

Counter-Terrorism and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Counter-Terrorism and Other Legislation Amendment Bill 2016.

Policy objectives and the reasons for them

From September 2014, nationally, there has been an escalation of terrorist related activity with three terrorist attacks resulting in fatalities, a further six imminent planned attacks disrupted and 36 persons being charged as a result of 13 different operations in relation to counter-terrorism matters. Australia is facing the most significant ongoing threat from terrorism in our nation's history. Not only is the threat of terrorism increasing it is becoming harder for law enforcement and intelligence agencies to detect and defeat.

Whilst the threat of hierarchical cells making detailed plans for mass-casualty and infrastructure attacks remain, there is an ever-increasing threat of low-tech, lone actor, terrorist attacks. This threat is exponentially harder to disrupt as there may be no visibility of planning, little or no direct communication between the terrorist group and the attackers and limited time delay between intent and action. These low tech attacks are often inspired by the terrorist groups' public calls for such acts with the perpetrators having tactical freedom to self-initiate and self-identify their targets based on their capability, size and resources.

Due to the nature of terrorism, and even more so with regard to low tech terrorism, police often need to intervene early to prevent a terrorist act, or act on less information than would be the case in more traditional policing responses. Rightfully, the priority for police and intelligence agencies is community safety. However, this does come at the cost of being able to fully identify the nature of the attack, identification of all persons involved and enabling the collection of sufficient evidence to prosecute those intent on causing harm.

Not all threatened, or actual, acts of violence against the community will be immediately identifiable as terrorism. In fact, it may be some time after the intervention, or the attack occurring, that it is identified that the act was undertaken with an intent of advancing a political, religious or ideological cause and the attack was done with the intention of coercing or influencing by intimidation, a government or the public.

Threats to community safety are not the sole domain of terrorism. Manmade and natural disasters and criminal acts such as mass murder, sabotage and destruction of critical infrastructure have a devastating impact on society. In order to prevent or minimise the impacts on public safety, it is essential that government can rapidly and effectively respond to emergencies.

The ability to rapidly acquire relevant information is critical for the effective management and resolution of emergencies. This is particularly so where lives are in jeopardy. Privacy concerns or specific legislation prohibiting disclosure of information unnecessarily impedes the acquisition and use of necessary information to enable effective management and resolution of emergencies. Furthermore, despite the *Information Privacy Act 2009* allowing disclosure of information to prevent a serious threat to life or public safety, or for the prevention, investigation and prosecution of offences, there are agencies and organisations who refuse to provide necessary information due to privacy concerns. Private companies are also increasingly concerned about the potential for adverse publicity and civil litigation where they voluntarily release information to police.

Whilst the *Information Privacy Act 2009* provides exemptions for an agency to disclose information, the Act requires the agency must be satisfied on reasonable grounds that the disclosure is necessary. This requires the agency to be provided with sufficient information on which to form its own determination that the disclosure is reasonably necessary. This may lead to a delay in the agency releasing the information. Furthermore, due to the sensitive or classified nature of some emergency incidents and in particular terrorist emergencies, not all information will be able to be released to the agency. For example, information describing the nature of the threat may identify the existence of a human source within a terrorist group. As such, the provision of limited information to the agency may be insufficient for their determination as to whether the disclosure is necessary. Furthermore, there is also no requirement for the disclosure of the information even if they may be satisfied the disclosure is necessary.

There is no legislative basis for police to require a person who, whilst not being a suspect in relation to a declared emergency, has intimate knowledge of relevant information which is necessary for the effective management or resolution of the emergency, to provide the information. Additionally, there is no requirement for a person to keep confidential the fact that information is being sought from the person, nor the nature of the information being sought, even if this disclosure is likely to result in persons being harmed, or seriously prejudicing the management or resolution of the emergency.

Terrorist emergency powers under Part 2A of the *Public Safety Preservation Act 1986* (PSPA) enable a terrorist emergency forward commander to declare a terrorist emergency for a stated area (the 'declared area'). However, the declared area is to be the smallest area necessary to effectively manage the terrorist emergency thereby limiting the area in which the terrorism emergency powers can be used. Dependant on the circumstances of the terrorism emergency, persons may be evacuated to another area within the 'declared area' for reception, identification

and assessment; and to ensure their safety and welfare. However, depending on the circumstances of the terrorist emergency, there will be incidents where persons will need to be evacuated some distance from the terrorist emergency site. This will either necessitate a considerable expansion of the declared area for the terrorist emergency or result in police no longer being able to exercise terrorist emergency powers to protect persons from further harm and effectively manage and control the evacuation, reception, identification and assessment of evacuated persons. Similarly, following a terrorist event, persons will self-evacuate from the terrorist emergency site and the declared area for the terrorist emergency may need to be considerably expanded to ensure police are able to exercise terrorist emergency powers to protect persons from harm and ensure they are appropriately assessed. Furthermore, due to the possibility of secondary devices and the potential for terrorists to be amongst evacuated persons, it poses an unacceptable risk for police to be unable to manage the evacuation and reception, identification and assessment of evacuated persons.

The PSPA enables a terrorist emergency forward commander to declare a terrorist emergency for a maximum period of seven days. The Premier and the Minister may extend the terrorist emergency but are limited to a maximum additional seven days. This limitation applies irrespective of the continuation of the threat of a terrorist act or a secondary terrorist act occurring. The Premier and Minister are further limited in that they may only extend the terrorist emergency if they are satisfied the terrorist emergency still exists and it is necessary for police to continue to exercise terrorist emergency powers to protect life or health at serious risk. This doesn't enable the terrorist emergency to shift if the nature, ongoing, or new threat poses a risk to critical infrastructure.

Police must be able to respond to emergencies with the maximum speed and effectiveness to preserve life, protect property and the environment. The Counter-Terrorism and Other Legislation Amendment Bill 2016 (the Bill) makes a number of amendments which are designed to improve the management and resolution of emergencies by enabling the Queensland Police Service to rapidly gather information, obtain authorisations and exercise powers in an endeavour to mitigate or minimise the impacts of emergency situations; including natural disasters, accidents and criminal actions, terrorist emergencies or chemical, biological and radiological emergencies.

The *Terrorism (Preventative Detention) Act 2005* (TPDA), whilst designed to enable early intervention regarding an imminent or recent terrorist act, does contain a number of provisions which inhibit police officers from obtaining an initial Preventative Detention Order (PDO) in urgent circumstances. Currently a police officer making an urgent application for an initial order must have completed a written application prior to making the application by telephone or other electronic means. Police officers reacting to an unfolding terrorist incident or threat of a terrorist act would unlikely be able to prepare a written application resulting in a delay in the application being made. Also the TPDA does not enable a Prohibited Contact Order (PCO) to be made at the same time as the PDO application and by similar method.

Additionally, police responding to terrorist emergencies may need to intervene to prevent a terrorist act from occurring prior to establishing the identity of all persons involved. The TPDA requires that a PDO must state the name of the person for whom the order is made. This prevents PDOs from being made in circumstances where the name of the person is not known, or where the person is only able to be identified by alias, partial name, physical description, including by surveillance photographs.

Section 8Q (Power to direct officers of government agencies) of the PSPA enables the Commissioner or a Deputy Commissioner of Police to manage and control the response of government agencies to a terrorist emergency, and give directions to an officer of a government agency to do an act or perform a function; or to refrain from doing an act or performing a function. Prior to a direction being given the agency must be consulted. Whilst there is merit with the requirement for the agency to be consulted prior to directions being given to their officers, the process is cumbersome and can inhibit the ability of the terrorist emergency forward commander's ability to manage the response within the declared area and ensure the safety of emergency responders and the broader community.

Currently a terrorist emergency officer has the power to search a vehicle within a declared area due to application of the powers of an emergency commander under section 8 (Powers of emergency commander). However, unlike the power to search a person under section 8N (Power to search person without warrant), section 8 does not provide a power to stop and search a vehicle that is about to enter, or is reasonably suspected of having just left, a 'declared area'.

Part 4 (General provisions) of the PSPA provides for specific protections and rights to employees who are absent from their work because of a relevant direction given under Part 2 (Emergency situation) and Part 3 (Chemical, biological and radiological emergencies). It also contains a scheme to enable a person to seek compensation where they have suffered a financial loss through their property being surrendered under a resource surrender direction or damaged or destroyed through use of powers under Parts 2 and 3. The PSPA does specifically provide that these provisions would apply as a result of compliance with relevant directions given under Part 2A (Terrorist emergency). Similarly, Part 4 does not clearly extend the protection from liability for officials and evidentiary provisions to Terrorist emergencies.

Corrective Services Act 2006

The Bill amends the *Corrective Services Act 2006* (CSA) to support efficiencies in the operational practices relating to the delivery of health services to prisoners, the management of corrective services facilities (including prisoners) and the supervision of offenders in the community.

Police Powers and Responsibilities Act 2000

The Bill amends the *Police Powers and Responsibilities Act 2000* to enable Commonwealth intelligence agencies to apply to the Supreme Court of Queensland, under the Commonwealth's

assumed identity legislation contained in Part IAC of the *Crimes Act 1914* (Cth), for approval to create a birth certificate for an assumed identity.

Achievement of policy objectives

The Bill achieves the objectives by amending the following Acts:

- *Corrective Services Act 2006*;
- *Police Powers and Responsibilities Act 2000*;
- *Public Safety Preservation Act 1986*; and
- *Terrorism (Preventative Detention) Act 2005*.

