

# Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018

## Explanatory Notes

### Short title

The short title of the Bill is the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018.

### Policy objectives and the reasons for them

The objectives of the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018 (the Bill) are to:

- provide a legislative framework to facilitate Queensland's participation in the Identity Matching Services (the IMS);
- remove the requirement to obtain an access approval order for Queensland Police to access Queensland driver licence digital images for non-transport related offences;
- remove the requirement for the Department of Transport and Main Roads (TMR) to report annually to parliament via the Minister on access to Queensland's driver licence digital images;
- overcome the current limitations in the Criminal Code in adequately addressing the threat of homemade explosives; and,
- provide for extended liquor trading arrangements for the 2018 Commonwealth Games.

### Identity Matching Services

Identity crime is a significant criminal threat that is estimated to cost Australia \$2.2 billion annually. It is a key enabler of serious and organised crime, such as drug trafficking, money laundering, and terrorism. Australians convicted of terrorism offences have used false names to avoid detection while planning attacks including purchasing ammunition and chemicals to make explosives and pre-paid mobile phones to communicate anonymously.

Currently, the majority of identity checking in Australia is based on matching names and other biographical details between different sources. Name based checking is vulnerable to identity fraud – it cannot detect instances where criminals have stolen someone's identity documents and substituted their own image. Detecting this type of fraud requires the comprehensive matching of facial images.

The use of facial biometrics will help strengthen the integrity of processes for issuing identity documents such as passports, visas and driver licences. It will also make it easier to detect high-quality fraudulent documents which use stolen identity information, but with another person's photograph substituted.

In April 2015, the Council of Australian Governments (COAG) agreed to implement a recommendation from the *Martin Place Siege: Joint Commonwealth – New South Wales Review* (Martin Place Siege Review) for government agencies which issue documents relied upon as primary evidence of identity to strengthen name-based identity checking processes and explore greater use of biometrics, including via Identity Matching Services through the National Facial Biometric Matching Capability.

The National Driver Licence Facial Recognition System (NDLFRS) has been developed as part of the IMS to enable cross-jurisdictional matching of driver licence images. Driver licences are the most widely used identity document in Australia, and thus their inclusion in the IMS is at the core of its capability.

On 5 October 2017 at the Special Meeting of COAG on Counter-Terrorism, the Queensland Premier, in conjunction with all other First Ministers agreed to establish the IMS and signed the *Intergovernmental Agreement on Identity Matching Services* (IGA). The IGA is an agreement to share and match identity information to prevent identity crime and promote law enforcement, national security, road safety, community safety and identity assurance outcomes. Under the IGA, each jurisdiction has agreed to make necessary legislative amendments to facilitate the collection, use and disclosure of facial images and associated identity information between participating entities.

The main sources of information include driver licence images and associated data held by states and passport and immigration images held by the Commonwealth. Given the volume and growing importance of this information for counter terrorism and law enforcement, the IMS will establish a streamlined and nationally consistent process for sharing it.

Key features of the IMS include:

- the Face Verification Service (to enable an image associated with an individual to be compared to confirm identity);
- the Face Identification Service (to enable an image of an unknown person to be matched to an individual); and
- the One Person One Licence Service (OPOLS) (to ensure that an individual is not issued with multiple licences of the same type across jurisdictions).

Access to the IMS will be of substantive benefit to law enforcement and community safety, particularly in relation to terrorism and serious and organised crime investigations. It will also enhance police capabilities with regard to identity crime, community safety (e.g. identifying missing persons, deceased persons and with disaster events or major events), road safety (e.g. detection of unlicensed drivers or multi licensed persons) and identity verification.

In Queensland, amendments will be required to TMR and Queensland Police Service (QPS) legislation to explicitly provide that relevant information may be shared for the purposes of the IMS.

Current transport legislation constrains the ability of the State to participate in the IMS due to limitations on the disclosure and use of personal information. The *Transport Planning and Coordination Act 1994* (TPCA), currently enables the use and release of personal information and digital images collected by TMR for limited purposes. It does not allow disclosure to entities for the purposes envisaged under the IMS.

In 2009, the Document Verification Service (DVS) was established through the auspices of COAG's *Intergovernmental Agreement to a National Identity Security Strategy*. The DVS is an online system that enables an organisation to verify identity documents against the records of the issuing agency. The IMS will incorporate functionality similar to the existing DVS. Driver licence information retained by TMR is currently shared through the DVS under section 77 of the *Transport Operations (Road Use Management) Act 1995* (TORUM).

### **Annual reporting on access to driver licence digital images**

Section 37A (Annual report about access to digital photos) of the TPCA requires a report about the number of times digital photos were accessed in a financial year to be prepared for the Minister, and for the Minister to table the report in the Legislative Assembly. This requirement will become impractical with the advent of the IMS given the number of agencies that may be accessing the relevant images, and the frequency of this access.

### **Authority to access driver licence images for non-transport law enforcement purposes**

Chapter 7, Part 5A of the *Police Powers and Responsibilities Act 2000* (PPRA) and section 28ED(4) of the TPCA restrict police access to a person's driver licence photo to when exercising a power under certain transport Acts, a dangerous operation of a motor vehicle offence (328A of the Criminal Code), and where authorised under the PPRA. The PPRA currently requires the authority of a justice to access images for non-transport law enforcement purposes.

However, the IMS will enable other jurisdictions to access the images for non-transport law enforcement purposes without the requirement for an authority from a justice of the peace. This will result in the potentially perverse outcome of the QPS not having the same access to TMR images as other jurisdictions and the continuation of the current situation where the QPS can directly access TMR images for traffic offences but not for more serious offences such as terrorism or murder.

