

Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016

Explanatory Notes

Short title

The short title of the Bill is the Australian Crime Commission (Queensland) and Other Legislation Amendment Bill 2016 (the Bill).

Policy objectives and the reasons for them

The objectives of the Bill are to facilitate the merger of CrimTrac (Australia's policing information sharing agency) into the Australian Crime Commission (ACC) (Australia's national criminal intelligence agency), and to address operational priorities of the Queensland Police Service (QPS) and Queensland Fire and Emergency Services (QFES).

CrimTrac agency merger into the ACC

As of 1 July 2016, the CrimTrac agency will cease to exist as an entity. The integration of Australia's national information (CrimTrac) and intelligence capabilities (ACC) is vital to ensure law enforcement and protection agencies have access to accurate information and intelligence in their response to immediate threats.

Amendment to the Australian Crime Commission (Queensland) Act 2003 (ACCQA)

The Australian Transaction Reports and Analysis Centre (AUSTRAC) provides valuable information regarding money laundering and the financing of terrorism to the ACC and the broader law enforcement community. To further strengthen this partnership the ACC Board resolved to add the CEO of AUSTRAC as a member of the ACC Board. Increasing the Board's membership from 14 to 15 members requires amendment to the quorum at Board meetings from seven to nine Board members, so as to constitute a majority.

Amendments to the Police Powers and Responsibilities Act 2000 (PPRA)

In 2013, the PPRA was amended by the *Tattoo Parlours Act 2013*. Section 35 of the PPRA was amended to include the power for a dog handler to use an explosives detection dog to carry out explosives detection in relation to a person who is about to enter, is in, or is leaving, a tattoo parlour. A drug detection dog can carry out detection at a tattoo parlour, licensed premises, where an event is being held or in a public place. The Bill will make amendments so that places where an explosives detection dog can carry out detection are consistent with the places in which a drug detection dog can currently be utilised.

The decision of *Bulsey & Anor v State of Queensland* [2015] QCA 187 (*Bulsey*) found the arrest of the appellants was unlawful as officers had arrested them upon the direction of a senior police officer, rather than forming their own reasonable suspicion as required under section 198(2) (now section 365(2) of the PPRA). Damages were awarded to the appellants. This has implications for arrests during large scale operations and in exigent circumstances. The Bill will address this issue by amending the PPRA to authorise a police officer to arrest a person without warrant upon the instruction of another police officer.

In *R v McMillan* [2010] QSC 309, the applicant was charged with unlawfully trafficking dangerous drugs. During an interview with police the applicant expressed reservations about answering questions, citing a fear of retribution if recorded incriminating others. The interview concluded and it was after the recording had stopped, but before the police and the applicant left the interview room that the applicant made admissions. Oral testimony of the police officers regarding the admissions was subsequently excluded from evidence due to the drafting of section 439 of the PPRA. Subsequent cases such as *R v Wayne Robert Purnell* [2012] QSC 60 have reiterated the need to redraft the section. The Bill will redraft section 439 and omit references to the term 'record' in order to resolve this issue.

Under section 31 of the PPRA, a police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without warrant exist may – (a) stop a vehicle; (b) detain a vehicle and the occupants of the vehicle; and (c) search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained. Section 32 of the PPRA lists the prescribed circumstances where a police officer may search a vehicle without warrant. Section 32(a) provides a power to search where there may be something in the vehicle that is a weapon or explosive that a person may not lawfully possess, but does not permit a search for a knife that a person may not lawfully possess. The Bill inserts the word 'knife' into section 32(a) to provide police with a clear power to search a vehicle for a knife that is unlawfully possessed.

Amendments to the Weapons Act 1990 (Weapons Act)

In 2012, the Weapons Act was amended by the *Weapons and Other Legislation Amendment Act 2012*. Section 50 of the Weapons Act (Possession of weapons) was amended by the insertion of a mandatory minimum penalty where a person unlawfully possesses a short firearm in a public place without reasonable excuse. Also inserted into section 50 by the amending Act was section 50(3) which states, 'In this section – **public place** includes any vehicle that is in or on a public place'. The insertion of this definition clarifies that possession of a short firearm in a vehicle that is in or on a public place constitutes possession of a short firearm in a public place. The amendment has highlighted inadequacies in other sections of the Weapons Act that make it unlawful to possess a knife or a weapon in a public place (i.e. sections 51 and 57 of the Weapons Act). The Bill will amend sections 51 and 57 of the Weapons Act to create conformity with section 50.