Corrective Services Act 2006

The Bill achieves its objective to support efficiencies in the operational practices relating to the delivery of health services to prisoners, the management of corrective services facilities (including prisoners) and the supervision of offenders in the community by amending the CSA to:

- Allow registered nurses as an alternative to doctors to conduct, at the prescribed intervals, the examination of prisoners under safety orders, maximum security orders, criminal organisation segregation orders and separate confinement orders;
- Clarify that a corrective services officer may use a biometric identification system for the purpose of the identification of a prisoner;
- Clarify that a prisoner's or visitor's biometric information that is captured, including by the individual submitting to a biometric identification system (including any data created of such information) is information the chief executive of corrective services may keep and must destroy as provided in the CSA;
- Expand the offence for a prisoner to fail to obtain the written permission of the chief executive of corrective services before applying to change the person's name so that it applies to a name change application in any Australian jurisdiction, not just Queensland; and
- Clarify the existing exception to a prisoner's right to request a reconsideration of a transfer decision that is an initial placement in a suitable facility also includes a transfer decision to move a remanded prisoner following sentence to another corrective services facility for the purpose of determining the most suitable facility for the prisoner's initial placement.

Police Powers and Responsibilities Act 2000

The Bill amends the *Police Powers and Responsibilities Act 2000* enabling Commonwealth intelligence agencies to apply to the Supreme Court of Queensland, under the Commonwealth's assumed identity legislation contained in Part IAC of the *Crimes Act 1914* (Cth), for approval to create a birth certificate for an assumed identity.

Public Safety Preservation Act 1986

The Bill will amend the *Public Safety Preservation Act 1986* enhancing public safety through augmenting counter-terrorism and emergency management powers, ensuring police can rapidly and effectively respond to and resolve emergencies. The Bill achieves this through:

- enabling police, during a declared emergency situation, terrorist emergency or chemical, biological and radiological emergency, to require the provision of information which is necessary for the management or resolution of the emergency and creating offences for contravening the requirement, giving false or misleading information and disclosure offences;
- clarification that the declaration of an area surrounding a moving activity for a terrorist emergency includes a stated area around a particular person;
- enabling the terrorist emergency to be extended beyond 14 days and up to 28 days by the Premier and the Minister for Police, Fire and Emergency Services and Minister for Corrective Services and thereafter only by regulation;
- enabling the appointment of a Terrorist Emergency Reception Centre Commander and declaration of a Terrorist Incident Reception Centre, the route or method of transportation and a place where persons self-evacuate to, as separate 'declared evacuation areas' for a terrorist emergency;
- extension to the power to stop and search, without warrant, a motor vehicle, other vehicle, ship, vessel, aircraft or railway rolling stock that is about to enter or is reasonably suspected of having just exited a 'declared area' for a terrorist emergency;
- removing the requirement for consultation with a government agency prior to giving directions to officers of the agency, in urgent circumstances or for the safety of the officer given the direction or the safety of other persons;
- amending the power to control movement of persons during a terrorist emergency to ensure that a direction given is withdrawn when compliance is no longer reasonably necessary;
- amending the power to search persons and vehicles and power to require name and address during a terrorist emergency by replacing the words 'has just left' with 'has recently left' to overcome possible legal argument as to what is meant by the word 'just';

- amending the power to seize things from a person during a terrorist emergency to ensure that police can seize anything that may be used to cause harm to any person;
- amending the power to require a person's name and address to include their date of birth;
- clarifying a cross reference in the definition of 'Emergency situation' and ensuring that the definition applies to intentional incidents in addition to accidents;
- clarifying that the protection of employment rights and compensation for use of, damage to, or destruction of property, apply to relevant directions given and exercise of powers under Part 2A (Terrorist emergency); and
- ensuring the protection from liability provision and the evidentiary provisions of the PSPA apply to terrorist emergencies.

Terrorism (Preventative Detention) Act 2005

The Bill will amend the *Terrorism (Preventative Detention) Act 2005* to enhance public safety through augmenting counter-terrorism and emergency management powers, ensuring police can rapidly and effectively respond to, and resolve, emergencies. The Bill achieves this by:

- enabling a Preventative Detention Order (PDO) to be made in respect of a person whose real name is not known, provided the person is able to be identified as the subject of the PDO;
- enabling police to require a person, who is suspected on reasonable grounds of being the subject of a PDO, to state their name, address and date of birth;
- enabling the taking and use of identifying particulars to establish or confirm the identity of a person who is detained under a PDO; and
- extension of the power for a police officer to make an application by phone or electronically etc. to include Prohibited Contact Orders and removing the requirement for preparation of a written application prior to making an urgent application for an initial order for a PDO.

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

The Bill has been drafted with due regard to the fundamental legislative principles outlined in the *Legislative Standards Act 1992* (LSA). However, there are a number of provisions of the Bill that are inconsistent with the fundamental legislative principles. These provisions and explanations for the inconsistencies are addressed below.

Corrective Services Act 2006

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

Clause 3 (Amendment of s.10 (Record of prisoner's details))

Section 10 of the CSA provides that the chief executive must establish a record of each prisoner's details, which include details about the identification of the prisoner. For the purpose of section 10, the term 'prisoner' includes a person subject to a community based order. For the identification of the prisoner a corrective services officer may take a photograph, fingerprint, palm print, footprint, toeprint, eye print or voiceprint from a prisoner. Clause 3 amends section 10 to make it clear the power to collect identifying information from a prisoner includes the form of such information that is collected by biometric identification systems. The amendment is intended to accommodate technological advances in the collection of identifying information rather than expand the existing power.

Fundamental legislative principles require that regard for a person's rights and liberties include a person's right of privacy. This amendment does not change the nature of the potential impact on a person's privacy that exists under the current section 10 of the CSA. It is necessary that an accurate record of each person under the chief executive's supervision, which includes biometric information, is created to support corrective services officers in the verification of the identity of prisoners during their period of imprisonment and when being supervised in the community. In recognition of the potential impact on a prisoner's right to privacy, section 10 of the CSA provides that biometric information must be destroyed if a prisoner is found not guilty of an offence for which the prisoner is being detained or if the proceedings for the offence for which the prisoner is being detained is discontinued or dismissed. In addition, section 341 of the CSA limits the disclosure of information collected under section 10 to particular circumstances. For example, disclosure is allowed for the purposes of the CSA or to discharge a function under another law. It is an offence punishable by 100 penalty units or two years imprisonment to disclose information contrary to section 341 of the CSA.

Clause 4 (Amendment of s 27 (Change of name))

Clause 4 amends section 27 of the CSA to extend the requirement that a person in the custody of the chief executive of corrective services' must seek the permission of the chief executive prior to submitting an application to change their name so that it applies to an application in any Australian jurisdiction. This amendment may affect a person's rights and liberties. The

amendment does not change the nature of the possible breach of fundamental legislative principles that exists with the current section 27. The possible breach of fundamental legislative principles must be balanced against the need to ensure community safety by enabling the chief executive, at all times, to be informed of any changes in a prisoner's name. This is necessary so that the chief executive has accurate information to effectively supervise prisoners released on parole orders; provide accurate information for victims on the eligible persons' register; and to ensure that the chief executive is holding correct information in relation to any prisoner in custody (which includes a person released on parole).

Clause 8 (Amendment of s 71 (Reconsidering decision))

Clause 8 amends section 71 to clarify the existing exception to a prisoner's right to request a reconsideration of a transfer decision. Currently, a prisoner cannot request a reconsideration of a transfer decision that is the initial placement of a prisoner following admission to a corrective services facility. The amended section 71 clarifies that this exception includes:

- a transfer to move a prisoner (who has been held on remand) following the prisoner's sentence to imprisonment if the transfer is to assess the prisoner and determine the most suitable corrective services facility in which to place the prisoner during his or her imprisonment; and
- the subsequent transfer to place the prisoner in another corrective services facility after the above-mentioned assessment of the prisoner has occurred.

The amendment to section 71 potentially impacts on the rights and liberties of prisoners. The amendment sufficiently defines the administrative power that is exempt from review. The potential infringement on a prisoner's rights and liberties by exempting the administrative decision from review ought to be balanced against the need to ensure the safety of the community and staff; as well as the security and good order of corrective services facilities. In order to meet these safety and security needs, it is necessary for the chief executive of corrective services to be able to determine the initial accommodation that will be most suitable for the prisoner at the time a prisoner is admitted to a facility following sentence to a period of imprisonment. If this initial placement decision of the prisoner was reviewable, the correctional system would potentially become unworkable.

Public Safety Preservation Act 1986

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

Clause 28 (Insertion of new pt 2, div 3)

Clause 28 inserts new section 8AE (Making of information requirement) which authorises the emergency commander or a police officer acting on the emergency commander's instructions, during the period of an emergency situation, to require the provision of information which is necessary for the management or resolution of the emergency situation. This power is also

extended to the terrorist emergency forward commander, the TERC commander, and the CBRE commander and police officers acting on the relevant commander's instruction. This may be seen as being inconsistent with the rights and liberties of individuals.

However, the power in section 8AE is considered justified in the circumstances, particularly given the safeguards reflected in sections 8AE to 8AR. An information requirement can only be given during the period of the declared emergency situation, terrorist emergency or chemical, biological and radiological emergency and only if the commander is satisfied on reasonable grounds that a person may be able to give information and that the information is necessary to manage or resolve the declared emergency. In managing and resolving emergencies, police would not normally have the luxury of time which may be afforded during more traditional policing responses. This is particularly the case where police are trying to prevent an imminent terrorist attack. Due to the nature of terrorism, and even more so with regard to low-tech terrorist attacks, police will often need to intervene early to prevent the attack from occurring. This does come at the cost of not being able to fully identify the nature of the attack and identification of all persons involved. In responding to emergencies, it is considered that the rights of the individual are outweighed by the public interest in ensuring police can effectively and quickly manage and resolve declared emergencies thereby minimising or mitigating the endangerment of the health and safety of the community, destruction of property or pollution of the environment.

Furthermore, section 8AE(1)(b) further limits the use of the information requirement power to when it is not practicable, in the circumstances of the emergency, to obtain the information from the person other than under an information requirement power.