### **Criminal Code – Explosive Offences**

Explosives, including highly volatile homemade explosives pose an increasing risk to the safety of the community and emergency services personnel. The Criminal Code offences most commonly utilised with regard to homemade explosives are sections 470A and 540 of the Criminal Code. Section 470A makes it an offence to wilfully and unlawfully throw, leave down or otherwise deposit any explosive or noxious substance in any place whatsoever under circumstances where it may cause injury to any person or damage to property of any person. Section 540 makes it an offence to make or knowingly possess an explosive substance with intent to commit a crime by using it or enabling its use by another person.

These offence provisions of the Criminal Code fall short of adequately addressing the threat of homemade explosives in two ways. Firstly, the maximum penalty of two years imprisonment for section 470A and three years imprisonment for section 540 are inadequate to reflect the seriousness of the conduct and provide appropriate deterrence. Secondly, the existing Criminal Code offences do not cover the manufacturing or possessing of an explosive in circumstances that may cause injury to a person or property. One of the policy objectives of the Bill is therefore to overcome these limitations.

## **Liquor trading arrangements for the 2018 Commonwealth Games**

The 2018 Commonwealth Games is a unique and significant event that will showcase Queensland on the world stage. Approximately 6,600 athletes and officials, and 672,000 visitors, are expected to attend. With the majority of the Commonwealth Games events being held on the Gold Coast, it is anticipated that there will be increased patronage of liquor licensed premises, particularly within the Broadbeach CBD and Surfers Paradise CBD safe night precincts (Gold Coast SNPs).

Accordingly, the Bill contains regulatory changes to help enhance tourism and hospitality experiences for Commonwealth Games participants and attendees, without compromising the integrity of the harm minimisation objectives of the *Liquor Act 1992* (Liquor Act) or the Government's *Tackling Alcohol-Fuelled Violence Policy*.

Specifically, the Bill seeks to amend the Liquor Act to automatically provide each licensee whose licensed premises is located in one of the Gold Coast SNPs with the authority to sell liquor for an additional hour beyond their current permanently approved liquor service hours, for each day of the 2018 Commonwealth Games period. The Bill ensures no additional fees are imposed on licensees in relation to this additional hour.

The Bill will also afford a new power to the Commissioner for Liquor and Gaming (Liquor Commissioner) to issue a public safety restriction notice (restriction notice), in order to minimise the risk of harm that may arise from the additional hour of liquor trading, and ensure immediate action can be taken against a licensee or licensees, where necessary, to maintain public safety and public order.

Additionally, the Bill waives application fees for temporary late-night extended hours permits for dates during the 2018 Commonwealth Games period, where the licensee's licensed premises is located in one of the Gold Coast SNPs.

For the purposes of the Bill, the 2018 Commonwealth Games period is taken to be 3 April 2018 to 17 April 2018 inclusive.

## **Achievement of policy objectives**

To achieve its objectives, the Bill amends the:

- *Transport Planning and Coordination Act 1994*;
- *Transport Operations (Road Use Management) Act 1995*;
- *Police Powers and Responsibilities Act 2000*;
- *Police Service Administration Act 1990*;
- Criminal Code; and
- *Liquor Act 1992*

### ***Transport Planning and Coordination Act 1994***

To overcome the current limitations on the use and sharing of images under transport legislation, the Bill makes amendments to the TPCA. These amendments will enable the sharing of information collected under transport legislation, including digital images, to support Queensland's participation in the IMS. They will also authorise the Commonwealth to

collect this information and use or share the information with other entities to facilitate the operation of the IMS.

The Bill authorises the disclosure of identity information for purposes of national security, protective security, law enforcement, community safety, road safety and identity assurance. Specifically, the new provisions:

- Allow identity information to be disclosed to an entity that maintains / hosts the IMS under agreement (the hosting entity).
- Allow identity information to be disclosed to entities that the State has entered into an agreement with as part of the IMS.
- Authorise the use, collection and further disclosure of identity information by the hosting entity to other entities that Queensland has entered into an agreement with, as required for the operation of the IMS.
- Authorise TMR to collect and use data from the hosting entity and other entities that are parties to an agreement as required for the operation of the IMS.

The Bill will remove the requirement for annual reports about the number of times digital photos are accessed in a financial year to be prepared for the Minister, and for the Minister to table the report in the Legislative Assembly.

The Bill will amend section 28ED(4) of the TPCA, to remove the existing requirement for the QPS to obtain a judicial authority to access driver licence images for non-transport law enforcement purposes. The amendments will instead ensure that information provided directly by TMR to QPS is treated consistently to that shared via the IMS.

### ***Transport Operations (Road Use Management) Act 1995***

The TORUM facilitates the operation of the DVS by allowing verification of driver licences and industry accreditation documents. However, other similar documents issued by TMR such as photo identification cards are not able to be verified through the DVS. The Bill amends the TORUM to enable these documents to be verified through the DVS should the need arise, as more identification documents are incorporated into the operation of the IMS under the IGA.

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

The Bill will enable improved access for law enforcement agencies as intended by the IMS; however, the QPS will continue to access digital photos through existing systems that are not part of the IMS. Specifically, the Bill amends the PPRA to remove current restrictions contained in Chapter 7, part 5A of the PPRA, (Accessing registered digital photos and other information). These changes, along with the amendment to section 28ED(4) of the TPCA, will remove the existing requirement for the QPS to obtain the authority of a justice to access images for non-transport law enforcement purposes. The amendments will instead ensure that information provided directly by TMR to QPS is treated consistently to that shared via the IMS.

