

# Police Powers and Responsibilities and Other Legislation Amendment Bill 2013

## Explanatory Notes

### Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2013.

### Policy objectives and the reasons for them

#### *Blue tape reduction*

In support of the Government's commitment to revitalise front line services, the Queensland Police Service (QPS) conducted a review to identify initiatives with the potential to reduce regulatory burden and increase operational efficiency. A range of initiatives were identified through a review process based on the following criteria: a focus on public benefit, removing time consuming or non-essential rules or processes impacting operational policing efficiencies and identifying opportunities to reduce regulatory burden. The proposed amendments benefit the community by improving the efficiency of the delivery of police services and the efficiency of the use of police resources.

#### *Out-of-control events*

The Bill includes a scheme to tackle the increasing occurrences of out-of-control events. These events are at the more serious end of the scale of anti-social behaviour. They can involve large groups of people whose conduct results in community members fearing violence to themselves and their families as well as property being damaged. Many participants of these out-of-control events become subject to mob mentality to the point that bottles, bricks and even fence palings have been thrown at police officers and community members.

Whilst police currently have powers to deal with a riot or an unlawful assembly, the conduct of people at out-of-control events may not reach this level of unlawful behaviour or may not be undertaken with the requisite common purpose. Also, whilst police officers have powers to deal with breaches of the peace, public nuisance offences and affray, none of these offences are targeted at persons who organise events which become out-of-control and are frequently undertaken for financial gain.

Parents responsible for either allowing their child to hold the event or contributing to the out-of-control event through inadequate supervision cannot be held accountable under current laws. Furthermore, existing noise abatement and move-on powers are not applicable to all instances of out-of-control events.

The Bill enables police officers, following authorisation for use of out-of-control event powers, to undertake actions reasonably necessary to prevent an event from becoming an out-of-control event in circumstances where it is reasonably suspected the event is likely to become an out-of-control event.

A typical out-of-control event is characterised in part by the large number of people attending, many of whom are under 18 years of age. The most common events of this type are generally referred to as 'open house parties' or 'Facebook parties' due to the use of social media to promote or advertise the event. People attending bring their own alcohol, which is consumed to excess, leading to alcohol fuelled violence and other anti-social or criminal conduct.

Out-of-control events impose a heavy burden on police resources and significantly impede the delivery of policing services to the remainder of the community. Resourcing impacts are not limited to the event location, but extend to the broader locality as attendees disperse and continue to commit offences and display anti-social behaviour. This includes areas where groups of people re-congregate such as parks or transport hubs. It is not uncommon for this sort of anti-social behaviour to result in excessive noise and party goers fighting in the street, smashing bottles and screaming abuse at local residents.

Whilst police have always dealt with anti-social events, the ever increasing size, frequency and societal impact of these out-of-control events in recent times has necessitated the development of specific legislation. Such legislation is required to provide police with the power to effectively respond to these events and to provide a greater deterrence to overcome the celebrity or profit individuals seek through organising such events.

### ***Evade police***

Section 754(2) of the *Police Powers and Responsibilities Act 2000* (PPRA) provides for the offence of failing to stop a vehicle when the driver of the vehicle has been directed to do so by a police officer. The offence of 'evading police' was created as an alternative to pursuits and to ensure that a sufficient deterrent exists following the decision of the QPS to move towards a more restrictive police pursuit policy.

Prior to the last state election on the 24 March 2012, the policy document *First 100 Days Action Plan* was released by the Government. That document expressed the Government's commitment to introduce legislation within the first 100 days of office to impose a minimum penalty of \$5000 and two years disqualification for the offence of evading police. The Government considered the existing penalties were not commensurate with the risk posed by those who evade police. This commitment was met on 29 August 2012 by the *Criminal Law Amendment Act 2012* which amended section 754(2) of the PPRA to allow for a minimum penalty of 50 penalty

units (\$5500) by way of fine and a two year disqualification from holding or obtaining a driver's licence.

On 6 August 2013, the Cairns Supreme Court delivered a decision in the matter of *Commissioner of Police Service v Magistrate Spencer and Ors* [2013] QSC 202. The decision suggests that alternative penalties for evading police offences could include a range of sentencing options, including probation or suspended sentences. Sentencing options such as these, particularly in circumstances where such an option is not comparable with a fine of 50 penalty units, undermines the Government's commitment to ensuring penalties for those who evade police are commensurate with the risk posed to the community.

The Bill fulfils the Queensland Government's commitment to revitalise front line services.

## **Achievement of policy objectives**

The Bill achieves the objectives by amending the following Acts:

- *Police Powers and Responsibilities Act 2000*; and
- *Evidence Act 1977*.

