Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

Explanatory Notes

Short title

The short title of the Bill is the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011.

Policy objectives and the reasons for them

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 (the Bill) aims to ensure the *Police Powers and Responsibilities Act 2000 (*PPRA) continues to meet its purposes as described in section 5 'Purposes of the Act'. That is, the Bill will ensure the PPRA:

(a) consolidates and rationalises the powers and responsibilities police officers have for investigating offences and enforcing the law;

(b) provides powers necessary for effective modern policing and law enforcement;

(c) provides consistency in the nature and extent of the powers and responsibilities of police officers;

(d) standardises the way the powers and responsibilities of police officers are to be exercised;

(e) ensures fairness to, and protects the rights of, persons against whom police officers exercise powers under the PPRA;

(f) enables the public to better understand the nature and extent of the powers and responsibilities of police officers.

The Bill fulfils the Queensland Government's commitment to regularly review the PPRA.

Achievement of policy objectives

The Bill achieves the objectives by amending the following Acts and Subordinate Legislation:

- *Police Powers and Responsibilities Act 2000*;

- *Evidence Act 1977;*
- *State Penalties Enforcement Act 1999*;
- *Justices Act 1886;* and
- *Police Powers and Responsibilities Regulation 2000.*

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 from implementation of this proposal.

Consistency with fundamental legislative principles

The Bill is generally consistent with fundamental legislative principles. Potential breaches of fundamental legislative principles are addressed below.

Clause 6 provides a search power allowing a police officer to conduct a pat-down search of a person detained under sections 50, 51 or 52 of the PPRA. The search power supports police officer safety when detaining persons under those identified provisions. The search allows a police officer to take and retain items located that can ordinarily be used by a person to cause harm to himself or herself or others (including the detaining officers), or to effect escape. The police officer may also seize any item located during the search that the police officer reasonably suspects may provide evidence of the commission of the offence. Anything taken and retained must be returned to the person upon the release of the person unless the person may not lawfully possess the item or may be evidence of the commission of an offence. This limited search power is necessary to enhance the safety of police officers and persons detained under these provisions.

Clause 8 introduces new search powers for police officers. A police officer, who reasonably suspects a minor has evidence of the commission of an offence against section 157(2) of the *Liquor Act 1992* (Liquor Act), may search the minor for liquor. The power to search is limited to where the police officer holds a reasonable suspicion that the minor is in possession

of liquor that relates to, is contributing to or is likely to contribute to, the commission of an offence by the minor and the liquor cannot be seized without a search of the minor. The search power is limited to a pat-down search which allows the search of outer clothing, and a search of personal property in possession of the minor, including bags.

The amendment supports the Government's harm minimisation strategies and supports findings of the Law, Justice and Safety Committee's *Inquiry into Alcohol Related Violence – Final Report* (the Report). The Report identified the significant strain on police resources caused by underage drinking and recognised that underage drinking in public places is a concern for Queensland. Furthermore, it was recognised that through the consumption of liquor, young people often undertake risky behaviours and place themselves in situations of risk, such as violent altercations or unwanted sexual experiences.

A power to conduct a pat-down search of a minor, who is suspected of being unlawfully in possession of liquor, is a preventative measure that is likely to decrease the number of intoxicated minors who are taken into police custody for their safety. Furthermore, statistics suggest that cautioning by police officers is successful in reducing the incidence of re-offending among young people, thus highlighting the effectiveness of early police intervention in unacceptable and anti-social adolescent behaviour. The search power has the potential to allow an earlier detection of liquor in the possession of minors in a public place, interrupt their consumption of the liquor and prevent further alcohol related offences.

Clause 12 extinguishes the right of a person to enforce a charge or other security interest registered under the *Motor Vehicles Boats and Securities Act 1986* by taking possession of a vehicle that is to be sold under section 118 'Sale of motor vehicle if not recovered after impounding ends' of the PPRA. This will enable the sale of the vehicle, without the purchaser being concerned that the asset will be repossessed by a security holder. Upon sale of the vehicle, the security provider may receive some payment through the prioritised disbursement of the proceeds of the sale. However, where there are inadequate proceeds to satisfy the full amount outstanding, the owner of the vehicle remains liable for the remaining debt. This is consistent with the process when a vehicle is destroyed and the insurance payment is insufficient to satisfy the full amount outstanding.

Clause 18 allows a police officer who enters a place, to provide an animal suffering from a lack of food or water, to leave a notice, if it is reasonably practicable. While a notice of the police officer's entry will not always be

given, continued regard is given to the rights and liberties of individuals. While entry to the place may be gained in the occupier's absence, the entry power is limited to the provision of care for an animal and does not extend to the search for, or seizing of, property. Furthermore, the entry power does not allow a police officer to enter a part of the place at which a person resides or apparently resides.