### ***Police Service Administration Act 1990***

The Bill amends the *Police Service Administration Act 1990* (PSAA) to create a specific legislative framework to facilitate QPS participation in the IMS. Division 1A of the PSAA currently contains existing provisions governing the disclosure of information by the QPS to

external agencies. However, existing provisions do not authorise the disclosure of information to the Commonwealth.

Consequently, the Bill expressly authorises the QPS to disclose information to the Commonwealth for the purposes of the IMS. It also makes provision for the on-disclosure of that information to government agencies with whom a participation agreement has been signed.

### ***Criminal Code***

The Bill amends the Criminal Code offence provisions dealing with explosives offences, section 470A (Unlawful deposition of explosive or noxious substances) and section 540 (Preparation to commit crimes with dangerous things), to ensure that these offences are responsive to the danger posed by highly volatile homemade explosives.

The current maximum penalties of two years imprisonment for section 470A and three years imprisonment for section 540 are inadequate to reflect the seriousness of the conduct and to deter offending. The Bill therefore increases the maximum penalties for both section 470A and section 540 to seven years imprisonment to address this anomaly.

Additionally, the Bill also extends the application of section 470A to ensure that the making of explosives in circumstances where there is a risk of injury or damage is also contemplated by the offence.

### ***Liquor Act 1992***

In relation to liquor trading arrangements, the Bill will achieve its policy objectives to appropriately enhance tourism and hospitality experiences in the Gold Coast SNPs, during the 2018 Commonwealth Games period, by inserting a new Part 10A (Extended trading hours and increased regulatory powers for the Commonwealth Games) into the Liquor Act. Part 10A contains provisions to:

- introduce a Commonwealth Games Extended Trading Hours Authority (Games Authority), which will automatically allow for licensees of licensed premises in the Gold Coast SNPs to serve liquor for an additional hour beyond the premises' current ordinary or permanently approved trading hours, for each day of the 2018 Commonwealth Games period;
- ensure no additional application fees or extended or authorised trading hours risk criterion licence fees apply in respect of the additional hour of trading under a Games Authority;
- clarify that, where a licensed premises is a regulated premises for ID scanning, the licensee will be required to continue scanning patron IDs during the additional hour of liquor trading authorised by the Games Authority; and
- clarify that, where a licensed premises is not a regulated premises for ID scanning, the licensee will not become required to scan patron IDs due to the operation of the Games Authority.

The Bill also inserts a new power for the Liquor Commissioner to, following a recommendation from the Police Commissioner or an Assistant Police Commissioner, issue a restriction notice to a licensee to impose one or more of the following actions:

- revoke a Games Authority;

- vary the liquor trading hours for the licence;
- impose conditions on the licence (e.g. require a minimum number of security guards to be present on the premises); and/or
- suspend the licence.

A restriction notice can only be issued by the Liquor Commissioner after receiving a written report from the Police Commissioner or an Assistant Police Commissioner stating a belief that alcohol-related violence, disorderly behaviour or anti-social behaviour is happening, or is likely to happen, at or in the vicinity of one or more licensed premises, and that violence or behaviour is likely to adversely impact public safety or public order.

The restriction notice has effect for a stated period, which cannot extend beyond the end of the 2018 Commonwealth Games period.

Additionally, the Bill inserts a provision to waive the application fee that would otherwise be payable for a temporary late-night extended hours permit application, being sought for a licensed premises located in one of the Gold Coast SNPs, where the date sought falls within the 2018 Commonwealth Games period.

## **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**

The IGA notes that the Commonwealth Government will fund the establishment costs of the IMS and will be responsible for the ongoing costs of managing and operating the interoperability Hub.

There will also be associated costs for Queensland's participation in the IMS, which will initially be met by the QPS and TMR as primary participating agencies. These costs may include the operating costs of agencies' internal systems; costs associated with connecting to the Hub; agency-specific customisations of the user interface; changes to internal processes, business procedures and authorisation regimes.

Queensland, along with other jurisdictions, have agreed under the IGA to share annual operating costs for the NDLFRS from 2018-19, with the cost being approximately \$202,000 for Queensland. A further assessment of jurisdictional contributions to ongoing operating costs will be undertaken in 2019 once all jurisdictions are participating and usage patterns and trends have been established or within two years of the commencement of the IGA, whichever is sooner.

TMR currently uses facial and signature image processing (FSIP) to support its licensing function. The support and maintenance contracts for the current FSIP expire in 2019. It is difficult to estimate the cost of TMR's replacement FSIP solution, as this could potentially take the form of a service as opposed to a system. It is anticipated the NDLFRS will be a more cost effective facial recognition solution for TMR, compared with procuring the solution unilaterally and funding all establishment, licensing and maintenance costs. However, further

investigations will continue and the financial commitment associated with each option will become clearer as the respective procurement processes of the Commonwealth and TMR progress over coming months. TMR's use of the NDLFRS as its FSIP solution will not impact on the provision and use of data for the purposes of participating in the IMS.

It is estimated that the amendments made by the Bill to waive certain fees under the Liquor Act could result in lost fees of up to \$140,000 (approximately).

## **Consistency with fundamental legislative principles**

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – privacy and the treatment of personal information

The amendments facilitating the use and disclosure of information for the IMS may raise the fundamental legislative principle about legislation having sufficient regard to rights and liberties of individuals and, in particular, privacy and treatment of personal information.

*Legislative framework to facilitate participation in the IMS – Part 5 and Part 7*

Part 5 and Part 7 of the Bill amend the PSAA and the TPCA to create a legislative framework to support the collection, use and disclosure of identity information for the purposes of the IMS.

This is an expansion of existing use and disclosure arrangements. Consequently, it raises a potential breach of the fundamental legislative principle that legislation has sufficient regard to the rights and liberties of individuals.