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

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

## **Estimated cost for government implementation**

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

## **Consistency with fundamental legislative principles**

Fundamental legislative principles considerations relating to the Bill are addressed below.

### ***Blue tape reduction***

Clause 13 that allows for the issue of a 'notice' requiring a financial institution to provide information in relation to whether a person holds an account and the account name or number, may be considered to be an infringement of an individual's right to privacy in respect of their financial records. However, the information compelled by the amendment is limited to the account name or the account number. The power to issue the 'notice' does not circumvent the need for a police officer to obtain a search warrant to obtain financial or transactions details. Rather, it enables police to gather the necessary information needed for a police officer to obtain a search warrant.

Furthermore, the issue of the 'notice' is limited to police officers of at least the rank of Inspector and the officer can only compel the institution to provide the information if the officer has reasonable grounds for believing the information may be relevant to an investigation of, or the prosecution of a person, for an offence against the law of the State.

The information being sought is not dissimilar to the information that a financial institution can already provide to a police officer pursuant to section 249 of the *Criminal Proceeds Confiscation Act 2002*. The principal difference is that the financial institution is compelled to provide the information under the amendments with a penalty provision for non-compliance. The penalty provision is balanced by the inclusion of a defence provision for non-compliance.

Clause 14 expands what a surveillance device warrant authorises to include entry into a place to undertake preparatory acts for the installation of a surveillance device. The amendment might be seen to infringe the rights and liberties of individuals as it results in an extension to what a police officer may currently do under a surveillance device warrant. It allows police officers to enter premises and take photographs and video for the purposes of planning the installation of a surveillance device.

The proposal is however balanced by the fact that entry into the premises remains under the authority of a surveillance device warrant issued by a Supreme Court judge and subject to the current safeguards of the chapter. These safeguards include the Public Interest Monitor (PIM) continuing to have involvement in the application process and requiring a report to the issuer, or PIM to be made regarding the execution of the warrant. This process is justified in the public interest as it is aimed at minimising the risks to officers acting under the surveillance device warrant and increases the potential success of the operation by minimising the time and equipment necessary to install the surveillance device and lessening the chance of the device being discovered.

Clause 20 allows the Commissioner to use non-government laboratories to analyse DNA samples. This Clause may be seen to breach the privacy of individuals. However, the process involved with the analysis of DNA samples does not, and will not, include any personal particulars or identifying information of the person. A DNA sample is provided with a unique barcode that remains the reference point for the sample. Upon analysis of the sample, the laboratory will send the profile (a series of numerical indicators) to the QPS, with the barcode. The QPS will then upload the profile information onto the National Criminal Investigation DNA Database. Because of the de-identification of the sample and the profile, there are no privacy implications for the proposal.

Furthermore, the Commissioner of Police may only enter into an arrangement under section 489 'Power to analyse etc. DNA samples' with the chief executive (health) or a forensic laboratory that is accredited by the National Association of Testing Authorities, Australia or another entity which is appropriately qualified to accredit a laboratory for compliance with the international standard ISO/IEC 17025:2005. The prescribed standard is set by the International Organisation for Standardisation. This body is composed of representatives of various national standards organisations and exists for the purpose of setting internationally uniform standards in a wide range of

fields. The purpose of these standards is to ensure that agreed levels of practice, quality and service are provided by those industries certified as compliant.

The power for the Commissioner to enter into an arrangement with a non-government forensic laboratory is necessary to ensure business continuity and service delivery in the analysis of DNA samples, while maintaining the current required standards. This approach is consistent with the government's contestability agenda.

### ***Out-of-control events***

Generally, the creation of the out-of-control event scheme may be seen to infringe the rights and liberties of individuals. Due to the fear and harm that these types of events cause to the general community, the alcohol fuelled violence between event attendees and the attacks directed at police responding to the events, the Bill achieves an appropriate balance between the rights and liberties of individuals and the safety of the broader community. Many of the provisions are not new, but are based on existing legislation that has been tailored to specifically deal with out-of-control events.

Clause 4, which introduces a new Part to address out-of-control parties, provides a power of entry to a place without warrant for a police officer. This power may be seen to breach the rights and liberties of an individual due to entry of the premises not being undertaken under a warrant issued by a judge or judicial officer. The power of entry is justified due to the need for police to immediately respond to the events to prevent the continuation of offences and minimise the harm caused by these events to the community and attendees themselves. Entry is also required to identify the person organising the event and to give relevant directions. The power of entry is consistent with existing powers to deal with noise abatement under section 581 'Powers of police officers to deal with excessive noise' of the PPRA and powers relating to nuisance in moveable dwellings under section 593 'Power to enter moveable dwellings' of the PPRA.

Due to the significant impact these events have on the broader community, the power achieves an appropriate balance between the rights of the individual and the rights and safety of the community in general.