The information requirement scheme creates offences for a person to contravene the information requirement, giving false or misleading information, and disclosing to an unauthorised person the fact that an information requirement had been made or the nature of the information sought. The maximum penalty for the simpliciter offence is 40 penalty units or 12 months imprisonment. Each offence contains a circumstance of aggravation where the person commits the simpliciter offence and intends to, knows or is reckless as to whether, committing the offence will, seriously endanger the health or safety of any person, cause serious damage to property, cause serious pollution to the environment or seriously prejudice the effective management or resolution of the declared emergency. The maximum penalty for the circumstance of aggravation is 10 years imprisonment. This is the maximum penalty, and the actual penalty imposed is at the discretion of the court taking into account all the relevant individual circumstances of the particular case.

The level of penalty is appropriate and necessary. The ability to rapidly acquire relevant information is critical for the effective management and resolution of emergencies. Where a person is not motivated to provide police with information to preserve life or prevent mass property destruction, the maximum penalty of 10 years imprisonment is indispensable in deterring persons from failing to comply with the information requirement. This is particularly the case where the person is reluctant to provide the information due to misplaced loyalty

because of friendship or family connections. Furthermore, the person's right to silence is far outweighed by the public interest in preventing the health or safety of the community from being seriously endangered, serious damage being caused to property, serious pollution of the environment or seriously prejudicing the effective management or resolution of the declared emergency.

To further safeguard the rights of individuals, section 8AE(7) specifically prohibits the giving of an information requirement to a person who is reasonably suspected of having committed an indictable offence that is directly related to the declared emergency. Furthermore, section 8AF (Person to be informed of relevant matters) provides that the person must be advised of the factors outlined in section 8AF(3), including that it is a reasonable excuse for the person not to give the information, if giving the information might tend to incriminate the person or expose them to a penalty or where the information is the subject of legal professional privilege.

Section 8AQ (Protection from liability for giving information) further safeguards a person who provides information in compliance with the information requirement, or who provides information to the person who is complying with the information requirement, by protecting them from any criminal or civil liability. Furthermore, the person cannot be held to have breached any code of professional etiquette or ethics or to have departed from accepted standards of professional conduct.

Clause 40 (Replacement of s 8L (Grounds for exercise of power))

Clause 40(1) replaces section 8L and omits the existing requirement for the exercise of terrorist emergency powers by a terrorist emergency officer to occur 'and, unless otherwise provided, only in a declared area'. The omission of 'and, unless otherwise provided, only in a declared area' removes contradictions with provisions that provide a power to give a direction to a person outside of a declared area and powers in relation to searching persons and vehicles that are about to enter or are reasonably suspected of having recently left a declared area for the terrorist emergency or declared evacuation area. The power to give directions to persons outside of a declared area is justified in the circumstances of managing terrorist incidents, whereby the power to search and control movement of persons about to enter a declared area is necessary. The information requirement power conferred under new section 8AE is also not restricted in terms of the areas in which it may be exercised. Section 8L(1) retains the safeguards and includes specific grounds for the exercise of power under new section 8M.

Legislation should not confer immunity from proceeding or prosecution without adequate justification – *Legislative Standards Act 1992*, s 4(3)(h).

Clause 28 (Insertion of new pt 2, div 3)

New section 8AQ (Protection from liability for giving information) provides protection from criminal or civil liability or liability under an administrative process to a person who gives information under an information requirement or who gives information to a person of whom an information requirement was made to help that other person comply with the information

requirement. This could be considered to be a breach of the fundamental legislative principle that legislation should not confer immunity from proceeding or prosecution without adequate justification.

However, it is considered that adequate justification for the protection provided by section 8AQ exists. Persons to whom an information requirement is given are required to provide the information and should not be exposed to liability as a result of compliance with an information requirement. Therefore, it is considered reasonable that such persons should be protected from liability as a result of the provision of the information. The protection only applies if the person acted honestly and without negligence.

Clause 54 (Amendment of s 47 (Protection from liability))

Clause 54 amends section 47 to extend the current protection from liability provided in that section to also apply to a terrorist emergency commander, a terrorist emergency forward commander, a terrorist emergency reception centre commander, the commissioner, the deputy commissioner or a relevant police officer. This potentially breaches the fundamental legislative principle that legislation should not confer immunity from proceeding or prosecution without adequate justification.

This amendment has been made to provide a consistent protection from liability for persons acting under the Act. The amendment ensures officials acting under part 2A (Terrorist emergency) of the Act are provided with the same protections as officials already covered in section 47 of the Act. The extension of the protection of liability is considered justified due to the nature of terrorist emergencies. It is important for officials to be able to exercise powers and perform actions under the Act without fear of litigation, particularly given the urgent and high-pressure nature of terrorist emergencies. The protection only applies if the act is done or omission is made in good faith and without negligence.

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

Clauses 36 (Replacement of s 8H (Extension of terrorist emergency beyond 7 days to a maximum of 14 days))

Clause 36 inserts new sections 8H (Extension of terrorist emergency beyond 7 days) and 8HA (Extension of terrorist emergency beyond 28 days) to enable extension of a terrorist emergency. Section 8H enables the Premier and the Minister to extend a terrorist emergency beyond the initial seven days, up to a maximum of 28 days, by up to seven day increments. Section 8HA enables the terrorist emergency to be further extended by regulation if the circumstances of the terrorist act or threats of further terrorist acts necessitate the continuation of the terrorist emergency. Each regulation can only extend the terrorist emergency by a maximum of 14 days.

Allowing the extension of a terrorist emergency to be made by the Premier and Minister or by regulation could be considered to breach the fundamental legislative principles that legislation should only allow the delegation of administrative power in appropriate cases and to

appropriate persons and that legislation should have sufficient regard to the institution of Parliament.

The power of the Premier and the Minister is limited to extending the terrorist emergency for periods of up to seven days therefore requiring regular reassessments of the use of the terrorist emergency powers based on operational need. The ability to extend the terrorist emergency is also subject to the requirement in section 8I for a relevant person to end the terrorist emergency if satisfied that it is no longer necessary for police officers to continue to exercise terrorist emergency powers to maintain public safety, protect life or health at serious risk or to protect critical infrastructure.

Legislation should not reverse the onus of proof in criminal proceedings without adequate justification – *Legislative Standards Act 1992*, section 4(3)(d)

Clause 28 (Insertion of new pt 2, div 3)

Clause 28 inserts new section 8AG (Offence to contravene information requirement) which creates an offence for a person who fails to comply with an information requirement. Section 8AG(4) provides that it is a defence to a prosecution for an offence for the person to prove that the person:

- (a) could not reasonably comply with the information requirement within the period stated in the requirement;
- (b) took reasonable steps to comply with the information requirement; and
- (c) gave the information sought under the information requirement as soon as practicable after the period for compliance stated in the requirement.

The effect of section 8AG(4) is that the onus of proof is reversed and it is considered that there is adequate justification for this, as the factors for which the reversal applies are uniquely in the knowledge of the defendant and difficult for the Crown to prove otherwise. This section is also consistent with section 76 (Proof of negative etc.) of the *Justices Act 1886* which provides, in relation to simple offences, that it is not necessary for the prosecution to prove the negative, but that the defendant shall be called upon to prove the affirmative thereof in the defendant's defence.

Clause 56 (Amendment of s 48 (Evidentiary provisions))

Clause 56 amends section 48, extending the evidentiary provisions to appointments, signatures and documents made under Part 2A (Terrorist emergency) of the *Public Safety Preservation Act 1986*. The extension of the existing evidentiary provisions to appointments, signatures and documents made under Part 2A is consistent with the existing evidentiary provisions of the Act.

Terrorism (Preventative Detention) Act 2005

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

Clauses 60 (Amendment of s 14 (General provisions that apply if the PIM must be notified about an application to the issuing authority)), 61 (Amendment of s 15 (Application for initial order)), 68 (Replacement of s 79 (Obtaining orders by telephone or similar facility)).

Clause 68 omits current section 79 and inserts new sections 79 (Electronic application in particular circumstances), 79A (Oral application for initial order in urgent circumstances), 79B (Recording of particular applications for initial order) and 79C (Additional procedure if electronic application). The new sections extend the power of a police officer to make an application by phone, fax, email, videoconferencing, radio or another form of electronic communication for a PDO or a PCO. New section 79 removes the requirement for the preparation of a written application prior to making an urgent application for an initial order.

As a consequence of enabling oral applications for an initial order to be made, clauses 60 and 61 make consequential amendments to sections 14 (General provisions that apply if the PIM must be notified about an application to the issuing authority) and 15 (Application for initial order). Section 14 requires the applicant to give the Public Interest Monitor (PIM) a copy of the application. Section 15 requires the application for an initial order to be in writing.

Allowing an application to be made without the preparation of a written application could be considered to be inconsistent with the fundamental legislative principle that legislation should have sufficient regard to the rights and liberties of individuals. In particular, section 16(1) requires the applicant for an initial order to notify the PIM of the application and section 14(2) requires the applicant to give the PIM a copy of the application. If no application is to be prepared, this could reduce the effectiveness of sections 16(1) and 14(2) as a safeguard to the individual.

The potential inconsistency with the rights and liberties of the individual is considered to be justified in the circumstances. The application can only be made in urgent circumstances whereby making a written application for an initial order may unnecessarily delay a police officer from taking a person into custody under a PDO. In circumstances where the police officer is acting to prevent an imminent terrorist act or to preserve evidence following a recent terrorist act, any delay should be avoided and could impact the safety of the community at large. This delay may necessitate the release of a person involved in an imminent terrorist act or a recent terrorist act. In these circumstances, the need to preserve the safety of the community must outweigh the rights of the individual. Additionally, section 17(5) limits the period of detention under an initial order to a maximum period of 24 hours.

Section 79B(2) also provides a safeguard in relation to the making of an application in these circumstances. Section 79B(2) provides that the issuing authority must either make an audio or visual recording of the application or direct the applicant to make an audio or visual

recording of the application, or as soon as reasonably practicable after the application has been made, make a written record of the application or direct the applicant to make a written record of the application. Furthermore, section 79A(3) requires the police officer making the application to address each matter that is required in a written application. These safeguards are considered to be a sufficient compromise and ensures the rights of the individual are addressed as soon as practicable.