Any potential breach of fundamental legislative principles is considered justified given that the underlying rationale for the proposed amendments is to enhance interagency information sharing in the interests of national security, law enforcement and community safety.

The privacy of individuals is also protected in the following ways:

- The disclosure and use of the identity information must be in accordance with the permitted purposes defined in the Bill (Clauses 17 and 24).
- The sharing of information is also constrained by the IGA and associated participation agreements which are legally binding. The use of the information in the IMS is recorded and auditable to ensure accountability.
- Clause 24 of the Bill creates a new offence provision for the collection, use or disclosure of identity information for a purpose other than a permitted purpose.
- The disclosure of information by the QPS is already governed by a rigorous legislative framework. Specifically, section 10.1 of the PSAA (Improper disclosure of information), provides offences for the unlawful disclosure of information that has come to the officer's knowledge through the exercise or use of any power. Depending on the individual circumstances of the disclosure, the officer may also be dealt with for misconduct in relation to public office or computer hacking and use under the Criminal Code.



*Removal of requirement to seek justice approval for access to photos – clauses 11 and 23*

Currently, police can access TMR images to investigate traffic offences but are unable to do so without recourse to an order by a justice for the investigation of more serious offences such as murder and terrorism.

The Bill removes the current requirement for police to obtain the approval of a justice prior to accessing a digital photo held by TMR for a non-transport related purpose.

This is a potential breach of the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals as it relates to privacy and the treatment of personal information.

However, any potential breach is justified on the basis that the IGA provides other mechanisms for ensuring police access to photographs is appropriate and QPS access to identity information will be consistent with other enforcement agencies Australia wide.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) *Legislative Standards Act 1992*) – Criminal Code amendments

Clauses 5 and 6 of the Bill amend the offence provisions contained in sections 470A and 540 of the Criminal Code.

The proposed amendments potentially impact on the rights and liberties of individuals by imposing a higher maximum penalty for the offences in sections 470A and 540 of the Criminal Code and therefore exposes an offender to greater punishment than was authorised by the former law.

The amendment is justified to appropriately reflect the seriousness of the offence and the risk it poses to the community. The amendment operates prospectively and will only apply to offenders who commit the offence on, or after, the date upon which the amendments commence.

Legislation has sufficient regard to the institution of Parliament (section 4(4)(a) *Legislative Standards Act 1992*) – transitional regulation making power in clauses 18 and 26

The Bill includes a transitional regulation making power which is a delegation of parliamentary power. The provisions concerned are transitional regulation provisions which allow the Act to be amended by regulation for a period of 2 years.

A transitional regulation may make provision of a saving or transitional nature which is necessary to facilitate the change from the operation of the legislation as it was in force before commencement of this Bill to the operation of the new provisions, if the Bill does not make sufficient provision.

If amendments are made under this power, the amendments are required to be regularised by way of an amending Act within 3 years.

The delivery of the full IMS will involve the implementation of an information technology system operating nationally, the passage of legislative amendments by the Commonwealth and other participating jurisdictions and the signing of intergovernmental participation agreements.

To address this complexity, and to ensure a nationally consistent implementation of the IMS, the delegation of parliamentary power is considered necessary and the breach of fundamental legislative principles is considered justified in the circumstances.

This regulation making power also applies amendments retrospectively to the commencement of the provision where necessary. However, given the nature of the provisions, the retrospective application does not impose obligations or sanctions on individuals.

Legislation has sufficient regard to the rights and liberties of individuals (section 4(2)(a) Legislative Standards Act 1992) – Liquor Act amendment, public safety restriction notice

Clause 9 introduces an ability for the Liquor Commissioner to issue a restriction notice to a licensed premises.

Under a restriction notice, the Liquor Commissioner may: revoke a Games Authority; change the liquor service hours for the licence; impose conditions on the licence; or suspend the licence. The restriction notice remains in effect for a stated period which cannot extend beyond the conclusion of the 2018 Commonwealth Games period.

A decision of the Liquor Commissioner relating to a restriction notice is not reviewable by the Queensland Civil and Administrative Tribunal (QCAT). Further, no compensation is payable to any person in relation to restriction notices.

The operation of the restriction notice, and the exclusion of review and compensation provisions, may breach fundamental legislative principles, as it abrogates existing rights, without compensation, and does not provide for natural justice.

It is considered that any potential breach of fundamental legislative principles associated with the restriction notice, including the lack of a review or compensation payable, is justified on the basis of public interest. Ensuring public safety during the Commonwealth Games, which constitutes a significant security challenge for Queensland government agencies, should take greater precedence over the commercial interests of licensees for the limited period in which a restriction notice could be in effect (i.e. 3 April – 17 April 2018).

The restriction notice provides for immediate action to be taken against licensees of licensed premises in a Gold Coast SNP operating in a manner that harms, or has potential to harm, the health and safety of the general public or the local amenity, and may only be considered upon the recommendation of the Police Commissioner or an Assistant Police Commissioner.

Due to the unique operating environment of the 2018 Commonwealth Games, and the significant harm that could occur given the expected volume of people, it is considered necessary to allow for serious action to be taken against a licensee (e.g. suspension) without having to prove the licensee has contravened the Liquor Act, and without ordinary natural justice processes applying, to protect public safety.

Further, the flexibility of the actions allowable under a restriction notice allows for a proportional response to address the specific causes of harm arising from the way a particular

premises, or group of premises, operates. For example, suspending the licence may not be warranted, but the immediate restriction of hours or conditions requiring additional crowd control provisions may be more appropriate to ensure public safety.