Clauses 20 to 27 allow for a very limited role for a civilian participant in a controlled activity. A civilian participant may undertake ancillary conduct which includes the aiding or enabling of a controlled activity offence. Where a civilian participant is authorised to undertake such a role, the civilian will be afforded protection from criminal liability to the extent that the individual was acting under that authorisation and in accordance with the relevant policy or procedure for ancillary conduct in controlled activities. Additionally, the civilian participant does not incur a civil liability for an act done or omission made if the individual is acting under the honest belief that it was duly authorised. The existing safeguards applicable to a police officer participating in a controlled activity will be extended to the participation of a civilian participant. The use of a civilian participant in a controlled activity will be authorised by a chief superintendent, be limited to ancillary conduct, require the civilian to be under the instructions of a police officer, and may not extend beyond 7 days. These provisions are considered necessary to respond to community expectations in the detection of crime and the apprehension of offenders. The power to utilise a civilian participant is necessary in the detection and investigation of controlled activity offences.

Clause 29 allows for the entry of premises, for which a surveillance device warrant has been issued, for the purposes of the preparation for installation of the authorised surveillance device. The clause implements a risk minimisation process to enhance the safety of officers who are authorised to covertly attend a place to install a surveillance device, in accordance with a surveillance device warrant. The clause removes the necessity to enter the premises to install the device, without indepth knowledge of the place, as the technical support team will have greater opportunity for preparation through the taking of digital footage of, and in, the place, prior to entering to install the device. The entry to the place is still governed by a warrant issued by a Supreme Court judge and subject to the current safeguards of the chapter. Furthermore, the Public Interest Monitor (PIM) will continue to have involvement in the application process and a report to the issuer, or PIM, regarding the warrant will still be required.

Clause 48 allows a police officer to search and re-search anything in the possession of a person to whom Chapter 16 'Search powers for persons in custody' of the PPRA applies. The power to search and re-search is limited to reasons of cataloguing and accountability, and to determine the presence of anything that may be taken and retained under the existing subsections 3(a) to (c). The power to re-search the property is required to ensure that upon return of property to the person, for the purposes of accountability, the police officer is able reassure the person that the property taken, and retained, is also returned.

Clause 61 allows a police officer to take a DNA sample for analysis from a person who is subject to an interstate parole order and transferred into the custody of Queensland authorities from another State or Territory under the *Prisoners (Interstate Transfer) Act 1982*. The taking of the DNA sample is limited to a person who committed an offence for which a DNA sample may have been taken in the originating jurisdiction, is transferred into the custody of Queensland authorities, and the results of the DNA analysis of the person's DNA sample are not recorded on CrimTrac. Where the committed offence is not an offence for which DNA may have been taken in the originating jurisdiction, the person's DNA may not be taken under this power.

This amendment is intended to include people who have already been transferred to Queensland. Retrospectivity is necessary as there are currently 52 prisoners who are subject to an interstate parole order in Queensland. Of those 52, there are 4 prisoners who do not have the results of a DNA analysis of the DNA sample recorded on CrimTrac. The offences committed by these 4 prisoners include rape and stealing. This clause is justified given the link between DNA and solving crime, and the public interest in ensuring that offenders are brought to justice. Furthermore, the power to take a DNA sample without a court order accords with the current accepted practice when taking a DNA sample for DNA analysis from a transferred prisoner who is detained in a corrective services facility.

Clause 62 introduces a regime whereby a police officer may apply to a magistrate for an order to perform a forensic procedure on a child who is not being investigated as a suspect for an offence, but where the police officer reasonably suspects the test results will assist the investigation by identifying the offender or establish whether a child DNA sampling offence has been committed. The forensic procedure is limited to the taking of a DNA sample for DNA analysis. A police officer may only make an

application when forensic procedure consent cannot be obtained. This power is tempered with protections to ensure the wellbeing and safety of the child is preserved. The issue of a DNA sample order is restricted to a child DNA sampling offence. The DNA sample must be destroyed upon finalisation of the charge to which the sample relates.

This regime is considered necessary to ensure the detection and investigation of serious sexual offences against children and their protection through the involvement of the chief executive (child safety). In considering the application, the court must give primary consideration to the child's wellbeing. The court will also consider the seriousness of the offence by having regard to aspects such as the age difference between the suspect and the victim and the harm that has been done or is likely to have been done to the victim.

Upon issue of the DNA sample order, a police officer may enter a place the police officer reasonably suspects the child is located, without warrant, to search the place for the child. However, prior to entering the place, the police officer must give the occupier a copy of the order, tell the person that the police officer is entitled to enter and search the place for the child, and give the person the opportunity to allow the police officer to enter the place, unless immediate entry is required to the place. In recognition of the child as a possible victim of a serious offence, when the police officer locates the child, the police officer may only use minimal force such as carrying the child if an infant or holding the child's hand, and the child is entitled to be accompanied by a support person.

Because the child may be a victim, or a result of an offence committed against the victim, there is no offence created for the child's failure or refusal to comply with the order. However, an offence is created for a person who prevents or attempts to prevent the police officer from enforcing the order, without reasonable excuse. This is considered necessary to ensure a person who has committed offences against the child, or has an interest in ensuring the child's DNA sample is not provided, may not interfere with the enforcement of the order.

Additionally, the DNA sample order also provides a police officer with the authority to take a photograph of the child. The purpose of the photograph is to assist in verifying the identity of the child from whom the DNA sample was taken.