Consultation

Consultation on the Bill was undertaken with the following community stakeholders:

- Australian Medical Association Queensland;
- Aboriginal and Torres Strait Islander Legal Service;
- Chamber of Commerce and Industry Queensland;
- Queensland Council for Civil Liberties;
- Queensland Law Society;
- Legal Aid Queensland;
- Prisoners Legal Service;
- The Public Interest Monitor; and
- Bar Association of Queensland.

In relation to the amendments to the *Corrective Services Act*, the following stakeholders were consulted:

- Queensland Nurses Union;
- Sisters Inside;
- Catholic Prison Ministry; and
- Women's Legal Service.

Consistency with legislation of other jurisdictions

Corrective Services Act 2006

Amendments to the CSA does not relate to a uniform or complementary legislative scheme with other jurisdictions.

Police Powers and Responsibilities Act 2000

Amendments to chapter 12 of the PPRA (Assumed identity) to enable Commonwealth intelligence agencies to obtain birth certificate for an assumed identity.

The assumed identity legislation of New South Wales, Western Australia and Tasmania enable ASIO and ASIS to obtain birth certificates as evidence of assumed identities.

Public Safety Preservation Act 1986

Clause 36, amending section 8Q (Power to direct officers of government agencies). New South Wales, Victoria, Western Australia, Tasmania, Northern Territory and the Australian Capital Territory all provide police with the power to direct government agencies, without the need for consultation with the agency, in their terrorist emergency powers.

Terrorism (Preventative Detention) Act 2005

Clause 62, amendment to section 17 (Issuing authority may make initial order). The Commonwealth preventative detention legislation similarly enables Preventative Detention Orders to be made where the name of the person is not known.

Clauses 68 replacement of section 79 (Electronic application in particular circumstances) and insertion of new sections 79A (Oral applications for initial order in urgent circumstances), 79B (Recording of particular applications for initial order) and 79C (Additional procedure if electronic application). Both the New South Wales and Commonwealth equivalent legislation permits Preventative Detention Order and Prohibited Contact Order applications to be made by telephone and other means and enable an urgent application to be made without a written application having first been prepared.

Notes on provisions

Part 1 Preliminary

1. Short title

Clause 1 provides that, when enacted, the Bill will be cited as the *Counter-Terrorism and Other Legislation Amendment Act 2016*.

Part 2 Amendment of Corrective Services Act 2006

2. Act amended.

Clause 2 provides that Part 2 amends the *Corrective Services Act 2006*.

3. Amendment of s 10 (Record of prisoner's details)

Clause 3 amends section 10 (Record of prisoner's details). Subclause (1) amends section 10(2) to clarify that for the identification of a prisoner a corrective services officer may collect and store the prisoner's biometric information, including by way of a biometric identification system.

Subclause (2) amends section 10(3) to clarify that the prisoner's biometric information, and any data about the biometric information stored in a biometric identification system must be destroyed in accordance with the circumstances outlined in section 10(3).

Subclause (3) amends section 10(4) to clarify that the prisoner's biometric information and any data about the biometric information stored in a biometric identification system must not be destroyed in the circumstances outlined in section 10(4).

4. Amendment of s 27 (Change of name)

Clause 4 amends section 27 (Change of name) so that a person in the chief executive's custody must obtain the chief executive's written permission before applying to change the person's name under the *Births, Deaths and Marriages Registration Act 2003* or an equivalent law of another State providing for the registration of a change to the person's name.

Subclause (2) amends section 27(3) to reflect the renumbering in section 27(1).

5. Replacement of s 57 (Medical examination)

Clause 5 replaces section 57 (Medical examination) and inserts a new section 57 (Health examination). The new section 57 (Health examination) provides that a doctor or a nurse must examine, for any health concerns, a prisoner the subject of a safety order. The frequency of the examinations continues to be as soon as practicable after the order is made; and subsequently, at intervals that are, to the greatest practicable extent, of not more than 7 days. The provision continues to ensure that a prisoner's medical needs (including mental health) are not neglected or overlooked during the period he or she is on a safety order.

6. Replacement of s 64 (Medical examination)

Clause 6 replaces section 64 (Medical examination) and inserts a new section 64 (Health examination). The new section 64 (Health examination) provides that a doctor or a nurse must examine, for any health concerns, a prisoner the subject of a maximum security order. The frequency of the examinations continues to be as soon as practicable after the order takes effect and thereafter at intervals that are, to the greatest practicable extent, of not more than 28 days, and as soon as practicable after the order ceases to have effect. The provision continues to ensure that a prisoner's medical needs (including mental health) are not neglected or overlooked during the period he or she is on a maximum security order.

7. Replacement of s 65C (Medical examination)

Clause 7 replaces section 65C (Medical examination) and inserts a new section 65C (Health examination). The new section 65C (Health examination) provides that a doctor or nurse must examine, for any health concerns, a prisoner subject to a criminal organisation segregation order (COSO). The frequency of the examinations continues to be as soon as practicable after the COSO takes effect and subsequently (to the greatest extent practicable) at intervals of not more than 28 days, and as soon as practicable after the order ceases to have effect. The provision continues to ensure that a prisoner's medical needs (including mental health) are not neglected or over looked during the period he or she is on a COSO.

8. Amendment of s 71 (Reconsidering decision)

Section 71 currently provides that a prisoner cannot request a reconsideration of a transfer decision that is the prisoner's initial placement after admission to a corrective services facility. Clause 8 amends section 71 (Reconsidering decision). Subclause (1) amends section 71(1)(a) to clarify that a prisoner cannot request a reconsideration of a transfer decision if it is a prisoner's preliminary transfer or the prisoner's initial placement.

Subclause (2) amends section 71(6) by inserting new definitions for the terms initial placement and preliminary transfer. A preliminary transfer is the transfer on sentencing of a prisoner who has been held on remand if the purpose of the transfer is to assess and determine an appropriate corrective services facility to place the prisoner during his or her imprisonment. The initial placement of such a prisoner is the subsequent transfer of the prisoner to another corrective services facility following the above-mentioned assessment. The initial placement of a prisoner who is first admitted into a corrective services facility on being sentenced to imprisonment for an offence, is the transfer of the prisoner to another corrective services facility after first being admitted.

9. Amendment of s 121 (Separate confinement)

Clause 9 amends section 121 (Separate confinement) to provide that a doctor or nurse must examine the prisoner subject to a separate confinement for any health concerns. The frequency of the examinations continues to be as soon as practicable after the order takes effect and ceases to have effect. The provision continues to ensure that a prisoner's medical needs (including

mental health) are not neglected or over looked as a result of the prisoner being placed on separate confinement.

10. Amendment of s 160 (Identification of visitor)

Clause 10 amends section 160(2) (Identification of visitor) to ensure a consistent use of the term “identification system procedures” which is used in section 160(1).

11. Amendment of s 162 (Proof of identity)

Clause 11 amends section 162 (Proof of identity) to clarify the visitor’s biometric information the chief executive of corrective services may keep (when provided by the visitor as proof of the visitor’s identity) and must destroy (when the chief executive is satisfied it is no longer required) includes any data stored in a biometric identification system.

12. Amendment of sch 4 (Dictionary)

Clause 12 inserts into schedule 4 (Dictionary) by inserting a definition for ‘biometric identification system’ and ‘biometric information’ for the purposes of sections 10, 160 and 162. The terms allow for the collecting and storing of a person’s photograph and information about a person’s hands, feet, eyes or voice that is taken by scan or print.

Part 3 Amendment of Police Powers and Responsibilities Act 2000

13. Act amended.

Clause 13 provides that Part 3 amends the *Police Powers and Responsibilities Act 2000*.

14. Amendment of s 280 (Definitions for ch 12)

Clause 14 amends section 280 (Definitions for ch 12) by inserting definitions of ‘chief executive officer’, ‘intelligence agency’ and ‘intelligence officer’. These definitions are necessary for, and a consequence of, amendments enabling the Australian Secret Intelligence Service and the Australian Security Intelligence Organisation to obtain birth certificates for assumed identities.

15. Amendment of s 289 (Order authorising creation of birth certificate for assumed identity under corresponding authority)

Clause 15 amends section 289 (Order authorising creation of birth certificate for assumed identity under corresponding authority) to enable the chief executive officer of a Commonwealth intelligence agency to apply to the Supreme Court of Queensland for a birth certificate approval under Part IAC (Assumed identities) of the *Crimes Act 1914* (Cth) for the creation of a birth certificate for an assumed identity. Pursuant to Part 2 of Schedule 4 (Corresponding laws) of the *Police Powers and Responsibilities Regulation 2012*, Part IAC of the *Crimes Act 1914* (Cth) is a corresponding law to Queensland’s assumed identity legislation. Part IAC of the *Crimes Act 1914* (Cth) provides for the acquisition and use of assumed identities for Commonwealth law enforcement and intelligence agencies. It also provides for

the periodic review of each authority to acquire and use an assumed identity and imposes obligations relating to compliance and monitoring.

16. Amendment of s 290 (Giving effect to birth certificate approval)

Clause 16 amends section 290 (Giving effect to birth certificate approval) as a consequence of the amendment to section 289 to enable an intelligence officer named in the birth certificate approval to create a birth certificate. Section 290 also requires the registrar-general to provide the intelligence officer with any help the officer needs to create the birth certificate.

17. Amendment of s 291 (Destruction of birth certificate created under s 290)

Clause 17 amends section 291 (Destruction of birth certificate created under s 290) to extend the destruction and notification requirements to the chief executive of an intelligence agency when the birth certificate approval is cancelled.

18. Amendment of s 299 (Indemnity for issuing agency and officer in relation to creation of birth certificates)

Clause 18, as a consequence of the amendment to section 289, amends section 299 (Indemnity for issuing agency and officer in relation to creation of birth certificates) to impose a requirement on the intelligence agency to indemnify the registrar-general, or an officer of the registrar-general from any civil liability incurred as a result of the creation of the birth certificate in accordance with a birth certificate approval.