The Liquor Commissioner must revoke or amend the restriction notice when satisfied the public safety issues have been addressed.

## **Consultation**

The Queensland Privacy Commissioner has been consulted in relation to Queensland's participation in the IMS. The Privacy Commissioner has raised concerns including privacy gaps in other Australian legislative regimes, appropriate oversight, scope creep into use for minor crimes and potential for errors in usage. There are a range of mechanisms that will address these concerns.

Regarding gaps in Australian legislative regimes, a Participation Agreement and data access policies will need to be finalised prior to data access being made available to other jurisdictions. This will involve an independent Privacy Impact Assessment to identify any privacy impacts, which can be addressed through the Participation Agreement and supporting access policies.

The IGA also details the privacy safeguards that will be in place for the IMS, both in terms of participant obligations to have data security measures in place and in-built system controls. Each jurisdiction must enter into a legally binding Participation Agreement that will detail the terms and conditions that apply to the use of the IMS. Detailed data access policies will also be required for participating entities, such as TMR and the QPS.

The Commonwealth will retain discretion to refuse, modify, suspend or terminate access should an agency breach any of the associated conditions. The Commonwealth has also introduced legislation that will implement a robust privacy framework at the Commonwealth level. That framework will include criminal penalties for unauthorised use and disclosure and reporting requirements.

Regarding concerns about errors in usage, the outputs from the IMS will not be used for evidentiary purposes. That is, it will be one of many investigative tools police will have available to them, but they will need to compile further admissible evidence to lay charges against an individual. The Face Identification Service (FIS) will only be used by specially trained QPS staff to ensure that any errors in usage are minimal.

### ***Liquor Act amendments***

A teleconference was held to discuss matters relating to liquor service at the 2018 Commonwealth Games. Attendees at this teleconference were the Honourable Yvette D'Ath, Attorney-General and Minister for Justice and Leader of the House (Attorney-General); the Honourable Kate Jones MP, Minister for Innovation and Tourism Industry Development and Minister for the Commonwealth Games (Minister for the Commonwealth Games); Gold Coast Mayor, Councillor Tom Tate; Mr Martin Winter, Chief Executive Officer of Gold Coast Tourism; Mr David Mackie, Director-General of the Department of Justice and Attorney-General; and Mr David Ford, the Liquor Commissioner.

Further, the Attorney-General and the Minister for the Commonwealth Games also met and consulted with the Head of the Broadbeach CBD and Surfers Paradise CBD SNP Boards.

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

The amendments proposed by the Bill will be significantly similar to all other jurisdictions.

On 5 October 2017 at the Special Meeting of COAG on Counter-Terrorism, all First Ministers agreed to establish the IMS and signed the IGA. Under the IGA, each jurisdiction has agreed to make necessary legislative amendments, in accordance with the terms of the agreement, to facilitate the collection, use and disclosure of facial images and associated identity information between participating entities.

The only exception to this is the Australian Capital Territory (ACT). The ACT will allow access to its data via the FIS for the purposes of national security and community safety only. The ACT will not participate in the OPOLS at this stage.

Regarding the amendments in relation to liquor arrangements for the 2018 Commonwealth Games, the Bill is specific to the State of Queensland and is not uniform with legislation of the Commonwealth or another State.

## Notes on provisions

### Part 1 Preliminary

#### Clause 1 Short title

Clause 1 provides that, when enacted, the Bill will be cited as the *Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018*.

#### Clause 2 Commencement

Clause 2 provides that section 8(1) commences on 19 April 2018. Section 8(1) omits newly inserted definitions from the Liquor Act, aligning with the expiry of the new Part 10A (Extended trading hours and increased regulatory powers for the Commonwealth Games) of the Liquor Act at the conclusion of the 2018 Commonwealth Games period.

### Part 2 Amendment of Criminal Code

#### Clause 3 Code amended

Clause 3 provides that Part 2 amends the Criminal Code.

#### Clause 4 Amendment of s 77 (Definitions for chapter)

Clause 4 amends section 77 to remove reference to section 470A in the definition of *relevant offence* at (b)(i). As a consequence of the amendment in Clause 5 that increases the maximum penalty for section 470A from two years imprisonment to seven years imprisonment, the section 470A offence falls within the definition of *relevant offence* at (a). Therefore, the specific reference to section 470A at (b)(i) of the definition is duplicative and omitted.

#### Clause 5 Replacement of s 470A (Unlawful deposition of explosive or noxious substances)

Clause 5 replaces section 470A (Unlawful deposition of explosive or noxious substances).

The new section 470A:

- Provides the offence title as *Unlawful dealing with explosive or noxious substances*;
- Preserves the existing offence in section 470A(1) of wilfully and unlawfully throwing, leaving down or otherwise depositing an explosive or noxious substance in circumstances that may cause injury to a person or damage to property;
- Extends the application of the offence to the wilful and unlawful making or possession of an explosive in circumstances that may injure a person or damage property;
- Reclassifies the offence as a crime rather than a misdemeanour;
- Increases the maximum penalty from 2 years imprisonment to 7 years imprisonment; and,
- omits 470A(2) which provides that an offender may be arrested for the offence without a warrant. This is consequential to the reclassification of the offence as a crime.

### **Clause 6 Amendment of s 540 (Preparation to commit crimes with dangerous things)**

Clause 6 amends section 540 (Preparation to commit crimes with dangerous things) to increase the maximum penalty for the offence from 3 years imprisonment to 7 years imprisonment.

## **Part 3 Amendment of Liquor Act 1992**

### **Clause 7 Act amended**

Clause 7 provides that Part 3 amends the *Liquor Act 1992*.