Amendments to the Fire and Emergency Services Act 1990 (FESA)

As of 1 July 2015, the Residential Tenancies Authority (RTA) advised QFES they are no longer able to provide QFES with access to information contained within the rental bonds database on the basis of confidentiality provisions. This has restricted QFES' efforts to identify the occupiers and owners of budget accommodation buildings and take appropriate action to ensure compliance with fire safety standards in such structures. The Bill will permit an authorised fire

officer to require information that will assist in identifying the occupier of a premises, in order to investigate a contravention of fire safety measures.

Achievement of policy objectives

The Bill achieves the objectives by:

1. amending Queensland Acts that currently refer to 'CrimTrac' to refer to the new agency, 'the ACC';
2. increasing the quorum at ACC Board meetings from seven to nine members in the ACCQA;
3. permitting police to use an explosives detection dog, without warrant, to carry out explosives detection operations at licensed premises, where an event is being held or in a public place;
4. redrafting section 439 of the PPRA to allow judicial discretion to admit evidence of unrecorded admissions or confessions where the admission of the evidence is in the interests of justice;
5. ensuring it is lawful in the PPRA for a police officer to arrest a person without warrant at the instruction of another police officer, where there are lawful grounds for the arrest;
6. providing police with the power to search a vehicle, without warrant, where it is reasonably suspected the vehicle may contain a knife, not in the lawful possession of a person;
7. defining 'public place' in section 51 of the Weapons Act to clarify the definition of 'public place' with respect to a knife being possessed within a vehicle in public, without reasonable excuse;
8. defining 'public place' in section 57 of the Weapons Act to clarify the definition of 'public place' with respect to particular conduct involving possession of a weapon within a vehicle in public, without reasonable excuse;
9. permitting an authorised fire officer of QFES to require information that will identify or help identify a person reasonably suspected of contravening FESA or chapter 7 or 7A of the *Building Act 1975*. The authorised fire officer may require the information from a government entity, an occupier of the premises, or a person who may reasonably be expected to give the information; and
10. creating an offence provision for the failure to provide information that is required by an authorised fire officer, without reasonable excuse.

The Bill amends the following Queensland legislation:

- *Animal Management (Cats and Dogs) Act 2008*;
- *Australian Crime Commission (Queensland) Act 2003*;

- *Child Protection (Offender Reporting) Act 2004*;
- *Fire and Emergency Services Act 1990*;
- *Police Powers and Responsibilities Act 2000*;
- *Police Powers and Responsibilities Regulation 2012*;
- *Police Service Administration Act 1990*; and
- *Weapons Act 1990*.

Alternative ways of achieving policy objectives

There are no alternative ways 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

Amendments in the Bill are compatible with fundamental legislative principles.

Amendments to the Weapons Act

Possession of a knife in a public place or school

Under section 51 of the Weapons Act a person must not possess a knife in a public place or school without reasonable excuse. For the purpose of this section defining a public place as including a public place where a vehicle is in or on will mean a person cannot carry a knife in a vehicle in or on a public place without a legitimate reason. This will potentially expose more persons to liability under the Weapons Act and may be seen as a breach of the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

However, there are a number of safeguards built into the section, which provide examples of 'reasonable excuses' for possession of a knife in public as follows:

- A person may carry a knife on his or her belt for performing work in primary production;
- A scout may carry a knife on his or her belt as part of the scout uniform;
- A person may carry a knife as an accessory while playing in a pipe band;
- A fisher may carry a knife for use while fishing;
- A person who collects knives may exhibit them at a fete or another public gathering;
- A person may use a knife to prepare or cut food at a restaurant in a public place or when having a picnic in a park; and
- A person may carry a pen knife or Swiss Army knife for use for its normal utility purposes.

Further, under section 51(4), it is a reasonable excuse to physically possess a knife for genuine religious purposes, for example, a Sikh may possess, in a public place, a knife known as a kirpan to comply with the person's religious faith.