Clause 63 allows the analysis of DNA samples to be undertaken by a forensic laboratory other than Queensland Health. The processes involved

with the analysis of DNA samples do not, and will not, include any personal particulars or identifying information of the person, thereby preserving an individual's privacy. The DNA samples are identified only through a unique barcode which remains the reference point for the sample. Upon analysis of the DNA sample, the laboratory uploads the profile (a series of numerical indicators) onto the DNA database. To gain any personal information regarding the de-identified profile uploaded on the DNA database, contact must be made with the Queensland Police Service (QPS) who will only provide the information if there are no legal impediments and an operational need. Because of the de-identification of the sample and the profile, there are no privacy issues related to the proposal.

Furthermore, the Commissioner of Police may only enter into an arrangement under section 489 'Power to analyse etc. DNA samples' of the PPRA with the chief executive (health) or a forensic laboratory that is accredited for compliance with the standard prescribed under regulation. Including a regulation-making power allowing the Executive Council to stipulate the required standard rather than through parliamentary process, will 'future proof' the PPRA by removing the need to seek a legislative amendment should a new qualification be approved. The prescribed standard is set by the International Organisation for Standardisation. This body is composed of representatives of various national standards organisations and exists for the purpose of setting internationally uniform standards in a wide range of fields. The purpose of these standards is to ensure that agreed levels of practice, quality and service are provided by those industries that are certified as compliant.

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

Clause 78 limits an application for a disease test order, made on the basis of a needle stick injury suffered, to a police officer or public official. The amendment supports the workplace health and safety of, and the minimisation of prolonged testing to, persons in groups with a high risk of exposure to such an injury.

Clauses 81 and 84 clarify that a police officer can act upon a complaint of excessive noise from an anonymous complainant. The clause does not remove the requirement for a complaint to be made prior to a police officer investigating the complaint, however, specifically allows for the complaint

to be made, without requiring the complainant to identify himself or herself. It is then, upon the police officer being reasonably satisfied that the noise is of the type for which a noise abatement direction may be given and is excessive in the circumstances, that the police officer may direct a person to abate the excessive noise. Therefore, it is not the belief of the complainant, identified or anonymous, that forms an element of an offence that a person may commit due to the person's non-compliance with the noise abatement direction. However, the clauses still require a complaint to be made regarding excessive noise. A police officer is still required to attend at, or near, the complainant's address and to give evidence of the excessive nature of the noise. This requirement necessitates some information being provided to the police officer however, does not obligate the complainant to make full disclosure, hence allowing for anonymity.

Clause 86 amends section 609 'Entry of place to prevent offence, injury or domestic violence' of the PPRA to remove the entitlement of an occupier to accompany a police officer during a search of a place, after entering the place under the authority of section 609. The ability to exclude the occupier is limited to when a police officer reasonably suspects that allowing the occupier to accompany the police officer will result in an injury being caused to a person. Prior to searching the place, the occupier must be provided a warning that he or she will be excluded from accompanying the police officer while the place is being searched. The exclusion of the person is considered necessary considering the limited nature of the search under the existing subsection (4) and the need to support the safety of police officers and affected persons.

Clauses 91 and 92 broaden the power of a watch-house officer to allow a watch-house officer to transport prisoners between a watch-house and a relevant place or another watch-house. This expansion is considered necessary to relieve police officers of administrative tasks and ensure police officers are available for operational roles. The delegation of power to a watch-house officer is considered appropriate as section 5.18 'Appointment of watch-house officers' of the *Police Service Administration Act 1990* limits any such appointment to where the Commissioner of Police is satisfied the person has the appropriate qualifications and experience for performing the functions of a watch-house officer.

Clause 101 expands Schedule 5 'Additional controlled activity offences' of the PPRA to include additional offences of section 77A 'Prostitute providing sexual intercourse or oral sex without a prophylactic' of the *Prostitution Act 1999*. The additional offences included in the schedule are

limited to the offer, and acceptance of an offer, to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used. The inclusion of these offences will provide immunity for a police officer authorised to engage in a controlled activity to the extent of the authorisation. The inclusion of these offences will increase the opportunities for a police officer to detect and investigate offences that have the potential impact upon the health of the Queensland community through the spread of sexually transmitted infections.

Clause 102 provides a definition of a 'forensic nurse examiner'. The clause includes a regulation-making power allowing the Executive Council to approve new qualifications, rather than through the parliamentary process. The introduction of a regulation identifying the required qualifications will 'future proof' the PPRA by removing the need to continually seek a legislative amendment every time a new qualification is approved. The utilisation of forensic nurse examiners will address the reported shortage of doctors, in regional Queensland, who are willing to be appointed by Queensland Health to undertake these procedures and alleviate the current resource strain in the collection of samples from victims, suspects and offenders.

Clauses 109 to 110 allow for the appointment of a DNA analyst where the Commissioner of Police has entered into an arrangement with a forensic laboratory or the chief executive (health). Upon being appointed a DNA analyst, the analyst may issue a DNA evidentiary certificate under the *Evidence Act 1977*. This delegation of power is necessary to support the utilisation of non-government laboratories in the analysis of DNA samples. All laboratories, regardless of ownership, will be required to ensure those who are involved with the analysis of DNA samples are appropriately qualified.