### **Clause 8 Amendment of s 4 (Definitions)**

Clause 8 amends section 4 (Definitions) to insert definitions required for the new Part 10A. It is noted that subsection (1) provides for the omission of these definitions on 19 April 2018, following the conclusion of the 2018 Commonwealth Games period.

### **Clause 9 Insertion of new pt 10A**

Clause 9 inserts a new Part 10A (Extended trading hours and increased regulatory powers for the Commonwealth Games).

**Section 235A (Definitions for part)** outlines definitions required for the new Part 10A. The definition of ‘games period’ from and including 3 April 2018 to and including 17 April 2018, aligns with the dates for extended retail trading hours for the 2018 Commonwealth Games permitted by the Queensland Industrial Relations Commission.

**Section 235B (Licensed premises to which this part applies)** provides that the new Part 10A only applies to licensed premises located in one of the Gold Coast SNPs (i.e. Broadbeach CBD and Surfers Paradise CBD).

**Section 235C (Commonwealth Games extended trading hours authority)** provides for a Games Authority. Under subsection (1), all licensees of licensed premises in a Gold Coast SNP automatically hold a Games Authority for the duration of the 2018 Commonwealth Games period.

Subsection (2) specifies the Games Authority authorises the licensee to sell liquor during each ‘extended trading hour’ that falls within the 2018 Commonwealth Games period. Pursuant to the definitions provided in subsection (5), an ‘extended trading hour’ is a period of one hour starting at the end of a licensee’s ‘current trading hours’ for a day. ‘Current trading hours’, for a day, includes the period, starting on a day and ending on that day, or the following day, that a licensee is usually authorised to sell liquor on a regular basis (i.e. under ordinary liquor trading hours or permanent approved extended liquor trading hours). It does not include liquor trading authorised under a temporary late-night extended hours permit.

Subsection (3) limits the Games Authority to the sale of liquor for consumption on the premises (i.e. the Games Authority does not allow for an additional hour of liquor trading for takeaway liquor sales). Subsection (4) notes that section 235C applies subject to new section 235H (Public safety restriction notice).

Substantively, section 235C allows for an additional hour of liquor trading for each day of the 2018 Commonwealth Games period, for licensees of licensed premises located in a Gold Coast SNP.

For example, under the Games Authority: a licensee that ordinarily trades until midnight (i.e. under ordinary liquor trading hours, with no permanent extended liquor trading hours) would be authorised to serve liquor until 1am; while a licensee with a permanent extended liquor trading hours approval until 2am would be authorised to serve liquor until 3am.

Note that, as an 'extended trading hour' must fall within the 2018 Commonwealth Games period, the additional hour of liquor trading under a Games Authority would effectively provide for liquor trading in the early morning of 3 April 2018 (to, potentially, 4am) and would conclude at midnight on 17 April 2018.

**Section 235D (ID scanning)** effectively provides that a licensee's existing obligations in relation to ID scanning would remain in effect under the Games Authority, despite the extended hours. Subsections (1) and (2) clarify that licensees of regulated premises must continue to scan patron IDs during the additional hour of liquor trading authorised by the Games Authority. Additionally, to remove any doubt, subsection (3) specifies those licensed premises that are not regulated premises do not become regulated premises by virtue of the additional hour of liquor trading authorised by the Games Authority.

**Section 235E (No additional fees for games authority)** provides that a licensee for a licensed premises is not liable for a fee, or an increase in a fee, due to holding a Games Authority or being authorised to serve liquor under a Games Authority. This section is intended to ensure that licensees of licensed premises located in the Gold Coast SNPs do not have to pay an application fee, or additional extended or authorised trading hours risk criterion licence fee, in respect of the additional hour of liquor trading authorised under a Games Authority.

**Section 235F (Fee waiver for particular extended hours permits)** waives the application fee that would otherwise be payable for a temporary late-night extended hours permit (i.e. where the licensee is seeking to trade between midnight and 5am), where the licensed premises is located in one of the Gold Coast SNPs, and the date sought falls within the 2018 Commonwealth Games period.

**Section 235G (Police may give report recommending action)** provides a power for senior police officers to recommend to the Liquor Commissioner action/s in response to violence or public safety concerns in or in the vicinity of liquor licensed premises operating under the Games Authority.

Subsection (1) states the Police Commissioner or an Assistant Police Commissioner must believe alcohol-related violence, disorderly behaviour, or anti-social behaviour is happening or is likely to happen, at or in the vicinity of one or more licensed premises, and the violence or behaviour is likely to adversely affect public safety or public order. Subsection (2) authorises the Police Commissioner or an Assistant Police Commissioner to give a written police report to the Liquor Commissioner, stating the belief under subsection (1); evidence for the belief; and a recommendation for particular action under section 235H to be taken by the Liquor Commissioner in relation to the licensed premises.

**Section 235H (Public safety restriction notice)** contains a power for the Liquor Commissioner to issue a restriction notice, on the basis of advice given in the police report, requiring certain actions. This action is able to be taken without seeking comment from an affected licensee or following the approval process otherwise required under the Liquor Act for taking action against a licensed premises.

Subsection (1) clarifies the section applies if the Liquor Commissioner considers it appropriate to take immediate action in relation to a licensed premises to deal with matters mentioned in the police report. The scope of actions able to be taken under the restriction notice, outlined in subsection (2), are: (a) revoke the licensee's Games Authority; (b) further reduce liquor trading hours; (c) vary the conditions on the licence; and (d) suspend the licensee's licence. However, the discretion of the Liquor Commissioner to determine not to take the actions recommended in the police report is preserved by subsection (3).