Further, in section 51(6), in deciding what a reasonable excuse is the court may have regard to whether the way the knife was held in possession would cause a reasonable person concern that he or she, or someone else in the vicinity, may be threatened or harmed.

Additionally the section requires 'physical possession' of the knife. This means that if a knife was located in a tool box in the back of a vehicle, the possession could not be regarded as 'physical' for the purposes of the section. However, if the knife was located in the door well of a vehicle where it is readily to hand, this could be considered physical possession.

The completeness of the safeguards in the section ensures the only persons liable under the provision will be those who possess a knife in a vehicle in public, without a legitimate reason. There is a propensity for knives that are not necessarily prohibited weapons (e.g. a kitchen knife), to be used to commit serious crimes such as armed robbery and homicide. Knives are far easier to access without the detection of authorities, than firearms or prohibited weapons. Limiting the possession of knives in a vehicle that is travelling in a public place to those persons who have a lawful reason for the possession will assist in the deterrence of those persons with unlawful intentions.

Particular conduct involving a weapon in a public place prohibited

Under section 57 of the Weapons Act particular conduct involving a weapon in a public place is prohibited, without reasonable excuse. For the purpose of this section defining a public place as including a public place where a vehicle is in or on will mean a person cannot (a) carry a weapon exposed to view, (b) carry a loaded firearm or a weapon capable of being discharged or (c) discharge a weapon in, into, towards, over or through a public place, while in a vehicle in or on a public place, without a legitimate reason. This will potentially expose more persons to liability under the Weapons Act and may be seen as a breach of the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

However, there are a number of safeguards built into the section, which provide examples of 'reasonable excuses' for particular conduct involving a weapon in a public place as follows:

- A person may carry a sword for ceremonial purposes at an official function attended by the Governor;
- A person may carry a sword as an accessory while playing in a pipe band;
- A person who collects swords may exhibit them at a fete or another public gathering; and
- A person may carry a sword as part of an official uniform the person is entitled to wear.

Further, under section 57(7), in deciding what is a reasonable excuse for subsections 57(2) & (3), regard may be had, among other things, to whether the way the weapon is carried, or when and where it is carried, would cause a reasonable person concern that he or she, or someone else in the vicinity, may be threatened or harmed.

Without the inclusion of a vehicle in or on a public place, as a public place, a person would potentially be excused from carrying a loaded shotgun or rifle in a vehicle, in public, without reasonable excuse, however would be liable under section 50 of the Weapons Act for possessing a short firearm (under 75cm in length) or handgun in a vehicle in public. The inclusion of the definition is consistent with the overall object of the Weapons Act to prevent the misuse of weapons.

Amendments to the PPRA

Firearms and explosives detection

Under section 35 of the PPRA, a drug detection dog can be used in relation to the search of persons at licensed premises, where an event is being held and in regard to a person who is in a public place or who is in a tattoo parlour. Until 2013, the PPRA was silent on the use of an explosives detection dog to carry out explosives detection. In 2013, the PPRA was amended by the insertion of the power for a dog handler to use an explosives detection dog to carry out explosives detection in relation to a person who is about to enter, is in, or is leaving, a tattoo parlour. This had the consequence of excluding the use of an explosives detection dog to carry out explosives detection in places other than a tattoo parlour. The expansion of the use of explosives detection dogs to the same places in which drug detection dogs can operate is arguably a breach of rights as it is likely to increase the opportunities for a dog to detect and for a police officer to subsequently search a place or person for explosives.

Potential breaches of the fundamental legislative principle are justified in order to ensure places such as sports stadiums, running events, concert arenas and other places of mass congregation can be kept secure.

Expansion to power of arrest without warrant

The Queensland Court of Appeal decision of *Bulsey* found the arrest of the appellants was unlawful as officers had arrested them upon the direction of a senior police officer rather than forming their own reasonable suspicion as required under section 198(2) (now section 365(2) of the PPRA). The amendment to section 365 of the PPRA will allow a police officer to instruct another police officer to make an arrest where the instructing officer has the requisite reasonable suspicion as prescribed by the section. The PPRA has previously stipulated that the arresting officer is the officer who must have the requisite reasonable suspicion and therefore, this amendment could be considered to be inconsistent with the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

The standard in section 365 that the arresting police officer have the reasonable suspicion will remain. An additional section will provide that an officer can instruct another officer to make an arrest in circumstances where it is not practicable for the instructing officer to personally arrest the person, and the arresting officer has insufficient time or it is otherwise impractical for the officer to form their own reasonable suspicion about the commission of an offence. This is justified, particularly in instances of emergencies or large policing operations, which require a rapid response to apprehend individuals, and where there is insufficient time to provide first response or specialist officers with a detailed briefing of the reasons for arrest.