19. Amendment of sch 6 (Dictionary)

Clause 19 amends schedule 6 (Dictionary) by signposting that the definitions of ‘intelligence agency’, ‘intelligence officer’ and ‘chief executive officer’ as they apply to chapter 12 of the PPRa are contained in section 280.

Part 4 Amendment of Public Safety Preservation Act 1986

20. Act amended.

Clause 20 provides that Part 4 amends the *Public Safety Preservation Act 1986*.

21. Amendment of s 3A (extraterritorial application of Act)

Clause 21 amends section 3A (Extraterritorial application of Act). Subclause (1) inserts a new subsection into section 3A ensuring the ability to declare a vehicle or a stated area surrounding a vehicle as a declared evacuation area under new section 8GA (Evacuation areas may be declared), even though the vehicle is outside of Queensland. Furthermore, the amendment ensures that the declaration of the vehicle or stated area around the vehicle does not cease because the vehicle leaves Queensland. For example, this will allow a vessel that is to be used to evacuate persons to a terrorist emergency reception centre established on the main land from a Queensland island, or from another vessel, which is a declared area for the terrorist emergency.

Subclause 2 ensures that the new subsection inserted by subclause (1) does not limit the extraterritorial application of the PSPA.

Subclause 3 renumbers the section due to the inclusion of the new subsection by subclause (1).

22. Insertion of new pt 2, div 1 heading

Clause 22 inserts new heading for Part 2, Division 1 (Declarations and delegations) into the PSPA.

23. Amendment of s 5 (Declaration of emergency situation)

Clause 23 amends section 5 (Declaration of emergency situation) to replace subsection (2) to insert the term ‘emergency situation certificate’ and clarify the information which must be stated in the emergency situation certificate.

Subclause (2) makes a consequential amendment to subsection (4) due to the inclusion of the term ‘emergency situation certificate’ into the section.

Subclause (3) replaces subsection (5) ensuring that the commissioner must still keep the emergency situation certificate for a period of 6 years, however, the timeframe for forwarding the certificate to the office of the Commissioner of the Police Service is not retained as the office no longer exists. The time frame for forwarding the emergency situation certificate and the location where the certificate is to be kept are to be dealt with through policy.

24. Amendment of s 7 (Power to delegate)

Clause 24(1) replaces the heading for section 7 (Power to delegate) with section 7 (Delegation of power for particular periods). This change to the heading was necessary due to new section 7A (Delegation of power to require information).

Subclause (2) redrafts subsection (3) as a consequence of the use of the new term ‘emergency situation certificate’ inserted in section 5 of the PSPA.

25. Insertion of new s 7A

Clause 25 creates a new section 7A (Delegation of power to require information). This section enables the emergency commander to delegate the new information requirement power provided by section 8AE (Making of information requirement) to an appropriately qualified police officer. This delegation power is consistent with current Queensland Police Service emergency management policy and procedures which enables the emergency commander to delegate functions in line with the complexity and size of the emergency. Whilst the emergency commander may delegate this function, the emergency commander still remains responsible for the command, control and coordination of the response to the declared emergency.

Subsection (2) requires the emergency commander to attach a written instrument of delegation or revocation, made under this section, to the emergency situation certificate.

Subsection (3) clarifies that any delegation that is in force, ends, when the emergency declaration ends.

26. Insertion of new pt 2, div 2, hdg

Clause 26 inserts a new heading for Part 2, Division 2 (Powers for area in which emergency situation exists) into the PSPA.

27. Amendment of s 8 (Powers of emergency commander)

Clause 27 amends the heading for section 8 from (Powers of emergency commander) to (General powers). This amendment is as a consequence of the new information requirement powers provided by new part 2 division 3 (Power to require information).

28. Insertion of new pt 2, div 3

Clause 28 inserts new division 3 (Power to require information) into part 2 of the PSPA. Division 3 contains new sections 8AA to 8AR to create an information requirement scheme for the management and resolution of declared emergencies under the PSPA. By including the information requirement power as part of the emergency commander's powers in Part 2, it will apply to emergencies declared under Part 2A (Terrorist emergencies) and Part 3 (Chemical, biological and radiological emergencies) pursuant to sections 8C(4), 8E(2)-(4), 8FA(2)-(4) and 18 of the PSPA.

Section 8AA (Definitions for division) inserts the definitions that are necessary for new information requirement powers contained in new division 3.

Section 8AB (Meaning of authorised person) inserts the meaning of who is an authorised person for an information matter.

Section 8AC (Meaning of unauthorised person) inserts the meaning of who is an unauthorised person for an information matter.

Section 8AD (Meaning of disclosure recipient) inserts the meaning of who is a disclosure recipient. Subsection (2) clarifies that a person can be a disclosure recipient irrespective of whether the disclosure of the information matter to them was lawful or unlawful.

Subsection (3) sets out who is not a disclosure recipient for the purposes of the division 3 (Power to require information). A person who is not a disclosure recipient pursuant to this subsection is not subject to prohibitions on disclosing an information matter under the division, including the requirement to seek a disclosure notice under section 8AL (Request for disclosure notice to be given) or the disclosure offence under section 8AJ (Offence for disclosure recipient to disclose information matter to unauthorised person).

Section 8AE (Making of information requirement) provides police with a power to require any person, including government agencies, to provide information, a document or answer questions that are necessary for the management or resolution of the declared emergency situation.

Subsection (1) limits the use of the power to during the period of the declared emergency and only if the commander is satisfied on reasonable grounds, the person may be able to give the information, that the information is necessary for the management or resolution of the declared emergency and it is not practicable, in the circumstances of the emergency, for the information to be obtained from the person, other than through the use of the information requirement power. Examples of when it would not be practicable, in the circumstances of the emergency, to obtain the information another way include, but are not limited to, where:

- the information is required immediately, including where this does not allow any time for a person to determine if the release of the information is reasonably necessary in accordance with the *Information Privacy Act 2009*;
- due to the sensitive or classified nature of details about the emergency, not all information will be able to be provided to the person to enable their determination if the release of the information is reasonably necessary in accordance with the *Information Privacy Act 2009*;
- disclosure of the fact that information is being sought, or the nature of the information sought, needs to be prohibited;
- it will assist in ensuring that the person does not provide false or misleading information;
- a person refuses to provide the necessary information;
- legislation restricts the acquisition, use, disclosure or retention of the information;
- the person may benefit from being protected from liability under section 8AQ for providing the information; or
- the person, from whom the information is being sought, requests the making of an information requirement.

Subsection (2) establishes who can make the information requirement and to whom the information is to be provided in compliance with the requirement. Subsection (2)(b) enables the information requirement to be provided to a police officer, not specifically identified, who is performing a stated function, as an individual officer's shift may end and that officer is replaced by another police officer. For example, the person may be required to contact the intelligence cell for the declared emergency on a stated telephone number or email address.

Subsection (3) defines that an information requirement is a requirement made under subsection (2).

Subsections (4) sets out how the information requirement may be made.

Subsection (5) sets out how a person may be required to give the information in compliance with the information requirement.

Subsection (6) enables the information requirement to be provided on an ongoing basis, but only during the period of the declared emergency. For example, a toll road operator may be required to continuously monitor their system and notify police immediately when a vehicle with a specific registration number is detected on their system.

Subsection (7) restricts an information requirement being made of a person who is reasonably suspected of having committed or committing an indictable offence that is directly related to the emergency situation. This subsection makes it clear that the information requirement power cannot be used to abrogate a suspect's right to silence.

Subsection (8) sets out how a person complies with the information requirement when providing an electronic document. To comply with the information requirement, the document must be in a form usable by the Queensland Police Service.

Subsection (9) provides that once the declaration for the emergency ends or is revoked, any current requirement to provide information ends.

Subsection (10) provides the meaning for the term 'electronic document' for the purposes of section 8AE.

Section 8AF (Person to be informed of relevant matters) specifies the information that must be provided to a person to whom an information requirement is made, and how that information may be provided.

Subsection (1) requires, if the information requirement is made by written notice, the notice is to contain the prescribed relevant matters.

Subsection (2) requires, if the information requirement is made orally, the prescribed relevant matters are to be told to the person when the requirement is made.

Subsection (3) prescribes the relevant matters to be provided to the person to whom the information requirement is made.

Section 8AG (Offence to contravene information requirement) creates an offence for a person, without a reasonable excuse, to fail to comply with the information requirement.

Subsection (2) ensures that privilege against self-incrimination and legal professional privilege are maintained. Subsection (2)(a) does not apply to circumstances where a person considers they may expose themselves to criminal or civil liability or expose themselves to a penalty for disclosing the information in compliance with the information requirement. Due to the operation of subsection (5) and section 8AQ (Protection from liability for giving information), the person is protected from liability and therefore cannot use subsection (2)(a) as a reasonable excuse for non-compliance with the information requirement.

Subsection (3) clarifies that subsection (2) does not limit what is a reasonable excuse for contravention of the information requirement.

Subsection (4) provides protection for a person who is given an information requirement and is unable to comply with the requirement, either immediately or within the stated timeframe, due to reasons that are reasonable in the circumstances, as long as the person undertook reasonable steps to comply with the requirement and provided the required information as soon as was reasonably practicable in the circumstances. For example, a company requested to

provide CCTV footage could not provide the footage immediately as a technician was required to transfer the data into a format that would be able to be viewed by the Queensland Police Service without the need for specific equipment.

Subsection (5) ensures that the information requirement overrides any requirement under another Act or rule of law, to maintain confidentiality or any other restriction on giving the information. This includes a newer, more specific provision, unless the provision expressly excludes the operation of the section.

Subsection (6) creates the circumstance of aggravation for the offence of contravening the information requirement under subsection (1). This includes circumstances where the person intends to, or is reckless as to whether their noncompliance with the information requirement will seriously endanger the health or safety of any person; or cause serious damage to property; or cause serious pollution of the environment; or seriously prejudice the effective management or resolution of the emergency situation. A person will be reckless with respect to the circumstances of the matter if the person is aware of a substantial risk that the circumstance exists or will exist and having regard to the circumstances, it is unjustifiable to take that risk.