### ***Evade police***

Clause 39 of the Bill amends section 754 'Offence for driver of motor vehicle to fail to stop motor vehicle' of the PPRA in relation to the offence for failing to stop a motor vehicle when the driver of the vehicle has been directed to do so by a police officer.

Clause 39 amends section 745 of the PPRA to provide that the only alternate minimum penalty that a court can impose instead of the 50 penalty units is 50 days imprisonment to be served wholly in a correctional services facility. The amendment specifically excludes the imposition of alternate penalties or sentencing options, such as probation or a suspended sentence, in lieu of the minimum penalty. Furthermore, the amendments also expressly overrides the discretion of the Court under section 160B of the *Penalties and Sentences Act 1992* to order the release of a person on

parole earlier than the minimum period of 50 days if the person is sentenced to a period of imprisonment.

Whilst the amendment may be seen as potentially interfering with the rights and liberties of individuals, it is justified and proportionate when considered against the background of the harm caused by those who evade police. The amendment supports the Government's commitment of ensuring that penalties for offenders that evade police are commensurate with the risk posed to the community.

## **Consultation**

Consultation was undertaken with the following government departments during the development of the Bill:

- Department of Justice and Attorney-General;
- Department of the Premier and Cabinet;
- Queensland Health;
- Department of Communities, Child Safety and Disability Services;
- Queensland Treasury and Trade;
- Department of Transport and Main Roads;
- Office of Best Practice Regulation.

Consultation was also undertaken with the Australian Bankers Association and the Customer Owned Banking Association in relation to clause 13 'Insertion of new ch 7, pt 7' Accessing account information.

## **Consistency with legislation of other jurisdictions**

Western Australia is the only jurisdiction with comparable legislation to Queensland's out-of-control event scheme inserted into the PPRA by clause 4. The significant differences between the two jurisdictions are:

- Queensland has an offence for persons refused entry to an event causing an event to become an out-of-control event ;
- the inclusion of a circumstance of aggravation in the Queensland scheme where a person organising an event is not an occupant of the place and has no lawful authority or permission to be at the place where the person is holding the event; and;
- the ability of a Queensland court to make cost orders for the policing response against a parent or guardian in circumstances where a child is found guilty of an offence under the scheme and the court considers that the parent or guardian contributed to the offence occurring by not adequately supervising the child.

## Notes on provisions

### Part 1 Preliminary

#### 1. Short title

Clause 1 provides for the citation of the Act.

#### 2. Commencement

Clause 2 provides that all clauses of the Bill, other than clauses 4, 6, 42(2), (3), (4), (6) and (7), commence on assent. Clauses 4, 6, 42(2), (3), (4), (6) and (7) will commence by proclamation.

### Part 2 Amendment of the *Police Powers and Responsibilities Act 2000*

#### 3. Act amended

Clause 3 provides that Part 2 amends the *Police Powers and Responsibilities Act 2000*.

#### 4. Insertion of new ch 2, pt7

Clause 4 introduces a new Chapter 2 Part 7 to address out-of-control events.

New section 53BA clarifies that the out-of-control event powers are in addition to other powers a police officer may use in response to an out-of-control event and are neither limited by, nor limit, other powers a police officer may use under any Act.

New section 53BB 'What is an *out-of-control event*' of the PPRA sets out the criteria of how an event is determined to be out-of-control. To be an out-of-control event, the event must satisfy, what is in effect, a 3 step assessment. Firstly, it must be a gathering of 12 or more persons. Secondly, at least 3 persons who are attending the event or in the vicinity of the event and are reasonably suspected of either leaving the event or intending to attend the event, engage in out-of-control conduct. The 3 or more persons engaging in out-of-control conduct do not have to be acting in concert, nor does the out-of-control conduct need to occur simultaneously. Finally, the out-of-control conduct engaged in by these persons, taken together, is to be of such a nature that the conduct causes or would likely cause, any person at the event or in the vicinity of the event, any one of the resultant harms or impacts on persons or property, set out in subsection 53BB(1)(c).

Subsection 53BB(2) excludes certain events from the out-of-control event scheme. These excluded events include events held on premises subject to specified licences and permits issued under the *Liquor Act 1992*, authorised public assemblies, events held at major sports facilities and events that are primarily for the purposes of political advocacy, protest or industrial action. This subsection also enables other events to be excluded from the scheme by regulation.

Subsection 53BB(3) provides that in determining if an event is an out-of-control event, it is not necessary for there to be any person, or likely to be any person, at or in the vicinity of the event harmed or impacted in a way set out in subsection 53D(1)(c). Furthermore, due to this provision, in prosecuting an offence under this new Part, the prosecution would not be required to prove that any person at the event or in the vicinity of the event, was harmed or impacted, or was likely to be so harmed or impacted, in a way set out in subsection 53BB(1)(c).