Judiciary to have discretion to admit evidence of unrecorded admissions or confessions

Police have to comply with a number of requirements in sections 436 and 437 of the PPRA before a confession or an admission can be received as evidence in a proceeding. For example, where practicable, questioning must be electronically recorded (section 436). The intent of section 439 of the PPRA (Admissibility of records of questioning etc.) is to provide a judicial discretion to admit evidence where there may not have been full compliance by police in the recording of an admission or confession. Prior to further consolidation and renumbering of police powers, section 439 was section 104(13) of the former *Police Powers and Responsibilities Act 1997*. The section did not use the term ‘record’ and allowed the court to admit evidence in the interests of justice if a court considered the division had not been complied with or there was not enough evidence of compliance. The current use of the term ‘record’ means the discretion to admit evidence of a confession or admission does not apply to oral testimony.

The Bill redrafts section 439 and omits the use of the term ‘record’. This will allow oral testimony of a confession or admission where it is in the interests of justice. This arguably breaches an individual’s rights due to noncompliance or insufficient evidence of compliance with safeguards pertaining to confessions and admissions. However, sometimes the lack of compliance is of a minor nature or out of the control of the police officer, for instance where a person makes a verbal admission but refuses to make the same admission on record due to fear of retribution. Any breach of rights is justified by the need to ensure that evidence can be admitted where the crime is of a serious nature and admission into evidence is in the overriding interests of justice.

Search of vehicle, without warrant, for unlawful possession of knife

Section 31 of the PPRA authorises a police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without warrant exist to – stop the vehicle, detain a vehicle and its occupants, and search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained. Section 32 of the PPRA lists a number of prescribed circumstances where a police officer may search a vehicle without warrant.

Section 32(a) permits a search where a vehicle may contain a weapon or explosive that a person may not lawfully possess. The insertion of the word ‘knife’ into section 32(a) may expose more drivers and occupants of a vehicle to a search of their vehicle and therefore, this amendment could be considered to be inconsistent with the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act 1992*.

Section 51 of the Weapons Act makes it an offence to physically possess a knife in a public place without reasonable excuse. As described above, the section contains many safeguards that will excuse a person from liability where the person is carrying a knife for a legitimate reason. The power for police to search a vehicle for a knife will support the clarification in the Weapons Act that a vehicle in a public place, is a public place. The power is justified as persons who would seek to use a knife as a weapon to intimidate or injure another should not be protected from detection by the insulation of their vehicle while they are in a public place.

Amendments to the FESA

Power to require information

QFES is invested in the safety of the community by ensuring that buildings that accommodate people meet fire safety standards, for example, by having working fire alarms, adequate fire escapes and not exceeding maximum occupancy. It is the responsibility of the owner or occupier of a building to ensure fire safety standards are adhered to. It is often difficult for QFES to identify the occupier or owner of a building, particularly where that person has responsibility for fire safety standards in budget accommodation, which is often used by backpackers and itinerant workers in the fruit picking industry. Up until 30 June 2015, the Residential Tenancies Authority (RTA) provided QFES with access to information contained within the rental bonds database to assist in investigations of matters within QFES jurisdiction.

The power for an authorised fire officer to require information about the identity of an occupier where a contravention of fire safety is reasonably suspected may be seen as a breach of privacy. The authorised fire officer may require a government entity; an occupier of the premises; or a person who may be reasonably expected to give the information, to give the authorised fire officer information that will identify or help identify an occupier of the premises. While it is envisaged that QFES will primarily seek this information from the RTA there will be occasions where an authorised officer may be able to access the information by making the requirement to a tenant of a premises or a neighbour who has knowledge of the identity of the owner/occupier. This potential breach of the fundamental legislative principle that legislation have regard to the rights and liberties of individuals under section 4(2)(a) of the *Legislative Standards Act* is justified to ensure that persons in control of accommodation cannot avoid identification and prosecution, and continue to put their own profits ahead of the safety of persons housed in their accommodation.