Section 8AH (Offence to give false or misleading information) creates an offence for a person to provide information that the person knows is false or misleading in a material particular.

Subsection (2) sets out the circumstances when the offence under subsection (1) does not apply to a person.

Subsection (3) creates the circumstance of aggravation for the offence of contravening the information requirement under subsection (1). This includes circumstances where the person intends to, or is reckless as to whether their noncompliance with the information requirement will seriously endanger the health or safety of any person; or cause serious damage to property; or cause serious pollution of the environment; or seriously prejudice the effective management or resolution of the emergency situation. A person will be reckless with respect to the circumstances of the matter if the person is aware of a substantial risk that the circumstance exists or will exist and having regard to the circumstances, it is unjustifiable to take that risk.

Subsection (4) provides the meaning for the term ‘nominated officer’ for the purposes of section 8AH.

Section 8AI (Offence for person to disclose information matter to unauthorised person) creates an offence for a person during the declared emergency, without a reasonable excuse, to disclose to a person who is not an authorised person for the information matter, the fact that an information requirement has been made of the person or the nature of the information sought under the information requirement that is made of the person.

Subsection (1) creates the offence for the disclosure of the information matter to a person who is not authorised to receive the disclosure. This subsection limits the period during which a person can commit the offence to during the period of the declared emergency.

Subsection (2) specifies the circumstances when the offence provision is excluded from applying to the disclosure.

Subsection (3) creates the circumstance of aggravation for the offence of disclosing an information matter under subsection (1). This includes circumstances where the person intends to, or is reckless as to whether their noncompliance with the information requirement will seriously endanger the health or safety of any person; or cause serious damage to property; or cause serious pollution of the environment; or seriously prejudice the effective management or resolution of the emergency situation. A person will be reckless with respect to the circumstances of the matter if the person is aware of a substantial risk that the circumstance exists or will exist and having regard to the circumstances, it is unjustifiable to take that risk.

Section 8AJ (Offence for disclosure recipient to disclose information matter to unauthorised person) creates offences for the disclosure of an information matter to an unauthorised person by a disclosure recipient.

Subsection (1) creates the offences for the disclosure of an information matter by a disclosure recipient to an unauthorised person. This subsection limits the period during which a person can commit the offence to during the period of the declared emergency.

Subsection (1)(a) applies where an authorised person for the disclosure of an information matter subsequently on-discloses the information matter, without a reasonable excuse, to an unauthorised person.

Subsection (1)(b) applies where an information matter is disclosed to an unauthorised person and the unauthorised person subsequently on-discloses the information matter, without a reasonable excuse, to another person, knowing or being reckless as to whether, the person to whom the disclosure is made is an unauthorised person.

Subsection (2) and (3) sets out when the offence provision is excluded from applying to the disclosure of the information matter by the disclosure recipient.

Subsection (4) creates the circumstance of aggravation for the offences of disclosing an information matter under subsection (1). This includes circumstances where the person intends to, or is reckless as to whether their noncompliance with the information requirement will seriously endanger the health or safety of any person; or cause serious damage to property; or cause serious pollution of the environment; or seriously prejudice the effective management or resolution of the emergency situation. A person will be reckless with respect to the circumstances of the matter if the person is aware of a substantial risk that the circumstance exists or will exist and having regard to the circumstances, it is unjustifiable to take that risk.

Section 8AK (Notice that person released from prohibition on disclosing information matter) enables the emergency commander to remove, or authorise the removal of, the prohibition from a person disclosing that an information requirement has been made or the nature of the information sought under the requirement.

Subsection (1) sets out when section 8AK applies.

Subsection (2) provides for the giving of the notice removing the prohibition against disclosure of the fact that an information requirement has been made or the nature of the information sought under the requirement. The notice takes effect from the time the notice is given to the person.

Subsection (3) sets out how the notice may be given to the person.

Section 8AL (Request for disclosure notice to be given) enables a person during the period of the declared emergency, who is either a person to whom an information requirement is made, or a disclosure recipient, to seek authorisation for the disclosure of the information matter to seek assistance in complying with the information requirement, informing employers or managers that an information requirement has been made or to seek legal advice in relation to the information requirement or offence provisions under the information requirement scheme.

Subsection (1) sets out when and to whom the section applies.

Subsection (2) sets out to who the person can seek the giving of a disclosure notice, authorising the disclosure of the information matter to a stated person and for a stated purpose.

Subsection (3) prescribes the stated purposes for which a disclosure notice may be given to a stated person.

Subsection (4) defines who is a relevant officer.

Section 8AM (Obligation to give, or refuse to give, disclosure notice) requires the relevant police officer to give a disclosure notice in compliance with a request made under section 8AL, unless the officer reasonably suspects that the giving of the notice might prejudice the effective management or resolution of the declared emergency.

Subsection (1) sets out when this section applies.

Subsection (2) requires the relevant police officer to give the disclosure notice to a stated person unless it is reasonably suspected that giving the notice might prejudice the effective management or resolution of the declared emergency.

Subsection (3) sets out how the disclosure notice may be given.

Subsection (4) clarifies that the obligation for the giving of a disclosure notice does not delay or otherwise affect the time for which the person must comply with the information requirement.

Subsection (5) requires the relevant officer to refuse to give a disclosure notice in circumstances where it is reasonably suspected that giving the notice might prejudice the effective management or resolution of the declared emergency.

Section 8AN (Person to be informed of relevant matters) specifies the information that must be provided to a person to whom a disclosure notice is given, and how that information may be provided.

Subsection (1) requires, if the disclosure notice is made by writing, the notice is to contain the prescribed relevant matters.

Subsection (2) requires, if the disclosure notice is given orally, the prescribed relevant matters must be told to the person when the notice is given.

Subsection (3) prescribes the relevant matters to be provided to the person to whom the disclosure notice is given.

Section 8AO (Procedure if disclosure notice is given) specifies what the relevant police officer must do to inform the person who requested the giving of the disclosure notice if a disclosure notice is given under section 8AM(2). Because subsection (1) does not state a time for this to occur, section 38(4) of the *Acts Interpretation Act 1954* applies requiring notification to occur as soon as possible.

Subsections (2) to (4) sets out the information that the relevant officer must record and when the information is to be recorded.

Section 8AP (Procedure if disclosure notice is refused) sets out what the relevant police officer must do if they decide under section 8AM(5) to refuse the request to give a disclosure notice.

Subsection (1) sets out when the section applies.

Subsection (2) sets out the obligations to be undertaken if a request for the giving of a disclosure notice is refused. Subsection (2)(b) requires police, if a request for a disclosure notice to be given to a stated lawyer is refused, to allow the person to nominate another lawyer to be given a disclosure notice to seek legal advice under section 8AL(3)(a)(iii) or (b)(iii).

Subsection (3) sets out how the information may be given.

Section 8AQ (Protection from liability for giving information) provides protection from liability to a person who, acting honestly and without negligence, provides the information in compliance with the information requirement, or being an authorised person who gives information to the person to whom the information requirement was made to enable their compliance with the information requirement.

Subsections (1) and (2) sets out to whom the section applies.

Subsections (3) to (5) prescribes the protection provided to the person who gives the information.

Section 8AR (Persons to be informed that emergency situation has ended) places an obligation upon the emergency commander to ensure that a person to whom either an

information requirement has been made or a disclosure notice has been given, as soon as is reasonably practicable after the declared emergency has ended, to inform the person that the declared emergency has ended and therefore they are no longer prohibited from disclosing the information matter.

Subsection (2) clarifies that this section does not apply if the prohibition on disclosing the information matter has already been removed by a notice given under section 8AK.

Subsection (3) provides the definition for 'relevant person'.

29. Insertion of new s 8BA

Clause 29 inserts a new section 8BA (Appointment of TERC commander) to enable the terrorist emergency commander, during a declared terrorist emergency, to appoint a terrorist emergency reception centre commander if it is necessary to establish a terrorist emergency reception centre outside of the declared area for a terrorist emergency.

30. Amendment of s 8C (Function of terrorist emergency commander)

Clause 30(1) amends the heading for section 8C from (Function of terrorist emergency commander) to section 8C (Function and powers of terrorist emergency commander).

Subclause (2) replaces subsection 8C(2) to extend the powers and function of the terrorist emergency commander to give directions about the performance of function and exercise of powers to the terrorist emergency reception centre commander as well as the terrorist emergency forward commander.

Subclause (3) amends subsection 8C(3) to extend the application of the section to require the terrorist emergency reception centre commander to comply with the directions of the terrorist emergency commander and provide that the terrorist emergency reception centre commander is also subject to the management and control of the terrorist emergency commander.

Subclause (4) replaces the existing subsection 8C(4) to extend the terrorist emergency commanders powers to include the powers that a terrorist emergency reception centre commander has in addition to having the powers of the terrorist emergency forward commander.

31. Amendment of s 8E (Function of terrorist emergency forward commander)

Clause 31 amends section 8E to provide the terrorist emergency forward commander with the function and powers an emergency commander has under part 2, including the new information requirement power under part 2, division 3 and the delegation of power to require information under section 7A.

Subclause (3) inserts new subsection 8E(2A) to facilitate the terrorist emergency forward commander's function and powers in relation to the exercise of the powers an emergency commander has under in section 7A and part 2, division 2 and 3. Subclause (3) also replaces

subsection 8E(3) to facilitate the use of powers under section 7A and part 2, division 2 and 3 by a police officer acting on the terrorist emergency forward commander's instructions.

Subclause (4) ensures that the powers provided by section 8E do not limit other powers that are available to the terrorist emergency forward commander or a police officer acting on the commander's instructions.

Subclause (5) renumbers section 8E(2A) to (5).

32. Insertion of new s 8FA and s 8FB

Clause 32 inserts new sections 8FA and 8FB to provide the functions and powers of a terrorist emergency reception centre commander.