New section 53BC 'What is out-of-control conduct' defines the type of conduct that will be considered to be 'out-of-control' for the purposes of the out-of-control event scheme. The out-of-control conduct reflects the anti-social and violent behaviour commonly displayed by persons at out-of-control events. Although the types of conduct prescribed are similar to offences, a person does not have to be committing an offence to meet the conduct criteria. For example, a person may be behaving in a violent or threatening way in the backyard of a house where the event is being held, and as a result, a neighbour is in fear of violence to a person or property. The behaviour would not be an offence against section 6 'Public nuisance' of the *Summary Offences Act 2005* because the behaviour is not interfering with the peaceful passage through, or enjoyment of, a public place by a member of the public.

New section 53BD 'Other definitions for pt 7' of the PPRA provides definitions for specific terms used in the Part.

New section 53BE 'Authorisation by senior police officer' allows a police officer, of the rank of sergeant or above, to authorise the use of out-of-control event powers. The authorising officer must reasonably believe an out-of-control event is occurring or an event is likely to become an out-of-control event. The authorising officer does not have to be at the event location and can form the reasonable suspicion based on information provided by other police officers. An authorisation remains in effect for 24 hours unless it is sooner cancelled by the authorising officer or another senior police officer.

If an authorising officer approves the use of the out-of-control event powers, subsection 53BE(2) sets out the information that must be contained in the written authorisation. However, whilst subsection 53BE(2) sets out the required information to be recorded, subsection 53BE(3) ensures that an authorisation is not invalid if the authorising officer fails to record, or sufficiently record, the specified information before a police officer exercises an out-of-control event power. However, the proviso is that the senior officer makes the written record at the first reasonable opportunity after an out-of-control event power is exercised under the authorisation.

New section 53BF 'Use of powers only if authorised' provides that a police officer may only act under the Part if an event authorisation has been given and the officer acts in accordance with the authorisation.

New section 53BG 'Taking action for out-of-control event' outlines the powers a police officer may exercise, following authorisation, to prevent an event from becoming an out-of-control event, prevent an out-of-control event from continuing, disperse persons associated with the event and prevent dispersed persons from

regathering at another location, minimise the community impact of an event and identify persons who are organising the event or committing offences under this scheme.

New section 53BH 'Organising an out-of-control event' introduces an offence for a person who organises an event that becomes an out-of-control event. However, if the person organising the event is a child and the parent or guardian permitted the child to organise the event or allowed the event to occur, the parent or guardian is liable for the offence. The maximum penalty for this offence is imprisonment for 12 months or a fine of 110 penalty units (\$12,100).

This section provides a circumstance of aggravation for the organising offence in circumstances where the person organising the event is not an occupant of the place or has no lawful authority or permission to be at the place where the person is holding the event. The maximum penalty is imprisonment for 3 years or a fine of 165 penalty units (\$18,150).

Subsection 53BH(3) provides it is defence to this offence for a person to show they took reasonable steps to prevent the event from becoming an out-of-control event.

New section 53BI 'Causing an out-of-control event' introduces an offence for a person or group of persons, who after being refused entry into the event, engage in prescribed conduct at, or in the vicinity of the event, which results in the event becoming an out-of-control event. The maximum penalty is 12 months imprisonment or 110 penalty units (\$12,100).

Subsection 53BI(2) clarifies that the out-of-control conduct of a person is not considered in isolation. The out-of-control conduct being engaged in by the person is taken together with the conduct of other persons is taken into consideration in determining if the conduct is of such a nature that it causes or would likely cause, any person at the event or in the vicinity of the event, any one of the resultant harm or impact on persons or property, set out in subsection 53BB(1)(c). Furthermore, the out-of-control conduct does not have to be the same type of conduct and does not have to occur simultaneously.

New section 53BJ 'Offence to contravene direction' creates an offence to disobey a direction of a police officer given under the Part, without a reasonable excuse. The maximum penalty for the offence is 12 months imprisonment or a fine of 110 penalty units. The provision provides for a circumstance of aggravation with a maximum penalty of 3 years imprisonment or a fine of 165 penalty units, if in the course of disobeying a direction the person:

- damages or destroys or threatens to damage or destroy any property;
- assaults or threatens to assault any person; or
- throws, releases or places anything in a manner that endangers or is likely to endanger the life, health or safety of any person.

New section 53BK 'Costs order – adult' allows a court to order an adult found guilty of an offence under the Part to pay all or some of the reasonable expenses of, or incidental to, the police response to the event. This includes the costs of police time in minimising the impact of persons dispersing from the event and locality on the

broader community. The court may make such an order upon application of the Commissioner or upon its own volition.