Imposition of liability

Where the information requirement is contravened, an offence provision will apply with a maximum penalty of 20 penalty units. The offence penalty is consistent with other penalty provisions in part 6 of FESA. It will be a defence for a person to show the person had a reasonable excuse for failure to comply. A reasonable excuse will include not giving the information if giving it might tend to incriminate the individual or expose the individual to a penalty. The offence provision will therefore provide a proportionate penalty and adequate definition for the basis of liability.

Consultation

Public consultation was not undertaken with respect to the Bill as the amendments are either technical in nature or seek to clarify legislative intent.

Consistency with legislation of other jurisdictions

The amendments to the PPRA and Weapons Act are consistent with legislation in other jurisdictions.

New South Wales (NSW) legislation does not place any restrictions on the public places at which a police officer authorised to use a dog, can carry out general firearms or explosives detection without warrant.

Victorian and NSW legislation authorises a police officer to arrest without warrant if instructed or directed to do so by another police officer, provided the grounds for a lawful arrest without warrant exist. The NSW legislation uses the word 'directed' (s 99(2) of the *Law Enforcement Powers and Responsibilities Act 2002*) whereas the Victorian legislation uses the word 'instructed' (s 458(1)(b) of the *Crimes Act 1958*).

Victoria, South Australia and Tasmania prohibit the possession of a knife in a public place without lawful excuse and provide police with an express power to search a vehicle in a public place for a knife. Western Australian and New South Wales legislation also prohibits the possession/custody of a knife in a vehicle, in a public place, without reasonable excuse.

Notes on provisions

Part 1 – Preliminary

Short title

Clause 1 provides that, when enacted, the Bill will be cited as the *Australian Crime Commission (Queensland) and Other Legislation Amendment Act 2016*.

Commencement

Clause 2 provides that part 2 and schedule 1 amendments, which relate to the merger of CrimTrac into the Australian Crime Commission will commence immediately after the commencement of the *Australian Crime Commission Amendment (National Policing Information Act 2016)* (Cwlth). The provisions will operate retrospectively, however the merger amendments are technical in nature.

The remaining provisions will commence on assent of the Bill.

Part 2 – Amendment of Australian Crime Commission (Queensland) Act 2003

Act amended

Clause 3 states that part 2 amends the *Australian Crime Commission (Queensland) Act 2003*.

Amendment of s 11 (Quorum at Board meetings)

Clause 4 amends section 11 to increase the number of Board members required for a quorum at Australian Crime Commission Board meetings from 7 Board members to 9 Board members.

Part 3 – Amendment of Fire and Emergency Services Act 1990

Act amended

Clause 5 states that part 3 amends the *Fire and Emergency Services Act 1990* (FESA).

Insertion of new s 58D

Clause 6 inserts new section 58D (Power to require information about identity of occupier).

Subsection (1) provides the section will apply if a person alleges to an authorised fire officer, or an authorised fire officer reasonably suspects, a contravention of the FESA or chapter 7 or 7A of the *Building Act 1975*, has been committed in relation to premises.

Subsection (2) states an authorised fire officer may require any of the following persons to give the authorised fire officer information that will identify or help identify an occupier of the premises – a government entity; an occupier of the premises; or a person who may reasonably be expected to give the information.

Under schedule 6 (Dictionary) of FESA the definition of ‘occupier’ includes the owner of the premises.

Subsection (3) stipulates that a person must comply with a requirement under subsection (1) unless the person has a reasonable excuse for not complying. The subsection also states the maximum penalty for failure to comply with a requirement is 20 penalty units.

Subsection (4) provides it is a reasonable excuse for a person not to comply with a requirement under subsection (2) if complying with the requirement might tend to incriminate the person.

Part 4 – Amendment of Police Powers and Responsibilities Act 2000

Act Amended

Clause 7 states that part 4 amends the *Police Powers and Responsibilities Act 2000* (PPRA). The clause also notes that schedule 1 of the Bill amends the PPRA also.