Section 8FA (Function and powers of TERC commander) sets out the functions and powers of the terrorist emergency reception centre commander has for a declared evacuation area declared under section 8GA and a terrorist emergency reception centre.

Subsection 8FA(2) provides the terrorist emergency reception centre commander with the function and powers an emergency commander has under part 2, including the new information requirement power under part 2, division 3 and the delegation of power to require information under section 7A.

Subsection (3) facilitates the terrorist emergency reception centre commander's function and powers in relation to the exercise of the powers an emergency commander has under section 7A and part 2, division 2 and 3.

Subsection (4) facilitates the use of powers under section 7A and part 2, division 2 and 3 by a police officer acting on the terrorist emergency reception centre commander's instructions.

Subsection (5) ensures that the powers provided by section 8FA do not limit other powers that are available to the terrorist emergency reception centre commander or a police officer acting on the commander's instructions.

Subsection (6) stipulates that the powers conferred under section 8FA are subject to section 8PB (Grounds for exercise of power).

Section 8FB (TERC commander's power to delegate) prescribes when, to whom, and limitations of the terrorist emergency reception centre commander's power to delegate the commander's functions under the PSPA.

Subsection (4) sets out how the terrorist emergency reception centre commander is to record the delegation and any revocation of the delegation.

Subsection (5) ensures that any active delegation ends when the terrorist emergency ends.

Subsection (6) provides that the delegation of the terrorist emergency reception centre commander's functions also includes the commander's powers.

33. Replacement of pt 2A, div 1, sdiv 2 hdg (Declaration)

Clause 33 replaces the heading of part 2A, division 1, subdivision 2 (Declaration) to Subdivision 2 (Declarations).

34. Amendment of s 8G (Terrorist emergency may be declared)

Clause 34(1) amends the example of what may be a moving activity in section 8G(3) to clarify that a declared area may be a stated moving motor vehicle or vessel or an area surrounding a specified person.

Subclause (2) is a technical amendment to ensure that the subsection is drafted within contemporary drafting styles.

Subclauses (3) and (4) are consequential amendments due to the amendment made in clause 36 inserting new section 8HA (Extension of terrorist emergency beyond 28 days) enabling a regulation to extend the duration of the terrorist emergency.

35. Insertion of new s 8GA

Clause 35 inserts new section 8GA (Evacuation areas may be declared) prescribing when and why the terrorist emergency reception centre commander may declare a 'declared evacuation area'.

Subsection (2) prescribes the areas or vehicles which may be declared as a declared evacuation area for the terrorist emergency.

Subsection (3) requires the stated areas for the declared evacuation areas to be the smallest area necessary to effectively manage the evacuation of persons or to effectively manage the reception, identification and assessment of persons, thereby limiting the area in which the terrorism emergency powers can be utilised.

Subsection (4) requires that the terrorist emergency reception centre commander is to issue a terrorist emergency evacuation certificate as soon as practicable after making a declaration. The certificate must state each declared evacuation area and the date and time of the declaration.

Subsection (5) allows the terrorist emergency reception centre commander to change the description of a declared evacuation area at any time by amending the certificate and stating the date and time of amendment.

Subsection (6) provides that unless ended sooner by the terrorist emergency reception centre commander, the declaration ends when the declaration of a terrorist emergency has ended.

Subsection (7) provides the definition of vehicle for the section.

36. Replacement of s 8H (Extension of terrorist emergency beyond 7 days to a maximum of 14 days)

Clause 36 replaces section 8H (Extension of terrorist emergency beyond 7 days to a maximum of 14 days) with new sections 8H (Extension of terrorist emergency beyond 7 days) and 8HA (Extension of terrorist emergency beyond 28 days).

Section 8H (Extension of terrorist emergency beyond 7 days) enables the Premier and the Minister to extend a terrorist emergency beyond the initial seven days, up to a maximum of 28 days, by up to seven day increments, in circumstances where it is necessary to protect life or health or to protect critical infrastructure. This provides the Premier and Minister greater flexibility to ensure terrorist emergency powers are available to police to protect the Queensland community.

Section 8HA (Extension of terrorist emergency beyond 28 days) permits the terrorist emergency to be further extended by regulation if the circumstances of the terrorist act or threats of further terrorist acts necessitate the continuation of the terrorist emergency. Each regulation can only extend the terrorist emergency by a maximum of 14 days.

37. Amendment of s 8I (Relevant person must end terrorist emergency in particular circumstances)

Clause 37 amends section 8I (Relevant person must end terrorist emergency in particular circumstances) by replacing subsection (1) to require the terrorist emergency commander, the Premier or the Minister to end the terrorist emergency if the purpose of protecting life and health or critical infrastructure is no longer necessary.

Section 8I(3) provides that a regulation made under section 8HA expires when the terrorist emergency ends.

38. Replacement of s 8J (Dealing with the terrorist emergency certificate at the end of the emergency)

Clause 38 replaces section 8J with new section 8J (Dealing with certificates at end of terrorist emergency). This amendment in effect removes the timeframe and requirement for forwarding the terrorism emergency certificate to the office of the Commissioner of the Police Service as the office no longer exists and the time frame for forwarding the certificate and the location where the certificate is to be kept are to be dealt with through policy. New section 8J still requires the terrorist emergency forward commander to record the date and time of the ending of the terrorist emergency on the terrorist emergency certificate. The section also requires the commissioner to keep any terrorist emergency evacuation certificate as well as the terrorist emergency certificate for a minimum period of six years.

39. Amendment of pt 2A, div 2, sdiv 1, hdg (Terrorist emergency officer powers)

Clause 39 amends the heading of part 2A, division 2, subdivision 1 (Terrorist emergency officer powers) to part 2, division 2, subdivision 1 (Terrorist emergency officer powers for declared areas).

40. Replacement of s 8L (Grounds for exercise of power)

Clause 40 replaces the existing section 8L (Grounds for exercise of power).

Subsection 8L(1) prescribes when and for what purposes a terrorist emergency officer may exercise a terrorist emergency power under section 8M (Power to control movement of persons).

Subsection (2) prescribes when a terrorist emergency officer may exercise terrorist emergency powers, other than under section 8M.

Subsection (3) limits the exercise of terrorist emergency powers to during the period of the terrorist emergency.

Subsection (4) provides that a terrorist emergency officer may use force that is reasonably necessary when exercising a terrorist emergency power.

41 Replacement of s 8M (Power to control movement of persons)

Clause 41 replaces section 8M to, in effect, extend the power for a direction to be given to a person who is in a declared area or who it is reasonably suspected is about to enter a declared area to go to and stay at or in a declared evacuation area. New section 8M removes that qualification for the person to ‘temporarily’ stay but provides an additional safeguard of requiring the relevant commander to ensure a direction given under the section is withdrawn, when the relevant commander is satisfied that the direction is no longer necessary for a purpose specified in section 8L(1).

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

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

Subsection (3) requires the relevant commander to ensure a direction given under the section is withdrawn, when the relevant commander is satisfied that the direction is no longer necessary for a purpose specified in section 8L(1).

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

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

Subsection (6) provides a definition for the term ‘relevant commander’.

42. Amendment of s 8N (Power to search a person without a warrant)

Clause 42(1) amends section 8N(1) to specifically state in the section that the search may be undertaken without a warrant.

Subclause (2) amends subsection 8N(1) to replace the word ‘just’ with ‘recently’ to remove the immediacy of the person having left a declared area for a terrorist emergency, enabling the power to search the person to be undertaken in circumstances where it is reasonably suspected the person had recently left the declared area for the terrorist emergency.

Subclause (3) replaces subsection 8N(2) to enable a thing to be seized where the terrorist emergency officer reasonably suspects the person may use the thing to cause harm to themselves or another person.

43. Amendment of s 8O (Power to require name and address)

Clause 43 amends section 8O to enable police to require a person to state their date of birth and provide evidence of correctness of same, in addition to their name and address.

Subclause (1) amends subsection 8O(1) to replace the word ‘just’ with ‘recently’ to remove the immediacy of the person having left a declared area for a terrorist emergency, enabling police to require the person’s name, address and date of birth to be undertaken in circumstances where it is reasonably suspected the person had recently left the declared area for the terrorist emergency.

44. Insertion of new s 8P

Clause 44 inserts new section 8P (Power to search vehicle without warrant) to provide a power for a terrorist emergency officer, without warrant, to stop, detain and search a vehicle, that is in, about to enter or is reasonably suspect of having recently left a declared area for a terrorist emergency.

Subsection (2) sets out the power that a terrorist emergency officer has to seize items.

Subsection (3) provides that the safeguards contained in chapter 20 of the PPRA apply to this section.

Subsection (4) clarifies that a power exercised under this section is not an enforcement act for the purposes of the PPRA.

Subsection (5) provides a definition of ‘vehicle’ for the purposes of the section.

45. Insertion of new pt 2A, div 2, sdiv 1A

Clause 45 inserts a new part 2A, division 2, subdivision 1A (Terrorist emergency officer powers for declared evacuation areas). The new subdivision includes new sections 8PA to 8PD.

Section 8PA (Definition for sdiv) defines the term ‘terrorist emergency officer’ for the purposes of subdivision 1A.

Section 8PB (Grounds for exercise of power) limits the exercise of terrorist emergency powers for declared evacuation areas.

Subsection (1) prescribes when and for what purposes a terrorist emergency officer may exercise a terrorist emergency power under section 8PC (Power to control movement of persons).

Subsection (2) prescribes when a terrorist emergency officer may exercise terrorist emergency powers, other than under section 8PC.

Subsection (3) limits the exercise of terrorist emergency powers to during the period of the terrorist emergency.

Subsection (4) provides that a terrorist emergency officer may use force that is reasonably necessary when exercising a terrorist emergency power.

Section 8PC (Power to control movement of persons) provides powers to control the movement of persons in, or reasonably suspected of being about to enter, a declared evacuation area.

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

Subsection (2) prescribes the directions that a terrorist emergency officer may give to the person.

