessary skills and experience, and commissioned officers, to declare an emergency situation under Part 2 of the PSPA. This will minimise the possibility of delays in the policing response due to the necessity to contact and brief an inspector on the incident and have the inspector declare the emergency situation distally and delegate the emergency commander’s powers to the police forward commander.

Subclause 30(2) amends section 5 of the PSPA by inserting new subsection (1A) to clarify that the area specified by the emergency commander for the declaration of an emergency situation

can be an area surrounding a moving activity, such as a stated distance around a stated person travelling by foot or vehicle, or a stated vehicle or vessel. This will ensure that police can respond rapidly to the emergency once the person or vehicle is located without having to wait for the declaration, or in a location which minimises the risk posed to the community, police or the offender. The amendment will also negate the need for an emergency commander to continually change the specified area for the emergency.

Subclause 30(3) amends subsections 5(3) and (4) of the PSPA to enable another senior officer to revoke an emergency situation and make notations on the emergency situation certificate if the emergency commander is unavailable.

Subclause 30(4) renumbers the subsections in section 5 of the PSPA as a result of the insertion of a new subsection by subclause 30(2).

Clause 31 Amendment of s 6 (Effect of declaration under Disaster Management Act 2003)

Clause 31 amends section 6 of the PSPA to enable the revocation of an emergency situation by a senior officer when a disaster declaration is made.

Clause 32 Amendment of s 7 (Delegation of power for particular periods)

Clause 32 amends section 7(3)(b) of the PSPA to correct a cross reference to section 5(5) as a result of renumbering of section 5. Clause 32 further amends subsection 7(3)(b) to exclude as part of the emergency commander's delegated functions the ability to note on the emergency situation certificate prescribed information the emergency commander is required to state pursuant to sections 8AT(b) and 8AW(2)(a) relating to the giving, use and revocation of an extraordinary emergency authorisation.

Clause 33 Amendment of s 8 (General powers)

Clause 33 amends section 8 (General powers) by inserting a new subsection (1)(j). Section 8 outlines the powers an emergency commander, and any other police officer acting on his or her instructions, may exercise within the declared area specified in relation to the emergency situation. These powers include closing off streets, evacuating residents, taking control of resources, using necessary force to enter premises and searching and removing anything found within. The new subsection (1)(j) provides an additional power to destroy an explosive that is found in the area specified in respect of the emergency situation. This provision will ensure there is no doubt that a clear legislative authority exists for an appropriate police officer to destroy explosives when necessary in a declared emergency situation.

Clause 34 Insertion of new s 8AAA

Clause 34 inserts a new section 8AAA (Requirements for destruction of explosives) to provide that if the destruction of an explosive under the new section 8(1)(j) is likely to cause structural damage to a building, then the emergency commander or another police officer must obtain approval of a state police officer of at least assistant commissioner rank if practicable to do so. Additionally, the new subsections (3) and (4) provide that where approval has not been obtained and the destruction causes structural damage to a building, then the emergency commander or police officer must, as soon as reasonably practicable, inform an assistant commissioner of the damage.

This provision will ensure that, where practicable, a senior police officer of at least assistant commissioner rank is advised prior to the destruction of an explosive that is likely to cause structural damage to a building. Where such approval is not practicable, the police officer is

to inform the senior police officer as soon as reasonably practicable where structural damage has been caused.

Clause 35 Insertion of new pt 2, div 4

Clause 35 inserts new Division 4 (Extraordinary emergency powers) into Part 2 (Emergency situation) of the PSPA to provide police with the power to control movement of persons; search a person without warrant; require name, address and date of birth; collect and use biometric information; and require access information to enable a search to be conducted on an electronic device. The purpose of these powers is to minimise the risk to public safety and provide police with powers to effectively manage and resolve significant emergency situations involving hostages, armed offenders and IED. The amendments are reflective of the powers available during a declared terrorist emergency under Part 2A of the PSPA and provide a level of consistency in the powers police have to respond to these critical incidents. The amendment also enables a smoother transition from an emergency situation to a terrorist emergency upon establishing the incident involved terrorism. However, not all incidents will necessitate the use of the powers, for example a siege situation only involving a person threatening self-harm or a hostage situation only involving a few persons and police can distinguish the offender from the victims.