Consultation

Extensive consultation has been undertaken throughout the development of the Bill. A PPRA Review Committee was formed and chaired by the Member for Ipswich West, Mr Wayne Wendt MP. The Committee consisted of members representing the following organisations:

- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd;
- Crime and Misconduct Commission;
- Department of Communities;

- Department of Justice and Attorney-General;
- Department of the Premier and Cabinet;
- Legal Aid Queensland;
- Office of the Director of Public Prosecutions;
- Public Interest Monitor;
- Queensland Council for Civil Liberties;
- Queensland Law Society;
- Queensland Police Commissioned Officers Union of Employees;
- Queensland Police Service (QPS); and
- Queensland Police Union of Employees.

All recommendations made by the PRRA Review Committee were considered during the preparation of the Bill. The majority of the Committee recommendations are included in the Bill.

The Queensland community was consulted on the Bill. The community was invited to provide comments during the policy development of the Bill from 5 April to 17 May 2010 and again during the development of the Bill from 28 March to 6 May 2011.

Intra-Government consultation was also conducted during the development of the Bill with:

- Department of Justice and Attorney-General;
- Department of the Premier and Cabinet;
- Queensland Health;
- Department of Communities;
- Department of Community Safety;
- Queensland Treasury; and
- Department of Transport and Main Roads.

Consistency with legislation of other jurisdictions

The Bill is substantially uniform with legislation of the Commonwealth and other States. Each jurisdiction provides police officers with powers to ensure the investigation of offences and enforcement of the law,

maintenance of public order and the continued fairness to the rights of persons against whom police officers exercise powers.

Notes on Provisions

Part 1 Preliminary

Short title

Clause 1 provides for the citation of the Bill.

Commencement

Clause 2 provides that all clauses of the Bill, other than clauses 9 to 11, are to commence 3 months after assent. Clauses 9 to 11 and Part 5 will commence by proclamation.

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

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

Clause 4 clarifies that a prescribed circumstance as contained in section 30(c) includes the 'consumption' and 'smoking' of a dangerous drug in addition to the 'administration' of a dangerous drug.

Clause 5 clarifies that a prescribed circumstance as contained in section 32(f) includes the 'consumption' and 'smoking' of a dangerous drug in addition to the 'administration' of a dangerous drug.

Clause 6 inserts a new section 52A 'Power to conduct pat-down search for ss 50-52' which gives a police officer the power to conduct a pat-down search of a person detained under Chapter 2, Part 6 'Breaches of the peace,

riots and prevention of offences'. A police officer may also search personal property in the possession of the person. The search power supports police officer safety as the pat-down search, allows a police officer to take and retain items that can ordinarily be used to cause harm to any person, including the detaining officers, or to effect an escape. Any items taken and retained by a police officer must be returned to the person upon release, unless the items are seized under section 29 of the PPRA. A police officer is not required to provide the person with a receipt for the property taken and returned under this power.

Clause 7 renumbers section 53 'Prevention of particular offences relating to liquor' due to the relocation of the existing subsections 53(3) and (4).

Clause 8 inserts a new section 53C 'Power to conduct pat-down search of minor'. This provision provides a police officer with the authority to search a minor for something that may afford evidence of the commission of an offence against section 157(2) 'Prohibitions affecting minors' of the *Liquor Act 1992* (Liquor Act) where a police officer reasonably suspects the minor is in possession of liquor in contravention of section 157(2). The power only allows for a pat-down search of the minor for liquor and includes any personal property, including bags, in the possession of the minor. The police officer may seize liquor found in the minor's possession, subject to subsection 1. If a police officer locates an item reasonably suspected of being an item contained in section 30, any continuance of the search will be under the authority of section 29 'Searching persons without warrant' of the PPRA, hence not confined to a pat-down search or search of property, for liquor.

The clause also inserts a new section 53D 'Disposal of liquor seized under s 53 or 53C'. The disposal provisions contain those relocated under clause 7.

Clause 9 inserts section 101A 'Definitions for sdiv 1' which introduces new definitions for Chapter 4, Division 4, Subdivision 1 'Community service orders'. These definitions are of the terms: applied section, deemed fine option order and non performance amount.

Clause 10 provides for a deemed fine option order. A deemed fine option order is ordered instead of ordering the impounding or forfeiting of the motor vehicle subject to the application for an impounding order or forfeiture order. In ordering the deemed fine option order, the court may order the driver to complete a number of community service hours that the court considers satisfies the justice of the case, but not more than 240 hours

of community service. The deemed fine option order continues to be taken to be a fine option order under the *Penalties and Sentences Act 1992* (PSA).

At the time of imposing the deemed fine option order, the court must ensure a non-performance amount for each hour of community service ordered, and not performed, is attributed. The non-performance amount, as defined in clause 9, is not more than 1/5 of a penalty unit. The legislative provisions that are current at the time the court decides whether or not community service is to be imposed instead of impounding or forfeiting the vehicle, is applicable to the attribution of a non-performance amount, not that which is current at the time of receiving the application for an impounding order or forfeiture order.

Clause 11 inserts new sections 102A to 102C.