Subsection (3) requires the terrorist emergency reception centre commander to ensure a direction given under the section is withdrawn, when the commander is satisfied that the direction is no longer necessary for a purpose specified in section 8PB(1).

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

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

Section 8PD (Application of particular provisions to terrorist emergency officer) facilitates the exercise of powers under sections 8N to 8P by a terrorist emergency officer in a declared evacuation area.

46. Amendment of s 8Q (Power to direct officers of government agencies)

Clause 46 amends section 8Q (Power to direct officers of government agencies). Subclause (1) amends section 8Q(1) by removing the reference to a deputy commissioner to ensure that the power to give a direction to another agency is delegable pursuant to commissioner's general power of delegation under section 4.10 (Delegation) of the *Police Service Administration Act 1990*.

Subclause (2) amends subsection 8Q(3) to ensure that a direction can be given in relation to declared evacuation areas.

Subclause (3) inserts a new subsection 8Q(5) to remove the requirement to consult with a government agency prior to a direction being given if compliance with the direction is required urgently, or is necessary for the safety of the officer to whom the direction is given or another person.

Subclause (4) renumbers subsection (9) as subsection (10).

Subclause (5) inserts a new subsection (9) to clarify that this section does not limit other powers police have under this or any other Act to give directions.

47. Amendment of s 8R (Report to Minister)

Clause 47 amends section 8R (Report to Minister).

Subclause (1) amends subsection 8R(1) to clarify that the commissioner must give a report to the Minister in compliance with section 8R within 3 months after the declaration of the terrorist emergency ends.

Subclause (2) amends subsection (2)(a)(iv) to extend what the commissioner's report must contain to include any delegation under sections 7A (Delegation of power to require information), and 8FB (TERC commander's power to delegate).

48. Amendment of s 14 (Extension of CBR emergency beyond 7 days)

Clause 48 is a technical amendment to section 14(5) to clarify that the reference is to subsection (2).

49. Amendment of s 18 (Powers of CBRE commander)

Clause 49 amends section 18(2) to facilitate the CBRE commanders function and powers in relation to the exercise of the powers an emergency commander has under section 7A and part 2, division 2 and 3.

Subclause (1) omits 'Notes 1 to 3'. Note 1 is no longer required as subclause (2) inserts the relevant sections into section 18(2). Notes 2 to 3 are omitted and reinserted in accordance with current drafting practices.

50. Amendment of s 43 (Reports)

Clause 50 amends section 43(2)(a)(v) to require that the report about the CBR emergency tabled in the Legislative Assembly by the Minister must include powers delegated under sections 7A and 19(5) and why and to whom the powers were delegated.

51. Amendment of s 43D (Multiple appointments)

Clause 51 amends section 43D(2) to insert the terrorist emergency reception centre commander as a commander that a person can hold multiple appointments for.

52. Amendment of s 44 (Protection of employment rights)

Clause 52 amends section 44(6) to extend the protection of employment rights of a person to include a resource operator direction or a help direction given under Part 2A (Terrorist emergency).

53. Amendment of s 46 (Compensation for use of, damage to or destruction of property)

Clause 53(1) amends section 46 (Compensation for use of, damage to or destruction of property) to extend the compensation provisions to include a resource surrender direction given under Part 2A (Terrorist emergency).

Subclause (2) renumbers section 46(3)(b) as section 46(3)(c).

Subclause (3) inserts new subsection (3)(b) to provide reference to any claim relating to a terrorist emergency to be made within 28 days after the terrorist emergency ends.

54. Amendment of s 47 (Protection from liability)

Clause 54 amends section 47(2) to extend a protection from liability, where anything done or omitted to be done was done so in good faith and without negligence, for the terrorist emergency commander, terrorist emergency forward commander, terrorist emergency reception centre commander, commissioner, deputy commissioners, police officers operating on their instruction and the stated person in relation to a terrorist emergency.

55. Insertion of new ss 47A and 47B

Clause 55 inserts new sections 47A (Proceedings for offences) and 47B (Use of information obtained under Act).

Section 47A (Proceedings for offences) provides for the classification of offences under the Act and timeframe for the commencement of proceeding for summary offences under the Act.

Subsection (1) specifies the offences under the Act which are summary offences.

Subclause (2) enables a summary offence under Part 2, Division 3 (Power to require information) to be commenced within 2 years after the matter of the complaint arose in circumstances where a proceeding was previously commenced in relation to a circumstance of aggravation and the proceeding was, or is to be, discontinued by the Attorney-General or the director of public prosecutions.

Section 47B (Use of information obtained under Act) ensures that any information obtained under this Act may be recorded, retained or used for the purpose of performing a function of the police service despite any provision under any other Act which restricts the recording, retention or use of the information, unless the other Act specifically overrides this section.

56. Amendment of s 48 (Evidentiary provisions)

Clause 56 amends section 48 (Evidentiary provisions). Subclause (1) amends section 48(a) to insert references to ‘the terrorist emergency commander, the terrorist emergency forward commander, the TERC commander’. The effect of this amendment is that it will not be necessary to prove these appointments in a proceeding for the purpose of the Act.

Subclause (2) inserts new section 48(d) and (e) to include any document claiming to be a copy of a terrorist emergency certificate or terrorist emergency evacuation certificate is evidence of the certificate and of the matters stated in the certificate.

57. Amendment of s 50 (Power unaffected by failure to comply with formal provision)

Clause 57 amends section 50(b) to extend the application of the section in relation to non-compliance with sections 8AE(4)(b), 8GA(4), 8GA(4) or 8J in relation to issuing of a terrorist emergency evacuation certificate or completing the stated requirements on the certificate.

58. Amendment of schedule (Dictionary)

Clause 58 amends schedule (Dictionary) to clarify new terms used as a result of the amendments made to the PSPA.

Subclause (3) amends the definition of ‘emergency situation’ to include, in addition to any accident, any ‘incident’ that causes or may cause a danger or death, injury or distress to any person, a loss of or damage to any property or pollution of the environment. This is to ensure that an emergency situation can be declared irrespective of whether the actions were accidental or intentional.

Subclause (4) is a technical amendment to ensure that the definition is in accordance with current drafting practices.

Subclause (5) clarifies the cross-reference is to paragraph (g).

Part 5 Amendment of Terrorism (Preventative Detention) Act 2005

59. Act amended.

Clause 59 provides that Part 5 amends the *Terrorism (Preventative Detention) Act 2005*.

60. Amendment of s 14 (General provisions that apply if the PIM must be notified about an application to the issuing authority)

Clause 60 amends section 14 to remove the requirement for the PIM to be provided with a copy of the application in circumstances where an urgent application for an initial order was made without a written application having been prepared pursuant to sections 79(4)(a) or 79A(2).

61. Amendment of s 15 (Application for initial order)

Clause 61 amends section 15 (Application for initial order) by inserting new subsection (6) to clarify that the provisions contained within that section in relation to an application for an initial order are subject to sections 79 and 79A of the Act.

62. Amendment of s 17 (Issuing authority may make initial order)

Clause 62 amends section 17 (Issuing authority may make initial order) to allow an initial Preventative Detention Order (PDO) to be made where a person is only known by a partial name, alias, nickname or in circumstances where the person can only be identified by a description, including by a photograph.

The ability to issue an initial PDO for a person by description is qualified by the requirement that the description must be sufficient to identify the person in relation to whom the order is made.

63. Amendment of s 25 (Issuing authority may make final order)

Clause 63 amends section 25 (Issuing authority may make final order) to enable a final PDO to be made where a person is only known by a partial name, alias, nickname or in circumstances where the person can only be identified by a description, including a photograph.

The ability to issue a final PDO for a person by description is qualified by the requirement that the description must be sufficient to identify the person in relation to whom the order is made.

64. Amendment of s 40 (Requirement to provide name etc.)

Clause 64 amends section 40 (Requirement to provide name etc.) to ensure that a police officer is able to require a person, who is reasonably suspected of being the subject of the PDO, to state the person's name, address and date of birth.

Furthermore, this clause provides that a police officer can require a person who has been taken into custody under a PDO to state the person's name, address and date of birth.

65. Amendment of s 53 (Restrictions on questioning detained person)

Clause 65 amends section 53 (Restrictions on questioning detained person) as a consequence of the amendment to section 17 (Issuing authority may make initial order) and section 25 (Issuing authority may make final order) which enables initial and final PDOs to be made where a person's name is not known, but the person can be adequately identified by other means such as a partial name, nickname, alias or physical description.

66. Amendment of s 69 (Taking identifying particulars)

Clause 66 amends section 69 (Taking identifying particulars) to insert a note to clarify that the restrictions on taking identifying particulars, other than under this section, do not apply when a person has been released from detention under the PDO, even though the order may still be in force.

67. Amendment of s 70 (Use of identifying particulars)

Clause 67 amends section 70 (Use of identifying particulars) to enable the use of identifying particulars to establish or confirm the identity of the person taken into detention under the PDO.

68. Replacement of s 79 (Obtaining orders by telephone or similar facility)

Clause 68 inserts a new section 79 (Electronic application in particular circumstances) to allow police, in urgent circumstances or due to other circumstances such as remote location, to apply to an issuing authority for a PDO or Prohibited Contact Order (PCO) by telephone, fax, email, video conferencing, radio or another form of electronic communication.

Clause 68 also inserts new sections 79A-79C to permit urgent applications for a PDO to be made without the necessity for the preparation of a written application and enabling an application for a PCO at the same time the application is being made for a PDO.

69. Amendment of schedule (Dictionary)

Clause 69 amends schedule (Dictionary) to clarify the meaning of ‘described’ as it applies to a PDO.

Part 6 Other amendments of Public Safety Preservation Act 1986

70. Act amended.

Clause 70 provides that Schedule 1 amends the *Public Safety Preservation Act 1986*.

Schedule 1 Other amendments of Public Safety Preservation Act 1986

1. Particular references to time and date.

Schedule 1 makes minor technical amendments in accordance with contemporary drafting practices.