Section 8AS (Power to authorise exercise of extraordinary emergency powers) sets out the circumstances when the exercise of extraordinary emergency powers can be authorised by the emergency commander.

Subsection 8AS(1) restricts the ability of an emergency commander to authorise the use of the powers to circumstances where:

- an emergency situation has been declared under section 5 of the PSPA; and
- the emergency commander is satisfied on reasonable grounds that the emergency situation involves or may involve an explosive, or that a person's life or safety is seriously endangered by an act of another person, for example, a hostage incident; and
- the emergency commander is satisfied on reasonable grounds that the use of one or more of the powers is necessary to effectively deal with the emergency due to the scale or complexity of the situation.

Subsections 8AS(2) and (4) restrict the authorised area within which the emergency commander can authorise the use of the extraordinary emergency powers to be the smallest area necessary to deal with the emergency situation and within the area specified for the emergency situation.

Subsection 8AS(3) ties the exercise of stated extraordinary emergency powers is subject to section 8AZ (Grounds for exercise of power) which requires that the individual officers can only exercise an authorised power if the officer is satisfied that it is necessary.

Subsection 8AS(5) enables the area specified by the emergency commander for the exercise of extraordinary emergency powers to be a specified area surrounding a moving activity, such as a stated distance around a stated person travelling by foot or vehicle, or a stated vehicle or vessel. This assists in keeping the authorisation area to be the smallest area necessary to deal with the emergency and also negates the need for the emergency commander to continually change the description of the authorised area for the exercise of extraordinary emergency powers. This will also assist police in responding rapidly to the emergency once the person or vehicle is located without having to wait for the authorisation of the use of the powers to be made, or in a location which minimises the risk posed to the community, police or the offender.

Section 8AT (Steps after giving extraordinary emergency authorisation) sets out what an emergency commander must do following the giving of an extraordinary emergency authorisation. Section 8AT requires the emergency commander, as soon as is reasonably practicable after giving the authorisation, to notify an assistant commissioner of the authorisation and note on the emergency certificate when the authorisation was given, the authorisation area for the exercise of powers, the powers that may be used and the circumstances necessitating the authorisation.

Section 8AU (Changes to extraordinary emergency authorisation) enables and sets out when and how, the emergency commander can change the area in which the extraordinary emergency powers may be exercised and/or the circumstance relevant to the giving of the authorisation.

Section 8AV (When extraordinary emergency authorisation ends) sets out the circumstances when an extraordinary emergency authorisation ends.

Section 8AW (When extraordinary emergency authorisation must be revoked) prescribes when an emergency commander must revoke an extraordinary emergency authorisation. Subsection 8AW(2) sets out what actions the emergency commander must undertake following the revocation of the authorisation under subsection 8AW(1).

Section 8AX (Effect if extraordinary emergency authorisation ends because of terrorist emergency) sets out the transitional arrangements in relation to the exercise of specific powers under an extraordinary emergency authorisation, including seized items and the taking and retention of biometric information, where the incident transitions from an emergency situation under Part 2 of the PSPA to a terrorist emergency under Part 2A of the PSPA.

Section 8AY (Application of subdivision) applies subdivision 2 (Exercise of extraordinary emergency powers) in circumstances where an extraordinary emergency authorisation is in effect for an emergency situation.

Section 8AZ (Grounds for exercise of power) establishes the grounds for an emergency situation officer to exercise an extraordinary emergency power.

Subsection 8AZ(1) prescribes when and for what purpose an emergency situation officer may exercise an extraordinary emergency power.

Subsection 8AZ(2) provides that an emergency situation officer may use force that is reasonably necessary when exercising an extraordinary emergency power.

Section 8AZA (Power to control movement of persons) provides power for an emergency situation officer to give directions to persons about entering, going to or staying in an authorisation area for an extraordinary emergency authorisation.

Subsection 8AZA(1) sets out to whom and when the section applies to a person.