New section 53BL 'Costs order – child' allows a court to order a child offender found guilty of an offence under the Part to pay all or some of the reasonable expenses of, or incidental to, the police response to the event, if the child has the capacity to pay the costs order. The court may make such an order upon application of the Commissioner or upon its own volition.

New section 53BM 'Costs order - parent of child offender' applies if a court considers a child does not have the capacity to pay the reasonable expenses of, and incidental to, the police response to the event. A court may require the parent or guardian to show cause why they should not be ordered to pay all or some of the reasonable costs of the police response. If the court is satisfied:

- the parent may have contributed to the offence happening by not adequately supervising the child; and
- it is reasonable that the parent pay some or all of the expenses of the Commissioner,

the court may order the parent pay some or all of the reasonable costs of the police response.

New section 53BN 'Costs orders and other sentencing' declares that costs orders are in addition to any other sentence and sections 53BL and 53BM as apply in addition to part 7 of the *Youth Justice Act 1992*.

In determining the quantum of the commissioner's reasonable costs including the costs of the police time in minimising the impact of persons dispersing from the event and locality on the broader community, the costing rate shall be in accordance with the rate set out in the Financial Management Practice Manual.

#### **5. Amendment of s 118 (Sale of motor vehicle if not recovered after impounding ends)**

Clause 5 amends section 118 of the PPRA to remove the requirement that notice of the proposed sale of the motor vehicle must be advertised in a newspaper circulating in the locality where the vehicle was impounded. The amendment allows notice of the proposed sale or disposal of a motor vehicle forfeited to the State under section 118 of the PPRA to be made on the police service website. If the owner is known, notice of the proposed sale or disposal of the motor vehicle is given to the owner in writing.

#### **6. Amendment of s 118A (Sale of impounded motor vehicle if driver fails to appear)**

The *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013* inserted Section 118A into the PPRA. Clause 6 amends section 118A to remove the requirement that notice of the proposed sale or disposal is to be advertised in a newspaper circulating in the locality where the vehicle was impounded. The amendment allows notice of the proposed sale or disposal of a motor vehicle forfeited to the State to be made on the police service

website. If the owner is known, notice of the proposed sale or disposal of the motor vehicle is given to the owner in writing. This clause creates consistency in the process for advertising the disposal of property in the possession of the Police Service.

**7. Amendment of s 126 (Steps after seizing a vehicle, load or other thing)**

Clause 7 amends section 126(3) of the PPRA by replacing the requirement for notice to be given by advertisement in a newspaper circulating in the location where the vehicle, load or thing was seized, to requiring the notice to be published on the police service website. The section still requires, if practicable, notice to be personally given to the owner.

**8. Amendment of s 127 (Disposal of seized or moved vehicle, load or other thing)**

Clause 8 amends section 127 of the PPRA by replacing the requirement for notice of disposal to be given by advertisement in a newspaper circulating in the location where the vehicle, load or thing was found, to requiring the notice to be published on the police service website.

**9. Amendment of s 139 (Steps after seizing animal)**

Clause 9 ensures a consistent approach is adopted in the steps taken by a police officer after property is seized by amending section 139(3) of the PPRA by replacing the requirement for notice to be given by advertisement in a newspaper circulating in the location where the animal was seized, to requiring the notice to be published on the police service website. The section still requires, if practicable, notice to be personally given to the owner.

**10. Amendment of s 140 (Recovery of seized animal)**

Clause 10 amends section 140(2) of the PPRA to replace the requirement that notice of the proposed sale of the animal must be advertised in a newspaper circulating in the locality where the animal was found, to requiring notice of the proposed sale of the animal to be made on the police service website.

**11. Amendment of s 147 (Powers to provide relief to animal)**

Section 147 'Powers to provide relief to animal' of the PPRA provides a power for a police officer to enter a place, not being part of the place where a person resides, to provide relief to an animal which is suffering from lack of food or water or is entangled. Clause 11 removes the current requirement that a police officer must leave in a conspicuous place a notice of the officer's details and the action taken.

**12. Replacement of s 195L (Destruction of registered digital photo)**

Clause 12 replaces the existing rules relating to the destruction of registered digital photographs in the possession of the QPS. Currently, there is a blanket requirement for registered digital photographs, and all copies of it, to be destroyed by the police

officer who accessed the photo, in the presence of a justice, as soon as practicable after they are no longer required for the purpose for which they were obtained. The amended section 195L of the PPRA sets out the destruction requirements and when the registered digital photograph can be retained.

Due to registered digital photographs being accessed electronically, subsection (5) inserts a broad definition of destroy to include deleting an electronic copy of the photograph and severing or removing the electronic link or access to the photograph.