Section 102A lists the sections of the PSA that are applicable to a deemed fine option order. Through subsection 2, the section necessarily aligns certain terms used in the subdivision with terms used in the PSA. Upon ordering the driver to perform community service, the clerk of the court will not be able accept any payments of the amount ordered under section 102(2B). The time period for the completion of any community service imposed under section 102, may not be granted or extended beyond 12 months from the date of the making of the order. A contravention of the deemed fine option order will be taken to be that the offender is no longer willing to comply with the order. Therefore, if the driver no longer wishes to complete the community service, and instead wishes to pay the attributed non-performance amount for each hour of community service that has not been performed, an application under section 79 of the PSA should be lodged with the court. The court may then revoke the order for the driver to perform community service and order the immediate payment of the non-performance amount for each hour of community service that has not been performed.

Section 102B requires the court to explain the deemed fine option order to the person, including the consequences of failing to comply with the order, at the time of making the order.

Section 102C provides that a deemed fine option order may be revoked if the person is unable to, or chooses not to, complete the community service as required, or the driver's circumstances were not accurately reflected to the court under applied section 79 of the PSA. The court must order that the driver pay the amount worked out by multiplying the number of community service hours not performed with the non-performance amount

stipulated in the deemed fine option order. If the amount is not paid immediately, the recovery of the amount will be referred to the State Penalties Enforcement Registry (SPER) for collection and will be a payment into the consolidated fund.

Clause 12 extinguishes the right of a security provider to repossess a vehicle which is impounded and not collected within 30 days of the expiration of the impoundment period (administratively forfeited). The security provider will continue to receive some of the owed amount through section 121 'Disbursement of funds' of the PPRA. The ability of a person to enforce a registered security interest that does not involve the repossession of the vehicle, is not affected.

The clause also requires a notice of the proposed sale of an impounded vehicle to be advertised in a newspaper circulating in the locality where the vehicle was seized directing the reader to the QPS website for greater detail of the vehicle. The detail of the description to be included on the website does not extend to information that is not readily available to the Commissioner.

Also, consistency between the PPRA and other legislation is enhanced by using the term 'QPS website'.

Clause 13 amends the disbursement of funds where the vehicle is sold under section 118 or 120, to include, if the owner is an enforcement debtor for an enforcement order under the State *Penalties Enforcement Act 1999*, the State Penalties Enforcement Registry (SPER). The clause dictates that the SPER debt will be paid prior to the owner of the vehicle receiving any share of the proceeds of the sale of the vehicle.

Clause 14 requires a police officer to place a general notice of the seizing of a vehicle, load or other thing, moved or seized under section 126, to be advertised in a newspaper circulating in the locality where the vehicle, load or other thing was seized. The notice will direct the reader to the QPS website for greater detail of the vehicle, load or other thing. The detail of the description to be included on the website does not extend to information that is not readily available to the Commissioner.

Clause 15 creates consistency in the process for advertising the disposal property in the possession of the Police Service. The clause requires notice of the proposed sale of a vehicle, load or other thing to be disposed of, to be advertised in a newspaper circulating in the locality where the vehicle, load or other thing was seized. The notice will direct the reader to the QPS website for greater detail of the vehicle, load or other thing. The detail of

the description to be included on the website does not extend to information that is not readily available to the Commissioner.

Clause 16 creates consistency in the process for the advertising of seized animals (property) similarly to clause 14.

Clause 17 creates consistency in the process for the advertising of the disposal of seized animals (property) similarly to clause 15.

Clause 18 qualifies that a police officer does not need to leave a notice for the owner of the animal to which the officer has rendered assistance, if in the circumstances, it is not reasonably practicable. In determining what is reasonable, the police officer should consider the circumstances. For example, it may not be reasonable to leave such a notice at a place where it takes the police officer an hour to attend the dwelling on the place or at a suburban block if the police officer is called to urgently attend another location.

Clause 19 relocates section 25 'Application to be made with help of lawyer' of Schedule 10 'Responsibilities Code' of the *Police Powers and Responsibilities Regulation 2000* (PPRR) into section 212 'Covert search warrant applications' of the PPRA, with minor drafting amendments.

Clause 20 provides the following definitions-

'*ancillary conduct*' for a controlled activity authorised under section 224 means conduct that amounts to aiding or enabling a police officer to commit a controlled activity offence or conspiring with a police officer for the police officer to commit a controlled activity offence, but does not include conduct that amounts to actually doing an act of making an omission that constitutes a controlled activity offence. Therefore, ancillary conduct does not allow for a civilian participant to undertake criminal activity instead of, or in conjunction with, the police officer. However, ancillary conduct does allow for conduct such as the facilitation of an introduction of a police officer to a person for the police officer to commit a controlled activity offence, or to facilitate ongoing contact with another person to provide credibility for the police officer to commit a controlled activity offence.

'*civilian participant*' means an adult who is not a police officer.

Clause 21 provides that it is lawful for a police officer, who is at least the rank of a chief superintendent, to authorise a civilian participant to engage in ancillary conduct for a controlled activity. Furthermore, in authorising the civilian participant's engagement in the controlled activity, the chief

superintendent must act in accordance with the policies and procedures established by the Commissioner.

Clause 22 extends the application of Chapter 10 'Controlled activities' from 1 or more meetings to the broad meaning of written or oral communications. The use of the term 'meeting' implies an element of mutuality. By replacing the term meeting with 'written or oral communications', all methods of communication including email, mobile phone text messaging, social networking communications or meetings may be contemplated when considering an application for a controlled activity.