Subsection 8AZA(2) prescribes the directions that an emergency situation officer may give to the person.

Subsection 8AZA(3) requires an emergency situation officer to ensure a direction given under the section is withdrawn, when the direction is no longer reasonably necessary for a purpose specified in section 8AZ(1)(a).

Subsection 8AZA(4) clarifies that a person who is given a direction under this section is not under arrest or in custody for the purposes of the PPRA.

Subsection 8AZA(5) clarifies that a direction given under this section is not an enforcement act for the purposes of the PPRA.

Section 8AZB (Power to search a person without a warrant) provides an emergency situation officer, during an emergency situation and within the authorisation area for the exercise of extraordinary emergency powers, with the power to stop, detain and search any person, and anything in their possession, for anything relevant to the emergency situation.

Subsection 8AZB(1) limits the use of the search power to persons who are located within the authorisation area for the exercise of extraordinary emergency situation powers.

Subsection 8AZB(2) prescribes the search powers an emergency situation officer may exercise. The examples make it clear that the power to search anything in a person's possession includes the power to search laptops, tablet computers and mobile phones. Note that section 8AZF (What power to search or seize a storage device includes) clarifies that the power to search a storage device, which includes mobile phones and tablet computers, includes the power to search information stored on the device or accessible from the device. For example, messages sent from a messaging application or photographs accessible from the device but stored on a remote server.

Subsection 8AZB(3) sets out the seizure powers.

Subsection 8AZB(4) applies the safeguards contained in Chapter 20 of the PPRA to searches conducted under this section.

Subsections 8AZB(5) and (6) clarify that powers exercised under this section are not enforcement acts for the purposes of the PPRA, unless the search of a person involves the removal of clothing other than outer garments. Exempting searches, with the exception where the search involves the removal of clothing other than outer garments, is necessary to ensure police can rapidly and effectively respond to the emergency situation without significant time delays caused by police having to record every search in an enforcement register. Enabling police to quickly search persons minimises the risk of further harm to persons, assists police in identifying potential offenders and identifying anything that may assist in the management or resolution of the emergency.

Section 8AZC (Power to require name, address and date of birth) provides an emergency situation officer with the power to require a person's correct name, address and date of birth and evidence of the correctness of the details provided in specified circumstances.

Section 8AZD (Power to collect biometric information) provides an emergency situation officer with the power to take and use a person's biometric information to establish or confirm the identity of the person who is in the authorisation area for the exercise of extraordinary emergency powers.

Subsection 8AZD(1) restricts the power of an emergency situation officer to take a person's photograph or electronically take their fingerprints to persons who are located in the authorisation area for the use of extraordinary situation powers.

Subsection 8AZD(2) provides an emergency situation officer with the power to photograph a person who is located in the authorisation area for the purpose of identifying the person.

Subsections 8AZD(3) and (4), enable an emergency situation officer, in the prescribed circumstances, to take a person's fingerprints electronically and use the person's photographs and fingerprints in a biometric identification system to establish or confirm the person's

identity. The use of a person's photograph or fingerprints is not limited to within the authorisation area.

Subsections 8AZD(5) and (6) prescribe the destruction requirements for a person's biometric information.

Section 8AZE (Power to require access information) provide emergency situation officers with the power to require a person to provide access codes or assistance (fingerprint lock) to operate the storage device, which includes mobile phones and tablet computers, or to access information accessible from the device to facilitate the search of a storage device under 8AZB. It also includes the power to require a person to provide an encryption key to access information that has been encrypted.

Subsection 8AZE(1) sets out how the section applies. For the purposes of subsection 8AZE(1)(c), the person's possession of the storage device or if they have been seen using the device, is sufficient for the emergency situation officer to form a reasonable suspicion that the person has, or is able, to provide access information.

Subsection 8AZE(2) provides the emergency situation officer with the power to require the person to give access information or any other information or assistance or help to access or read information stored on the storage device or accessible from the storage device. Access information includes any password, whether alphanumeric or symbols, a passphrase, pattern and encryption key. Assistance includes the person providing access to the device through the use of a biometric system, for example, a fingerprint.