Amendment of s 32 (Prescribed circumstances for searching vehicle without warrant)

Clause 8 inserts the word ‘knife’ after the word ‘weapon’ in section 32(a) of the PPRA.

This will provide police with a clear power to search a vehicle where it is reasonably suspected the vehicle contains a knife that a person may not lawfully possess. For example, under section 51 of the *Weapons Act 1990* (Weapons Act), it is an offence for a person to physically possess a knife in a public place or school, unless the person has a reasonable excuse.

Replacement of ss 35 and 36

Clause 9 replaces sections 35 (Use of detection dogs in particular places) and 36 (Police officers and detection dogs may enter and remain on particular premises) with new section 35 (Use of detection dogs in particular places) and new section 36 (Police officers and detection dogs may enter and remain on particular places). The replacement of the sections has the effect that drug detection dogs and explosives detection dogs can carry out drug detection or explosives detection respectively, in the same circumstances. References to ‘explosives detection dog’ are replaced with ‘firearms and explosives detection dog’ to ensure the consistent use of terminology throughout the PPRA and to better reflect the duties which explosives detection dogs perform.

Section 35(1) specifies that a handler may, without warrant, use a drug detection dog to carry out drug detection in relation to a relevant person or thing.

Subsection (2) specifies that a handler may, without warrant, use a firearms and explosives detection dog to carry out explosives detection in relation to a relevant person or thing.

Subsection (3) states the section applies despite any other law.

Subsection (4) defines that ‘relevant person or thing’ means – (a) a person who is in a public place; (b) a person who is in the immediate vicinity of, is about to enter, is in, or is leaving, a place at which an event is being held; (c) a person who is about to enter, is in, or is leaving, licensed premises; (d) a person who is about to enter, is in, or is leaving, a tattoo parlour; and (e) a thing in a place mentioned in paragraph (a), (b), (c) or (d), or on land associated with the place, whether or not the thing is in the physical possession of a person.

Section 36 is amended to provide that police officers and detection dogs (both drug detection dogs and firearms and explosives detection dogs) may enter and remain on particular places.

Section 36(1) permits that for carrying out drug detection under section 35(1), a drug detection dog, the dog’s handler and any other police officer may enter and remain on a relevant place.

Subsection (2) provides that for carrying out explosives detection under section 35(2), a firearms and explosives detection dog, the dog’s handler and any other police officer may enter and remain on a relevant place.

Subsection (3) clarifies that for subsections (1) and (2) the power to enter and remain on a relevant place includes the power to enter and remain on land associated with the relevant place. An example of land associated with a relevant place is provided, i.e. land on which car parking is provided for patrons of the relevant place.

Subsection (4) states the section applies despite any other law.

Subsection (5) provides the definition of ‘relevant place’ as meaning – (a) a public place; or (b) a place at which an event is being held; or (c) licensed premises; or (d) a tattoo parlour.

Insertion of new s 365A

Clause 10 creates a new section (Arrest without warrant upon instruction of another police officer).

Subsection (1) states it is lawful for a police officer (the arresting officer), without warrant, to arrest a person if instructed to do so by another police officer (the instructing officer).

Subsection (2) qualifies that subsection (1) does not apply unless –

- (a) the instructing police officer reasonably suspects the person has committed, or is committing an offence; and
- (b) the arrest of the person is reasonably necessary for 1 or more of the reasons mentioned in section 365(1) or the reason mentioned in section 365(2); and
- (c) if the person is a child – it is lawful for the police officer to arrest the child under section 365(3); and

- (d) it is not practicable for the instructing officer to personally arrest the person (for example, the instructing officer is not at the location of the arrest); and
- (e) it is not practicable, because of an emergency situation or other particular circumstances, for the arresting officer to personally form the suspicion mentioned in section 365(1), (2) or (3), and to lawfully arrest the person under section 365(1), (2) or (3).

An example of where it is not practicable under subsection (2)(d) for the instructing officer to personally arrest the person may arise where the instructing officer views an offence in real time through CCTV and is able to communicate to a police officer in a better location to make an arrest of a person who is fleeing the scene.