The matters that must be stated in a restriction notice, under subsection (4), are: (a) each action that is being taken; (b) the reasons for the action; (c) that the notice has effect when it is given to the licensee; (d) the period for which the notice has effect; and (e) that the Liquor Commissioner's decision to take action is not subject to review under the Liquor Act.

Subsection (5) provides the restriction notice has effect when it is given to the licensee and remains in effect for the period stated on the notice, which cannot extend beyond the end of the 2018 Commonwealth Games period, unless the Liquor Commissioner exercises the power provided under subsection (6) to revoke the notice or amend the restriction notice. Subsection (6) clarifies the Liquor Commissioner must immediately give a further notice to the licensee if the Liquor Commissioner is no longer satisfied that the action stated in the restriction notice is necessary to deal with the violence or behaviours mentioned in the police report. The further notice may revoke the restriction notice or amend the restriction notice to change or omit the action.

Substantively, new section 235H enables the Liquor Commissioner to suspend or restrict a licence where senior police report an existing or potential threat to public safety and order, without affording any recourse to the licensee. The provisions place a greater emphasis on public safety, over the commercial interests of licensees, for the duration of the 2018 Commonwealth Games by not affording usually provided rights to licensees.

**Section 235I (No QCAT review)** provides the jurisdiction and powers of the Queensland Civil and Administrative Tribunal under section 21 of the Liquor Act do not apply to a decision made by the Liquor Commissioner in respect of a public safety restriction notice. The provisions place a greater emphasis on public safety, over the commercial interests of licensees, for the duration of the 2018 Commonwealth Games by not affording usually provided rights to licensees.

**Section 235J (No compensation)** expressly removes a person's entitlement to compensation as a result of action taken or not taken by the Police Commissioner, an Assistant Police Commissioner or the Liquor Commissioner under Division 4. The provisions ensure actions taken in the interests of public safety do not incur a cost to Government should licensees be commercially disadvantaged.



**Section 235K (Expiry)** provides for the new Part 10A of the Liquor Act to expire on 18 April 2018. It is to be noted that the expiry date for Part 10A is one day after the final day of the 2018 Commonwealth Games period, which ends on 17 April 2018.

To remove all doubt, 17 April 2018 is the final day on which licensees of licensed premises in the Gold Coast SNPs will be authorised to have an additional hour of liquor service under the Games Authority, and the last day on which a restriction notice may be in effect.

## **Part 4 Amendment of Police Powers and Responsibilities Act 2000**

### **Clause 10 Act amended**

Clause 10 provides that Part 4 amends the *Police Powers and Responsibilities Act 2000*.

### **Clause 11 Omission of ch 7, pt 5A (Accessing registered digital photos and other information)**

Clause 11 omits Chapter 7, Part 5A of the PPRA which provides a system to enable the QPS to access TMR's digital images and other related information. The provision includes access approval orders and emergency access. Clause 7 removes Part 5A to ensure that QPS access to TMR's images and information is no more restrictive than other jurisdictions' access under the IMS.

### **Clause 12 Insertion of new ch 7, pt 8**

Clause 12 inserts new Part 8 (Miscellaneous) into Chapter 7 of the PPRA and contains new section 197E (Accessing information stored electronically on smartcard transport authorities). Currently section 195I of Chapter 7, Part 5A of the PPRA contains a scheme to enable police to access information stored electronically on a prescribed document, such as a driver licence. To ensure police will still have the legislative authority to access the information following the removal of Part 5A by clause 11, the existing power and associated definitions currently contained in section 195A (Definitions for pt 5A) are moved to the new section 197E.

### **Clause 13 Amendment of sch 6 (Dictionary)**

Clause 13 is a consequential amendment to clause 11. Clause 13 amends schedule 6 (Dictionary) of the PPRA to remove definitions which are no longer required due to the removal of Chapter 7, Part 5A.

## **Part 5 Amendment of Police Service Administration Act 1990**

### **Clause 14 Act amended**

Clause 14 provides that Part 5 amends the *Police Service Administration Act 1990*.

**Clause 15 Amendment of s 1.4 (Definitions)**

Clause 15 amends section 1.4 of the PSAA to signpost that the meaning of specific terms necessary for the IMS legislative framework are defined in the new section 10.2FA (Definitions for division).

**Clause 16 Amendment of s 10.2 (Authorisation of disclosure)**

Clause 16 makes provision for the insertion of division 1AA by providing that section 10.2(1) does not apply in circumstances where a provision of division 1AA applies.

**Clause 17 Insertion of new pt 10, div 1AA**

Clause 17 inserts new Division 1AA (National identity matching services) into Part 10 of the PSAA to ensure that the QPS is able to participate in the IMS.

**Section 10.2FA (Definitions for division)** inserts the meaning of specific terms necessary for the purposes of the division to enable the QPS to participate in the IMS through the use of an identity matching service.

**Section 10.2FB (Division binds all persons)** clarifies that the division binds all persons including the State and to the extent that the legislative power of Parliament permits, the Commonwealth and the other States.

**Section 10.2FC (Disclosure of identity information by commissioner)** gives the Commissioner of Police authority to disclose any identity information that is lawfully in the possession of the Commissioner for a purpose related to the operation of an identity matching service. Section 10.2FC specifies that the Commissioner can make the disclosure to the host agency or a participating entity for the service.

**Section 10.2FD (Collection and use of identity information by commissioner)** gives the Commissioner of Police authority to collect and use identity information obtained as a result of the operation of an identity matching service. The section specifies who the Commissioner may collect the information from.

**Section 10.2FE (Collection, use and disclosure by host agency)** prescribes what the host agency of an identity matching service may do with identity information for purposes related to the operation of the identity matching service.