Subsection 8AZE(3) places a requirement on the emergency situation officer to inform the person that they must comply with the requirement even though complying may incriminate themselves or expose themselves to a penalty.

Subsection 8AZE(4) creates an offence for a person to fail to comply with the requirement.

Subsection 8AZE(5) excludes self-incrimination as a reasonable excuse for failing to comply with the requirement.

Subsection 8AZE(6) enables the storage device to be seized if the person fails to comply with the requirement.

Subsection 8AZE(7) applies the safeguards contained in Chapter 20 of the PPRA if the device is seized pursuant to subsection 8AZE(6).

Subsection 8AZE(8) clarifies that the seizure of the storage device is not an enforcement act for the purposes of the PPRA.

Section 8AZF (What power to search or seize a storage device includes), without limiting sections 8AZB and 8AZE(6), articulates what the search or seizure powers under those sections include.

Subsection 8AZF(a) enables use of the storage device to gain access to information stored on the device or accessible from the device, such as information accessible via an application or stored on a cloud.

Subsection 8AZF(b) enables examination of information stored on the device or accessible from the device to find out whether the information may be relevant to an emergency. For example, reviewing text messages sent or received and viewing pictures posted to Facebook.

Subsection 8AZF(c) enables use of a device to copy, either directly or by sending the information to a device at another location to make a copy, of the information located on the person's storage device or accessible from the person's storage device that is relevant to an emergency or evidence of an offence.

Subsection 8AZF(d) enables use of the storage device to send a copy of information that may be relevant to the emergency or any other associated emergency, for the purpose of managing or resolving the emergency. Where information is located which is relevant to the emergency and is necessary for managing or resolving the emergency, such as photographs of offenders, persons being held hostage or the physical layout of the premises, this subsection enables that information to be immediately downloaded, copied or electronically transferred through the operation of the device.

Section 8AZG (Report to Minister) establishes the commissioner's reporting requirements about the exercise of powers under an extraordinary emergency authorisation.

Subsection 8AZG(2) prescribes the information that must be included in the report.

Subsection 8AZG(3) enables this report to form part of a report under section 8R about a terrorist emergency, if a terrorist emergency was subsequently declared under Part 2A in relation to the emergency situation.

Section 8AZH (Tabling of report in Legislative Assembly) requires the Minister to table a report in the Legislative Assembly on the exercise of extraordinary emergency powers within six months of the extraordinary emergency authorisation ending.

Subsection 8AZH(2) sets out the information that must be included in the report.

Subsection 8AZH(3) prescribes the information that is not required to be in the report.

Subsection 8AZH(4) enables the report to form part of a report under section 8S about a terrorist emergency, if a terrorist emergency was subsequently declared under Part 2A in relation to the emergency situation.

Clause 36 Amendment of s 8N (Power to search a person without a warrant)

Clause 36 redrafts section 8N to clarify that the power to search a person includes a power to search anything in their possession including devices such as smart phones, laptops and tablet computer. Note that section 8PAC (What power to search or seize a storage device includes) clarifies that the power to search a storage device, which includes mobile phones and tablet computers, includes the power to search information stored on the device or accessible from the device. For example, messages sent from a messaging application or photographs accessible from the device but stored on a remote server.

Subclauses (2) and (3) amend cross references due to the redrafting of the section and subclause (4) renumbering the subsections.

Clause 37 Insertion of new ss 8PAA-8PAC

Clause 37 inserts new sections 8PAA to 8PAC into subdivision 1 of division 2 of Part 2A of the PSPA.

Section 8PAA (Power to collect biometric information) provides a terrorist emergency officer with the power to take and use a person's biometric information to establish or confirm the identity of the person who is in, about to enter, or who a terrorist emergency officer reasonably suspects has recently left the declared area for the terrorist emergency.

Subsection 8PAA(2) provides a terrorist emergency officer with the power to photograph a person who is in, about to enter, or who a terrorist emergency officer reasonably suspects has recently left, the declared area for the terrorist emergency for the purpose of identifying the person.