Clause 23 inserts a new section 224A 'Authorised ancillary conduct for a controlled activity' into the PPRA. Where section 224 'Authorised controlled activities' applies to a controlled activity, and a police officer considers it reasonably necessary for a civilian participant to engage in ancillary conduct for the controlled activity, a chief superintendent may authorise the civilian participant to engage in ancillary conduct for the controlled activity. In authorising the civilian participant to engage in ancillary conduct, the chief superintendent must act in accordance with any policy of the Police Service.

The chief superintendent must consider the nature or extent of the controlled activity offence for which authorisation under section 224 is given and whether authorising the ancillary conduct for the controlled activity is appropriate in the circumstances. The same chief superintendent may authorise a controlled activity under section 224 and the engagement of a civilian participant under this section.

The authorisation for the civilian participant to be involved in ancillary conduct for the controlled activity must be written and state the controlled activity in which the police officer is authorised to engage under section 224, the ancillary conduct for the controlled activity in which the civilian participant is authorised to engage, and the period, of not more than 7 days, for which the controlled activity is in force. The civilian participant may only be authorised to engage in ancillary conduct under the lawful instruction of a police officer engaging in the controlled activity. However, such instruction does not require the civilian participant to be in the continual company of a police officer.

The civilian participant is required to comply with a policy or procedure of the Police Service relevant to the controlled activity.

Clause 24 provides a civilian participant authorised to engage in ancillary conduct for the controlled activity with protection from civil and criminal liability, to the extent of the authorisation under section 224A.

Clause 25 provides for the admissibility of evidence gathered while a civilian participant is engaged in ancillary conduct for a controlled activity.

Clause 26 allows the Commissioner to issue a certificate that on a stated day, a stated person approved a stated controlled activity which includes ancillary conduct for the controlled activity.

Clause 27 inserts a new section 282A 'Application to use multiple assumed identities recorded in motor vehicle register'. This section allows a law enforcement officer, who is authorised to use and/or acquire an assumed identity, to use one or more assumed identities that are recorded in a motor vehicle register, without making a separate application under section 282 to use the other assumed identities. However, the use of assumed identities under this section is limited to representing that another assumed identity, being the registered owner of a motor vehicle recorded in the motor vehicle register, is real when it is not.

Subsection 3 of this section ensures that even though the chapter has been written on the basis of a single assumed identity, the chapter may be read on the basis that an application may be made, and authorisation given, for the limited use of more than one assumed identity.

Clause 28 relocates section 15 'Applications to Supreme Court judge to be made with help of lawyer' of Schedule 10 'Responsibilities Code' of the PPRR into section 328 'Application for surveillance device warrant' of the PPRA, with minor drafting amendments.

Clause 29 expands what a surveillance device warrant authorises. The authorisation of a surveillance device warrant includes entry to the premises nominated in the surveillance device warrant, and entry onto any other stated premises adjoining or providing access to the premises, for any act that is preparatory to, and reasonably necessary for, the installation of a surveillance device. Such acts include entering the premises on an occasion prior to entering the premises to install the device, to take photographs inside the premises.

The clause expands the authority of a surveillance device warrant to include the temporary removal of a vehicle for the purpose of installing, maintaining or retrieving a surveillance device or enhancement equipment and to enter premises to return the vehicle.

Clause 30 provides an example and accentuates the link between section 365 and section 378 'Additional case when arrest for being drunk in a public place may be discontinued'. In determining whether or not to continue the arrest and custody of an intoxicated person, a police officer should consider section 378 of the PPRA.

Clause 31 allows for the postal service of a notice to appear for any offence against the *Transport Operations (Road Use Management) Act 1995*. The postal service must be via registered post.

Clause 32 inserts a new section 388A 'Extension of a notice to appear' to provide the court with the authority to extend a notice to appear properly served on a person where the proceeding is to be adjourned and the person personally appears before the court, as required. Upon extension of the notice to appear by the court, the person is required to personally attend the court at the time and place to which the proceeding is adjourned. Extending the notice to appear is an alternative to releasing a person under the *Bail Act 1980.* The notice to appear may be extended on more than one occasion.

The clerk of the court is required to give a notice to the person indicating the details of the adjournment. Failure to give the notice does not affect the validity of the requirement to attend the court as required by the extended notice to appear.

Clause 33 retitles section 389 to reflect the purpose of the section. The clause then provides the power for a court to issue a warrant for the arrest of a person who fails to personally appear in accordance with a notice to appear, which has been extended by a court under section 388A. Upon apprehension of the offender under the warrant, the person does not commit an offence for the failure to appear.

Furthermore, the clause clarifies the options available to a court when a person fails to appear in accordance with a notice to appear, including an extended notice to appear. If the person fails to appear, as required by a notice to appear, the court may, in addition to the existing options of (a) and (b), deal with the matter in accordance with the *Justices Act 1886.* Therefore, if the court decides to hear and determine the complaint in the absence of the defendant, and the court proposes to make an order in relation to the person's driver licence, vehicle registration, certificate, permit or other authority, or imprison the person, the proceedings must be adjourned to enable the defendant to appear. The clerk of the court is to send a notice to the defendant. This allows the defendant to appear and

make submissions where the court is considering imprisonment or making an order relating to the defendant's licence etc or for the court to deal with the charge in the absence of the defendant. If the person still does not appear, the court may deal with the matter and impose a penalty that includes an order in relation to the person's driver licence, vehicle registration, certificate, permit or other authority, or imprisonment.