**Section 10.2FF (Disclosure, use or collection must be for permitted purpose)** restricts the disclosure, collection or use of identity information under Part 10 of the PSAA to permitted purposes. Subsection 10.2FF(2) prescribes what a permitted purpose is for the section.

**Section 10.2FG (Inconsistency with other laws)** clarifies, that in circumstances where another law conflicts or is inconsistent with a power or function provided under this division, the power or function provided under this division applies despite the other law.

### **Clause 18 Insertion of new pt 11, div 9**

Clause 18 inserts a new division 9 (Transitional provision for Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018 into part 11 of the PSAA.

Section 11.17 (Transitional regulation-making power) sets out the transitional regulation making power allowing for the making of a transitional provision by regulation for a period of 2 years from the commencement of the section to ensure the delivery of the full functionality of the image matching service over the next few years. This includes the implementation of an information technology system nationally and the passage of enabling legislation by the Commonwealth and other participating jurisdictions and the development of intergovernmental participation agreements. The regulation making power is necessary due to the complexity of the scheme and to ensure national consistency in the implementation of the identity matching service.

Subsection 11.17(2) clarifies that the transitional regulation may have retrospective application to the commencement of this section.

Subsection 11.17(5) clarifies that any transitional regulation made will expire 3 years after the day this section commenced. If a regulation is made under this provision, the amendments are required to be regularised by way of an amending Act within 3 years of the commencement of the section.

## **Part 6 Amendment of Transport Operations (Road Use Management) Act 1995**

### **Clause 19 Act amended**

Clause 19 provides that Part 6 amends the *Transport Operations (Road Use Management) Act 1995* (TORUM).

### **Clause 20 Amendment of s 77 (Restricted written or electronic release of person's prescribed authority and traffic history information)**

Clause 20 omits provisions related to the Document Verification Service (DVS) from TORUM, as provisions that support the DVS are being moved to the *Transport Planning and Coordination Act 1994* (TPCA) by 28EK of the Bill. This will allow any prescribed authority, such as a driver licence or marine licence, issued by TMR to be verified using the DVS.

## **Part 7 Amendment of Transport Planning and Coordination Act 1994**

### **Clause 21 Act amended**

Clause 21 provides that Part 7 amends the *Transport Planning and Coordination Act 1994*.

**Clause 22 Amendment of s 28E (Definitions for pt 4C)**

Clause 22 omits the definitions of *prescribed authorisation Act* and *prescribed authority* from applying to Part 4C of the TPCA only, as these definitions are being moved so that they apply to the whole Act.

**Clause 23 Amendment of s 28ED (Restricted access to a digital photo and digitised signature)**

Clause 23 expands the circumstances that the chief executive must give a police officer access to a digital photo to any *permitted purpose* under 28EP(2), which is being inserted by clause 16. This expands the circumstances under which TMR can disclose photos to police which will be consistent with the kind of access that will be permitted under the IMS.

**Clause 24 Insertion of new pt 4D**

Clause 24 inserts a new Part 4D (National identity matching services) into the TPCA to enable TMR to participate in the IMS.

**Section 28EI (Definitions for part)** provides definitions for part 4D.

**Section 28EJ (Part binds all persons)** provides that part 4D binds all persons, including the State and Commonwealth to the extent the legislative power of the Parliament permits.

**Section 28EK (Disclosure of information about prescribed authorities)** supports TMR's continued participation in the DVS.

**Section 28EL (Application of division)** provides that Division 3 applies in relation to an IMS, other than the DVS.

**Section 28EM (Disclosure of identity information by chief executive)** provides that the chief executive may disclose identity information kept under a prescribed authorisation Act to the host agency for the IMS or a participating entity for the service.

**Section 28EN (Collection and use of identity information by chief executive)** provides that the chief executive may collect and use identity information received through the IMS from the host agency or the participating entity.

**Section 28EO (Collection, use and disclosure by host agency)** provides that the host agency for the IMS may collect, use and disclose identity information in the IMS.

**Section 28EP (Disclosure, use or collection must be for permitted purpose)** provides that information collected, used or disclosed must be for a permitted purpose listed in 28EP(2).

**Section 28EQ (Misuse of identity information)** prohibits a person from collecting, using or disclosing identity information disclosed by the chief executive or that is obtained by the operation of an identity matching service other than for a permitted purpose.

**Section 28ER (Inconsistency with other laws)** provides that to the extent this division is inconsistent with part 4C or another law, this division prevails to the extent of the inconsistency.

**Clause 25 Omission of s 37A (Annual report about access to digital photos)**

Clause 25 omits the requirement for a report to be prepared for the Minister, and for the Minister to lodge the report in Parliament annually about access to digital photos.

**Clause 26 Insertion of new pt 7, div 4**

Clause 26 inserts a new transitional regulation making power.

**Section 46 (Transitional regulation-making power)** sets out the transitional regulation making power allowing for the making of a transitional provision by regulation for a period of 2 years from the commencement of the section to ensure the delivery of the full functionality of the image matching service over the next few years. This includes the implementation of an information technology system nationally and the passage of enabling legislation by the Commonwealth and other participating jurisdictions and the development of intergovernmental participation agreements. The regulation making power is justified due to the complexity of the scheme and to ensure national consistency in the implementation of the identity matching service.

Subsection 43(2) clarifies that the transitional regulation may have retrospective application to the commencement of this section.

Subsection 43(5) clarifies that any transitional regulation made will expire 3 years after the day this section commenced. If a regulation is made under this provision, the amendments are required to be regularised by way of an amending Act within 3 years of the commencement of the section.

**Clause 27 Amendment of sch 1 (Dictionary)**

Clause 27 amends definitions in the TPCA to support the IMS.