Subsections 8PAA(3) and (4), enables a terrorist emergency officer, in the prescribed circumstances, to take a person's fingerprints electronically and use the person's photographs and fingerprints in a biometric identification system to establish or confirm the person's identity. The use of a person's photograph or fingerprints is not limited to within the authorisation area.

Subsections 8PAA(5) and (6) prescribe the destruction requirements for a person's biometric information.

Section 8PAB (Power to require access information) provides a terrorist emergency officer with the power to require a person to provide access codes or assistance (fingerprint lock) to operate the storage device, which includes mobile phones and tablet computers, or to access information accessible from the device to facilitate the search of a storage device under 8N (Power to search a person without a warrant) or 8P (Power to search vehicle without warrant). It also includes the power to require a person to provide an encryption key to access information that has been encrypted.

Subsection 8PAB(1) sets out how the section applies. For the purposes of subsection 8PAB(1)(c), the person's possession of the storage device, if they have been seen using the device or if the person is the only person in the vehicle where the device is located, is sufficient for the terrorist emergency officer to form a reasonable suspicion that the person has, or is able, to provide access information.

Subsection 8PAB(2) provides the terrorist emergency officer with the power to require the person to give access information or any other information or assistance or help to access or read information stored on the storage device or accessible from the storage device. Access information includes any password, whether alphanumeric or symbols, a passphrase, pattern and encryption key. Assistance includes the person providing access to the device through the use of a biometric, for example, a fingerprint.

Subsection 8PAB(3) places a requirement on the terrorist emergency officer to inform the person that they must comply with the requirement even though complying may incriminate themselves or expose themselves to a penalty.

Subsection 8PAB(4) creates an offence for a person to fail to comply with the requirement.

Subsection 8PAB(5) excludes self-incrimination as a reasonable excuse for failing to comply with the requirement.

Subsection 8PAB(6) enables the storage device to be seized if the person fails to comply with the requirement.

Subsection 8PAB(7) applies the safeguards contained in Chapter 20 of the PPRA if the device is seized pursuant to subsection 8PAB(6).

Subsection 8PAB(8) clarifies that the seizure of the storage device is not an enforcement act for the purposes of the PPRA.

Section 8PAC (What power to search or seize a storage device includes), without limiting sections 8N, 8P and 8PAB(6), articulates what the search or seizure powers under those sections include.

Subsection 8PAC(a) enables use of the storage device to gain access to information stored on the device or accessible from the device, such as information accessible via an application or stored on a cloud.

Subsection 8PAC(b) enables examination of information stored on the device or accessible from the device to find out whether the information may be relevant to an emergency. For example, reviewing text messages sent or received and viewing pictures posted to Facebook.

Subsection 8PAC(c) enables use of a device to copy, either directly or by sending the information to a device at another location to make a copy, of the information located on the person's storage device or accessible from the person's storage device that is relevant to an emergency or evidence of an offence.

Subsection 8PAC(d) enables use of the storage device to send a copy of information that may be relevant to the terrorist emergency, or any other associated emergency, for the purpose of managing or resolving the emergency. Where information is located which is relevant to the emergency and is necessary for managing or resolving the emergency, such as photographs of offenders, persons being held hostage or the physical layout of the premises, this subsection enables that information to be immediately downloaded, copied or electronically transferred through the operation of the device.

Clause 38 Amendment of s 8PD (Application of particular provisions to terrorist emergency officer)

Clause 38 amends section 8PD by including sections 8PAA to 8PAC in the powers that apply to a terrorist emergency officer under subdivision 1A (Terrorist emergency officer powers for declared evacuation areas).

Clause 39 Insertion of new pt 3B

Clause 39 inserts Part 3B (Surveillance devices) into the PSPA. Part 3B contains new sections 43E to 43J to enable a commissioned officer to authorise the use of surveillance during a declared emergency under the PSPA.

Section 43E (Power to authorise use of surveillance device) enables a commissioned officer to authorise the use of a surveillance device to reduce a serious risk to the life, health or safety of a person during an emergency situation, terrorist emergency or chemical, biological or radiological emergency.