An example of other particular circumstances under subsection (2)(e) may arise where an officer with a defined role such as an officer of the Special Emergency Response Team may be instructed to make an arrest by an incident commander. As part of the officer's defined role, the officer might turn their mind to how to effect the arrest in an efficient and safe manner, but not necessarily the details of offences committed, such as an investigator would.

Subsection (3) requires that if a person is arrested under subsection (1), the instructing officer must – (a) make a record of the instruction and the reasons under subsection (2) for giving the instruction; and (b) take reasonable steps to give a copy of the record to the arresting officer.

Subsection (4) further requires that the instructing officer must inform the arresting officer at the earliest reasonable opportunity if the instructing officer stops holding the suspicion mentioned in subsection (2)(a).

Subsection (5) qualifies that a failure of the instructing officer to give a copy of the record mentioned in subsection (3)(b) does not affect the lawfulness of the arrest.

Subsection (6) states that in this section 'emergency situation' has the same meaning as provided by the schedule of the *Public Safety Preservation Act 1986*.

Amendment of s 391 (Information to be given to arrested person)

Clause 11 amends section 391(3) to require that before the person is released from police custody, a police officer must give the person, in writing – (a) the name, rank and station of the arresting officer; and (b) if the person was arrested under section 365A – the name, rank and station of the police officer who instructed the arresting officer to make the arrest.

Replacement of s 439 (Admissibility of records of questioning etc.)

Clause 12 replaces section 439 with new section 439 (Admissibility of evidence when noncompliance with requirements).

Subsection (1) provides that if a court considers section 436 (Record of questioning etc.) or section 437 (Requirements for written record of confession or admission) have not been complied with or there is not enough evidence of compliance, the court may, despite the noncompliance or insufficient evidence of compliance, admit evidence to which section 436 or 437 applies.

Subsection (2) qualifies that the court may admit the evidence only if, having regard to the nature of and the reasons for the noncompliance or insufficient evidence of compliance, and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.

Insertion of new ch 24, pt 15

Clause 13 inserts part 15 (Transitional provision for Australian Crime Commission (Queensland) and Other Legislation Amendment Act 2016) and new section 878 (ACC database).

Subsection (1) provides that if the context permits, a reference to the CrimTrac database in a document may be taken to be a reference to the ACC database.

Subsection (2) states that anything lawfully included under this Act or another Act, before the commencement, in the CrimTrac database is taken to be lawfully included in the ACC database and may be used under this Act or another Act.

Amendment of sch 6 (Dictionary)

Clause 14 amends schedule 6 by omitting definitions of ‘CrimTrac’ and ‘CrimTrac database’ and inserting a definition of ‘ACC database’.

The definition of ‘explosives or firearms detection dog’ is also replaced with ‘firearms and explosives detection dog’.

Technical amendments are made to the definitions of ‘enforcement act’ and ‘search’ to make references to drug detection dogs and firearms and explosives detection dogs consistent.

Part 5 – Amendment of Weapons Act 1990

Act amended

Clause 15 states that part 5 amends the *Weapons Act 1990*.

Amendment of s 51 (Possession of a knife in a public place or a school)

Clause 16 inserts a definition of ‘public place’ into subsection (7) to clarify that for section 51 ‘public place’ includes a vehicle that is in or on a public place.

Amendment of s 57 (Particular conduct involving a weapon in a public place prohibited)

Clause 17 inserts a definition of ‘public place’ into subsection (1) to clarify that for section 57 ‘public place’ includes a vehicle that is in or on a public place.

The amendment of sections 51 and 57 creates conformity with section 50 (Possession of weapons) of the Weapons Act, which has the same clarifying definition of ‘public place’ in section 50(3).

Part 6 – Minor and consequential amendments

Legislation amended

Clause 18 notes that schedule 1 amends the legislation it refers to.

Schedule 1 – Minor and consequential amendments

Schedule 1 makes minor and consequential amendments to the *Animal Management (Cats and Dogs) Act 2008*, the *Child Protection (Offender Reporting) Act 2004*, the *Police Powers and Responsibilities Act 2000*, the *Police Service Administration Act 1990* and the *Police Powers and Responsibilities Regulation 2012*. The amendments facilitate the merger of the CrimTrac Agency into the Australian Crime Commission and provide consistent referencing to the terminology of firearms and explosives detection dogs.

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