### **13. Insertion of new ch 7, pt 7**

Clause 13 inserts a new Part 7 'Accessing account information' into Chapter 7 of the PPRA. New section 197B enables a police officer of at least the rank of Inspector to give to financial institutions a 'notice' requiring an institution to provide the police officer with the account name or account number within a stated reasonable time if the officer has the requisite reasonable suspicion and belief required under subsection 197B(1). Subsection 197B(7) requires the police officer to make a written record of the reasons the officer has the requisite reasonable suspicion and belief.

Pursuant to subsection 197B(2), if the notice refers to a person, the financial institution is to advise whether an account is held in that name and if so, the account number. Subsection 197B(3) provides that if the notice relates to an account number, the financial institution is to provide advice of the name in which the account is held. In circumstances where the account number relates to an account where a number of persons are authorised to operate the account, the financial institution is to provide the names of all persons who operate the account.

Subsection 197B(4) sets out the information the officer is to include in the notice. Subsection 197B(5) enables the notice to state any additional information which may help the financial institution identify the account. This would include the provision of a date of birth of the person, or if the account related to a business or company, the relevant Australian Business Number or Australian Company Number.

New section 197D makes it an offence for a financial institution to fail to comply with the notice. Subsection 197D(3) provides that it is a defence for this offence for the financial institution to prove the institution:

- could not reasonably comply with the notice within the stated time;
- made reasonable endeavours to comply with the request; and
- provided the advice sought in the notice as soon as practicable.

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

Clause 14 amends section 332 of the PPRA to expand the powers a police officer has under a surveillance device warrant to allow preparatory action to be undertaken to facilitate the installation of a surveillance device. This amendment will allow for entry onto premises for the purposes of preparing for the installation of the surveillance device, prior to entry onto the premises being undertaken to install the device.

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

Currently, section 382 of the PPRA allows a notice to appear issued for traffic offences to be served by registered post. However, the reference in this section to sections 56(2)(a) and (b) of the *Justices Act 1886* may limit the ability to serve a notice to appear by post to circumstances where a driver's licence is produced by the driver at the time of the offence, or upon subsequent investigation, and offences that allow for an owner-onus such as camera-detected offences.

Clause 15 extends the reference to the *Justices Act 1886* by enabling service in a way provided by section 56 (2) (a) to (c) of the *Justices Act 1886* thereby allowing a police officer to serve a notice to appear by registered post for all offences against the *Transport Operations (Road Use Management) Act 1995*.

**16. Amendment of s 445 (Who are *qualified persons*)**

Clause 16 amends section 445 of the PPRA to expand who are qualified persons to perform non-intimate or intimate forensic procedures to include a forensic nurse examiner.

**17. Amendment of s 463 (When forensic procedure order ends)**

Section 463 of the PPRA deems that a forensic procedure order ends at the completion of both procedures if a doctor is performing an intimate forensic procedure under a forensic procedure order and decides to also perform a non-intimate procedure under the PPRA.

Clause 17 extends this deeming provision to similarly include when an intimate forensic procedure is being conducted under a forensic procedure order by a forensic nurse examiner. In such instances, a forensic procedure order will end, if the forensic nurse examiner decides to also conduct a non-intimate procedure, at the completion of both procedures.

**18. Amendment of s 481 (Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.)**

Section 481 of the PPRA allows the taking of a DNA sample from an adult where proceedings for an indictable offence have been started or continued by arrest, notice to appear or complaint and summons. A pre-requisite for taking a DNA sample is the approval of a senior officer.

Clause 18 removes the requirement for a police officer to obtain the approval of a senior officer prior to taking a DNA sample. This amendment will make the taking of DNA samples similar to other procedures involving the taking of identifying particulars. Additionally, the clause removes subsection (2) which provided a police officer with the power to detain a person to obtain the senior officer approval.

**19. Amendment of s 482 (DNA sample notice)**

Clause 19 removes the requirement for a police officer to obtain the approval of a senior officer prior to issuing a DNA sample notice. This amendment will make the procedures for the issuing of DNA sample notices consistent with procedures for issuing an Identifying Particulars Notice.

**20. Insertion of new s 488B**

Existing section 489(1) enables the commissioner to enter into an arrangement with the chief executive (health) for the analysis of DNA samples.

Clause 20 inserts new section 488B to enable the Commissioner to enter into arrangements about the analysis of DNA samples with the chief executive (health) and the chief executive officers of other forensic laboratories. Any forensic laboratory with which the Commissioner enters into an arrangement, must be accredited by the National Association of Testing Authorities, Australia (NATA), or possess equivalent accreditation, as complying with the international standard.