Subsection 43E(1) prescribes the basis upon which a commissioned officer may authorise the use of a surveillance device. The risk to life, health or safety extends to risk posed to police in responding to, or resolving, the emergency.

Subsection 43E(2) restricts the authorisation for the use of a surveillance device to within the emergency area for the relevant emergency and only during the operational period of the emergency.

Subsections 43E(4) and (5) set out what a surveillance device authorisation may authorise by application of specified provision of section 332 (What a surveillance device warrant authorises) of the PPRA.

Subsection 43E(6) enables the use of the surveillance device and any enhancement equipment to retrieve the device or equipment.

Subsection (7) ensures that section 43E does not require a surveillance device authorisation in circumstances where the use of the surveillance device by a police officer would not be an offence.

Subsection 43E(8) defines the specified words for the purposes of the section.

Section 43F (Surveillance device authorisation authorises use of existing device) clarifies a surveillance device authorisation that authorises the use of a surveillance device also authorises the use of an existing device on the premises, in the possession of a person or in or on a vehicle, object or class of vehicle or object as a surveillance device.

Subsection 43F(3) clarifies that the use of the existing device as a surveillance device under a surveillance device authorisation includes a power to do anything that is necessary to or in relation to the existing device to enable it to be used as a surveillance device. This includes the covert manipulation of the device either physically or remotely and including the remote installation of software onto the device to enable the device to be used as a surveillance device.

Subsection 43F(3)(b) enables a surveillance device authorisation to place conditions on the use of an existing device as a surveillance device.

Section 43G (When surveillance device authorisation ends) sets out the circumstances when a surveillance device authorisation ends.

Subsections 43G(2) and (3) clarify that despite the surveillance device authorisation ending pursuant to subsection (1), the authorisation can authorise the retrieval of the surveillance device and any enhancement equipment and operation of the device and equipment for the purposes of retrieval. However, subsection 43G(3) prohibits the retrieval of the surveillance device and equipment in circumstances where covert entry into a building is required to retrieve the device and equipment. If covert entry to a building is required, an application for a retrieval warrant under section 336 of the PPRA would need to be made.

Subsection 43G(4) enables the retrieval of the device and equipment from premises if the presence of the police officer on the premises is not an offence. For example, a crime scene has been declared for the premises.

Section 43H (When surveillance device authorisation must be revoked) sets out when the surveillance device authorisation must be revoked by a commissioned officer.

Section 43I (Report about surveillance device authorisations) requires the commissioner to report annually to the Minister on the number of authorisations given for the financial year. The Minister is then required to table the report in the Legislative Assembly within 14 sitting days after receiving the report. This report may form part of the commissioner's report on the use of surveillance devices and authorisations under section 358 (Annual reports) of the PPRA.

Section 43J (Register of surveillance device authorisations) requires the commissioner to keep a register of surveillance device authorisations and prescribes the information to be recorded in the register. This register may form part of the register of covert acts under Division 2, Part 2 of Chapter 21 (Administration) of the PPRA.

Clause 40 Insertion of new s 47C

Clause 40 inserts new section 47C (Use of particular evidence in proceedings) into the PSPA to limit the use of some evidence in criminal proceedings obtained as a result of a search of a storage device following compliance with an access requirement under sections 8AZE or 8PAB of the PSPA.

Subsection 47C(1) sets out the circumstances when the section applies to evidence in a criminal proceeding.

Subsection 47C(1)(d) excludes the section from applying to use of evidence in criminal proceedings that relate to any emergency situation declared under section 5 or any terrorist emergency. This subsection ensures that evidence obtained can be used in criminal proceedings for any declared emergency situation or terrorist emergency and not just the emergency situation or terrorist emergency that directly related to the information access requirement being made. For example, in circumstances where the evidence relates to another emergency situation that is the subject of a previous or simultaneous declaration, the evidence obtained from one declared emergency situation can be used in a criminal proceeding relating to the other declared emergency situation.