If the person does not appear and the court decides to issue a warrant, the warrant continues to be issued under this Act.

Clause 34 relocates section 35 'Right to remain silent not affected' of Schedule 10 'Responsibilities Code' of the PPRR into the PPRA as section 397A 'Responsibility of police officer', with minor drafting amendments.

Clause 35 relocates section 44(1), (2) and (4) 'Detention period extension application' of Schedule 10 'Responsibilities Code' of the PPRR into the PPRA as section 405A 'Responsibility relating to notification and response to application under s 405', with minor drafting amendments.

Clause 36 relocates section 33 'Asking persons to attend for questioning' of Schedule 10 'Responsibilities Code' of the PPRR into the PPRA as section 415A 'Responsibility relating to asking relevant persons to attend for questioning', with minor drafting amendments.

Clause 37 clarifies that when a person is the subject of an extradition arrest, section 417 applies after the person appears in a Queensland court in relation to the offence.

Clause 38 makes a minor clarification amendment to the heading of section 418 to better reflect the purpose of the section.

Clause 39 relocates the following sections from Schedule 10 'Responsibilities Code' of the PPRR to the PPRA, with minor drafting amendments.

PPRR Schedule 10	PPRA
Section 34 'Right to communicate with friend, relative or lawyer'	Section 418A 'Responsibility relating to right to communicate with friend or relative and lawyer'
Section 44A 'Ensuring support persons understand role'	Section 418B 'Responsibility relating to ensuring support persons understand role'

Clauses 40 to 42 relocate the following sections from Schedule 10 'Responsibilities Code' of the PPRR to the PPRA, with minor drafting amendments.

PPRR Schedule 10	PPRA
Section 36 'Questioning of Aboriginal people and Torres Strait Islanders'	Section 420A 'Responsibility relating to questioning of Aboriginal people and Torres Strait Islanders'
Section 37 'Cautioning relevant persons about the right to silence'	Section 431A 'Responsibility relating to cautioning relevant persons about the right to silence'
Section 38 'Provision of information relating to a relevant person'	Section 431B 'Responsibility relating to establishing identity of relative, friend or lawyer'
Section 39 'Right to interpreter'	Section 432A 'Responsibility relating to right to interpreter'

Clause 43 amends section 433 to relate the section to the responsibilities of the police officer under section 432A, thereby, removing ambiguity about the questioning of persons under that section.

Clause 44 relocates section 40 'Right of visiting foreign national to communicate with embassy etc.' from Schedule 10 'Responsibilities Code' of the PPRR into section 433A 'Responsibility relating to right of visiting foreign national to communicate with embassy' of the PPRA.

Clause 45 relocates section 41 'Rights of a person to be electronically recorded' from Schedule 10 'Responsibilities Code' of the PPRR to section 435, with minor drafting amendments. The clause also amend the heading of section 435 to 'Rights to be electronically recorded' of the PPRA.

Clause 46 relocates section 42 'Procedure for reading back a written record' from Schedule 10 'Responsibilities Code' of the PPRR to section 437A 'Responsibility relating to procedure for reading back a written record' of the PPRA.

Clause 47 relocates the following sections of Schedule 10 of the PPRR into a new Chapter 15A 'Identification powers for persons in custody' of the PPRA.

PPRR	PPRA
Section 45 'Management of witnesses during identification procedure'	Section 441A 'Management of witnesses during identification procedure'
Section 46 'Application of div 2'	Section 441B 'Application of pt 2'
Section 47 'Recording of identification parade'	Section 441C 'Recording of identification parade'
Section 48 'Explanation of procedure'	Section 441D 'Explanation of procedure'
Section 49 'Identification parade conditions'	Section 441E 'Identification parade conditions'
Section 50 'Conducting the identification parade'	Section 441F 'Conducting the identification parade'
Section 51 'Use of suitable persons in the identification parade'	Section 441G 'Use of suitable persons in the identification parade'
Section 52 'General requirements for identification using photographs'	Section 441H 'General requirements for identification using photographs'
Section 53 'Conducting a photoboard identification'	Section 441I 'Conducting a photoboard identification'

Clause 48 clarifies that the power of a police officer to search and re-search a person in custody includes any property (for example a backpack) in the possession of the person in custody. The search and re-search of the property is limited to the purposes of cataloguing the items in the person's possession and to locate anything mentioned in subsections 3(a) to (c). If a police officer reasonably suspects that a located item may provide evidence

of the commission of an offence, the item may be seized and the person dealt with for that offence.

Clause 49 includes a forensic nurse examiner as a qualified person to perform a forensic procedure, both intimate and non-intimate, in addition to a doctor or a dentist.

Clause 50 applies the process and requirements of forensic procedure consent to obtaining consent to take a DNA sample from a child for the purpose of investigating or prosecuting a child DNA offence. Forensic procedure consent is only applicable to the specific purposes contained in the section.