**21. Amendment of s 489 (Power to analyse etc. DNA samples)**

Section 489 of the PPRA outlines the powers that may be exercised by a police officer or a person acting under an arrangement between the Commissioner and the chief executive (health) to analyse a DNA sample.

Clause 21 extends who may exercise the powers that may be used to analyse DNA samples to persons acting under a DNA arrangement entered into under new section 488B.

**22. Amendment of ch 17, pt 7, hdg (Forensic procedures performed by doctors and dentists)**

Clause 22 is a minor technical amendment to amend the part heading of Chapter 17 of the PPRA. This amendment clarifies that forensic procedures may be performed by a doctor, dentist or a forensic nurse examiner.

**23. Amendment of s 501 (Application of pt 7)**

Clause 23 extends the application of Part 7 to include the performance of a forensic procedure by a forensic nurse examiner under Chapter 17.

**24. Replacement of s 502 (When doctor or dentist may be asked to perform forensic procedure)**

Clause 24, in effect, extends the existing provision in relation to when a doctor or dentist may be asked to perform a forensic procedure, to include a forensic nurse examiner. Section 502 allows a police officer to ask a doctor, dentist or forensic nurse examiner to perform a forensic procedure on a person only if it is authorised under a forensic procedure consent or a forensic procedure order.

A police officer may only ask a forensic nurse examiner to perform a forensic procedure on a person of the same sex unless it is not reasonably practicable to do otherwise in the circumstances.

**25. Amendment of s 503 (What person must be told before doctor or dentist performs a forensic procedure)**

Section 503 of the PPRA outlines the information that must be provided to a person by a police officer prior to a forensic procedure being performed.

Clause 25, due to the inclusion of a forensic nurse examiner as a person who can perform a forensic procedure, amends the section heading and the section to extend the requirement for a police officer to provide information under this section to circumstances where a forensic procedure is to be performed by a forensic nurse examiner.

**26. Insertion of new s 509A**

Clause 26 inserts new section 509A 'Forensic nurse examiner's powers' which outlines the powers a forensic nurse examiner may exercise when performing a forensic procedure on a person under the authority of a forensic procedure order or where the person has consented. These powers are similar to the powers that a doctor may use under section 509 of the PPRA.

**27. Amendment of s 511 (Samples and results of analysis to be given to person)**

Clause 27 is a consequential amendment due to the inclusion of forensic nurse examiners as a person who can perform forensic procedures and amends section 511 of the PPRA to require that a forensic nurse examiner has an obligation under this section to provide a representative sample to the person that has been the subject of an intimate forensic procedure.

Further, this clause allows a forensic nurse examiner to send a representative sample of an intimate forensic procedure to a doctor nominated by the person, if the forensic nurse examiner considers it inappropriate to give the sample to the person.

**28. Amendment of s 517 (Help with, and use of force for, performing forensic procedure)**

Due to the inclusion of a forensic nurse examiner as a qualified person to perform intimate and non-intimate forensic procedures, clause 28 amends section 517(3) of the PPRA to provide that a qualified person may ask another person to help the doctor, dentist or a forensic nurse examiner to help perform an intimate forensic procedure. The person providing help must be of the same sex as the person undergoing the procedure if reasonably possible, unless the person providing help is another doctor, dentist or forensic nurse examiner.

**29. Amendment of s 577 (Complaint about noise)**

Clause 29 amends section 577 of the PPRA to allow a person to make an anonymous complaint about noise emitting from a place, enabling a police officer to act on the anonymous complaint.

**30. Amendment of s 578 (How to decide what is excessive noise – noise emitted from a place)**

This amendment gives effect to Clause 29. As a police officer may act on an anonymous complaint of excessive noise emitting from a place, clause 30 removes the requirement that a police officer has to be reasonably satisfied that the noise complained of is clearly audible at or near a particular complainant's residence or work place. Instead, the police officer must be reasonably satisfied that the noise is clearly audible at or near residential premises.

**31. Amendment of s 579 (How to decide what is excessive noise – noise emitted by motorbike driven on a place that is not a road)**

Clause 31 gives effect to Clause 29. As a police officer can act upon an anonymous complaint of noise emitted by a motorbike being driven on a place other than a road, the amendment removes the requirement that a police officer has to be reasonably satisfied that the noise complained of is clearly audible at or near a particular complainant's residence or work place.

**32. Amendment of s 580 (How to decide what is excessive noise - noise emitted in other particular circumstances)**

Clause 32 gives effect to Clause 29. As a police officer can act upon an anonymous complaint of noise emitting from a radio, CD player etc. emitted from a motor vehicle on a road or public, this amendment removes the requirement that a police officer has to be reasonably satisfied that the noise complained of is clearly audible at or near a particular complainant's residence or work place.