Subsection 47C(2) ensures that the prescribed information, located as a result of chance discovery, is not admissible in evidence unless the offence to which the proceeding relates is either an indictable offence with a maximum penalty of at least 7 years imprisonment or an offence against section 218B (Grooming children under 16) of the Criminal Code. The section does not limit the derivative use of the information that is inadmissible as evidence in criminal proceedings.

Subsection 47C(3) clarifies that section 47C applies despite section 47B (Use of information obtained under Act).

Clause 41 Amendment of s 50 (Powers unaffected by failure to comply with formal provision)

Clause 41 amends section 50 of the PSPA by redrafting subsections 50(a) and (b) to extend the application of the section in relation to non-compliance with new sections 8AAA(2) or (4) (requirement for destruction of explosives), 8AT (Steps after giving extraordinary emergency authorisation) or 8AW(2) (When extraordinary emergency authorisation must be revoked). The amendment changes the existing cross reference in subsection 50(a) from section 5(2) to 5(3) as a result of clause 30 renumbering section 5. Subsection 50(a) is also redrafted to apply the section to section 8AE(4)(b) (Making of information requirement) for an emergency situation in line with the existing application of the section to section 8AE(4)(b) for a terrorist emergency.

Clause 42 Amendment of schedule (Dictionary)

Clause 42 amends the dictionary contained in the schedule to clarify new terms used as a result of amendments made to the PSPA.

Subclause 42(2) amends the definition of ‘emergency situation’ by removing the word ‘device’ from paragraph (e) to ensure that an emergency situation can be declared in relation to an explosive and not just an explosive device. Homemade explosives located may not always be incorporated into an explosive device.

Part 4 Amendment of Terrorism (Preventative Detention) Act 2005

Clause 43 Act amended

Clause 43 provides that Part 4 amends the *Terrorism (Preventative Detention) Act 2005*.

Clause 44 Amendment of s 3 (Object)

Clause 44 is a consequential amendment to section 3 of the TPDA as a result of clause 45 amending section 8 (Basis for applying for, and making, a preventative detention order).

Clause 45 Amendment of s 8 (Basis for applying for, and making, a preventative detention order)

Clause 45 amends section 8 of the TPDA to replace the ‘imminence test’ for the issue of a PDO with a threshold test that focuses on the capability of a person to commit a terrorist act, and which could occur, within the next 14 days. This amendment replicates amendments made to the Commonwealth PDO scheme in November 2016 and captures the essence of the original imminence test by having both a preparedness component and a temporal component. The preparedness component is that the terrorist act is capable of being carried out. The temporal component is that it could occur within 14 days. The ‘imminence test’ imposed impractical constraints on police by requiring that the terrorist act would occur in the next 14 days. Police may be aware of individuals who intend to commit a terrorist act and who possess the necessary ability to carry out the attack, for example, the persons have acquired weapons, but who have no clear timeframe as to when the act is intended to be undertaken. The amendment ensures operational utility between the Commonwealth’s and Queensland’s PDO Schemes.

Clause 46 Amendment of s 41 (Power to enter premises)

Clause 46 amends section 41 of the TPDA to remove legislative impediments which may impact on the ability for police to rapidly respond and take a person into custody under a PDO.

Subclause 46(1) is a technical amendment to redraft the subsection in line with contemporary drafting practices.

Subclause 46(2) reduces the threshold for entry into the premises from ‘believes on reasonable grounds’ to ‘suspects on reasonable grounds’ that the person, the subject of the PDO, is on the premises.

Subclause 46(3) omits subsections 41(2) and (3) to remove the restrictions on entry of a dwelling between 9pm and 6am to take the person into custody under the PDO. As a result of this amendment, subclause 46(3) also removes the definitions of ‘boat’ and ‘dwelling’ which are no longer necessary. The subclause retains the definition for ‘premises’.

Part 5 Other amendments

Clause 47 Acts amended

Clause 47 provides that Part 5 amends the Acts it mentions in schedule 1.

Part 6 Repeal

Clause 48 Repeal

Clause 48 repeals the *Queensland Police Welfare Club Act 1970*.

Schedule 1 Other amendments

Schedule 1 makes minor consequential and technical amendments to the PPRA and the PSPA.