**33. Amendment of s 582 (Compliance with noise abatement direction)**

Given that Clause 29 specifically allows a police officer to act upon an anonymous complaint, clause 33 provides an evidentiary provision to ensure the police officer does not need to prove that the noise abatement direction was given in response to a complaint made about noise.

Further, this clause amends subsection 582(4)(b) to extend the noise abatement period from 12 hours to 96 hours.

**34. Amendment of s 583 (Additional powers of police officers on later investigation)**

Clause 34 is a consequential amendment due to the renumbering of section 582(4) as 582(5).

**35. Amendment of s 584 (Offence to interfere with locked etc. property)**

Clause 35 amends section 584 of the PPRA to reflect that the noise abatement period has been increased to 96 hours. This amendment provides that a person must not unlock, unseal or use property that a police officer has locked sealed or otherwise dealt with under this chapter until the noise abatement period ends.

**36. Amendment of s 585 (Recovery of seized property)**

Section 585 of the PPRA provides that a claim to recover property seized by a police officer under this Chapter may be made only during stated hours on a business day not earlier than 24 hours after the seizure of the property. Clause 35 amends section 585 of the PPRA to allow a claim to recover property to be made only during stated hours on a business day after the expiry of the noise abatement period as defined in renumbered subsection 582(5).

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

Clause 37 creates consistency in the process for advertising the disposal of property in the possession of the Police Service. Clause 37 amends section 718(4) by removing the option for notice of the forfeiture to be given by advertising in a news paper. This will still allow the QPS to place a general notice of the proposed sale of property forfeited to the State under section 718 of the PPRA by publishing relevant information on the Police Service website.

**38. Amendment of s 719 (Order for forfeiture of relevant things connected with offences)**

Clause 38 creates consistency in the process for advertising the disposal of property in the possession of the Police Service. Clause 38 removes the requirement for the notice of forfeiture to be given by advertisement in a newspaper circulating throughout the state and allowing the QPS to place a general notice of the proposed sale of property forfeited to the State on the Police Service website.

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

Clause 39 amends section 754 to clarify that the only alternative minimum penalty that a court can impose instead of the 50 penalty units is 50 days imprisonment to be served wholly in a corrective services facility. The amendment removes other sentencing options such as suspended sentences, probation and intensive correction orders as alternatives to the minimum penalty of 50 penalty units.

The clause further clarifies that a court cannot fix a date for parole eligibility or parole release which will reduce the 50 days imprisonment period the person must serve if a court sentences the person to a term of imprisonment.

**40. Amendment of s 783 (Sale of motor vehicle if not recovered after impounding ends)**

Clause 40 amends section 783(2) of the PPRA by removing the requirement for advertisement of the proposed sale or disposal in a newspaper circulating in the area where the vehicle was seized and requiring the QPS to place a general notice of the proposed sale or disposal by publishing relevant information on the Police Service website. Clause 40 creates consistency in the process for advertising the disposal of property in possession of the Police Service.

**41. Omission of s 805 (Availability of Act)**

Clause 41 removes section 805 of the PPRA which places an obligation upon the Commissioner to ensure a copy of the PPRA is available for inspection in every police station. The PPRA is widely available electronically at no cost eliminating the need for this provision.

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

Clause 42 inserts new definitions and amends specified existing definitions necessary to give effect to this Bill into Schedule 6 'Dictionary' of the PPRA.

**Part 3 Amendment of the *Evidence Act 1977***

**43. Act amended**

Clause 43 indicates that this Part amends the *Evidence Act 1977*.

**44. Amendment of s 95A (DNA evidentiary certificate)**

Section 95A of the *Evidence Act 1977* allows a DNA evidence certificate signed by a DNA analyst to be produced in a criminal proceeding. A party to these proceedings may request in writing that the chief executive administering the *Hospital and Health Boards Act 2011* provide a copy of laboratory records relating to the receipt, storage and testing of the thing that has been subject to DNA analysis. The chief executive is obliged to give a copy of the laboratory's records to the party within 7 business days of receiving the request. This clause extends this obligation to the chief executive officer (however described) of the forensic laboratory with which the Commissioner of Police has entered a DNA arrangement under the PPRA.

**45. Amendment of s 133A (DNA analysts)**

This clause authorises the chief executive officer, however described, of a laboratory the Commissioner of Police has entered a DNA arrangement with, to appoint an employee of the laboratory as a DNA analyst. This appointment must be by written notice. The appointment of a DNA Analyst is subject to the chief executive officer of the laboratory being satisfied that the employee has the necessary qualifications and experience for the appointment. The appointment is effective from the date the notice is given or the date stated in the notice, whichever is applicable.