Clause 51 expands the current obligation of a police officer to provide specific information to a person from whom consent is sought by a police officer to obtain a DNA sample for the purpose of investigating or prosecuting a child DNA sampling offence suspected to have been committed by another person.

Clause 52 provides clarity that section 457 'Application of pt 3' may be applied even though there are specific provisions in the *Transport Operations (Road Use Management) Act 1995* that provide for the taking of a blood specimen from persons suspected of 'driving' offences. A police officer may still make an application under section 458 of the PPRA for a forensic procedure order to take blood from a person suspected of committing an indictable offence including those with an element of driving, for example an offence under section 328A 'Dangerous operation of a vehicle' of the Criminal Code.

Clause 53 clarifies that notice of an application for a forensic procedure order need not be given to the person to whom the application relates, before the hearing of the application, if the magistrate is satisfied that the loss or destruction of the evidence, due to a delay in the hearing of the application, is likely.

Clause 54 recognises the inclusion of a forensic nurse examiner as a qualified person to perform a forensic procedure.

Clause 55 inserts a new section 466A 'Qualified person need not comply with forensic procedure order in particular circumstances'. The section is a safeguard relevant to a qualified person who is to perform a forensic procedure on a person under a forensic procedure order, which has been issued under the given criteria. The qualified person need not take a sample of the person's blood if the qualified person reasonably believes the

taking of the sample would be prejudicial to the person's treatment or has another reasonable excuse.

Clause 56 clarifies that for the court to be satisfied it is necessary to take or photograph the person's identifying particulars, the court may either receive and consider an application from a police officer or the prosecutor for the proceeding, or make the order upon its initiative. The court may require information additional to the application in a particular format. The application need not be witnessed by a Justice of the Peace or Commissioner for Declarations.

Clause 57 provides that when forensic procedure consent has been obtained for a DNA sample for a child DNA sampling offence, the DNA sample may be taken at any location as agreed by the child or the person who gave the forensic procedure consent.

Clause 58 outlines the procedure for taking a DNA sample from a child under forensic procedure consent for a child DNA sampling offence. If the child is unable to use a mouth swab and has insufficient hair for the collection of the sample, the parent of the child or the DNA sampler may swab the child's mouth to take the DNA sample.

Clause 59 limits the use of the DNA analysis of a DNA sample taken from a child, for the purpose of investigating or prosecuting a child DNA offence or who is under 14 years of age, to the purpose for which the consent was provided.

Clause 60 clarifies that for the court to be satisfied it is reasonably necessary, having regard to the rights and liberties of the person and the public interest, to take a DNA sample for DNA analysis from the person, the court may receive and consider an application from a police officer or the prosecutor for the proceeding, or make the order upon its initiative. The court may require information additional to the application in a particular format. The application need not be witnessed by a Justice of the Peace or Commissioner for Declarations.

Clause 61 inserts a new section 487A 'Taking DNA sample from person subject to interstate parole order' into the PPRA. The section applies to a person who is the subject of an interstate parole order, or is or was, before the commencement of this section, transferred to Queensland from another State under an arrangement under the *Prisoners (Interstate Transfer) Act 1982*, and under the law of the State from which the person was transferred, a DNA sample could have been lawfully taken from the person, and the results of a DNA analysis of a DNA sample taken from the person are not

already included in the CrimTrac database. The section allows a police officer to detain the person and take the person to a place to enable a DNA sampler to take a DNA sample from the person for DNA analysis. The police officer may detain the person for 1 hour or a longer period of time if necessary.

The clause provides the following definitions for the section:

'interstate parole order' means an order made under the law of another State that provides for a person's release on parole;

'release on parole' includes release on probation and any other form of conditional release in the nature of parole.

Clause 62 inserts a new Chapter 17, Part 5, Division 3A 'Taking DNA samples from children to investigate or prosecute particular sexual offenders' to create a process where a police officer may apply to a Children's Court magistrate for an order to take a DNA sample from a child who is *not* being investigated as a suspect for an offence, but where the police officer reasonably suspects the test results will help identify the person who committed the offence, or establish whether the offence has been committed.

Section 488B 'Meaning of *child DNA sampling* offence' means any of the following offences against the Criminal Code that involves penetration of a penis into a person's vagina—

(a) rape or incest, if the victim of the offence is a child;

(b) carnal knowledge of a child under 16 years.

Section 488C 'Meaning of *parent*' provides a definition of parent for the division.

Section 488D 'Application of div 3A' limits the application of the division to where a police officer reasonably suspects that a child DNA sampling offence has been committed by a person and the analysis of the DNA sample taken from a child will help identify the person who committed the offence, or establish whether the offence has been committed. The child from whom a DNA sample may be taken may or may not be the victim of a child DNA sampling offence. Furthermore, a DNA sample order may only be made in relation to a child. Division 3A has no application where forensic procedure consent has been obtained.

Section 488E 'Application for DNA sample order' provides the authority for a police officer to apply to a Childrens Court magistrate to make an

application for an order authorising a DNA sampler who is a doctor or a nurse to take a DNA sample from the child for DNA analysis. The clause outlines the conditions to which the application must be made. The application need not be endorsed by a Justice of the Peace or a Commissioner for Declarations.

Section 488F 'Notice of application to be given' requires a police officer to give a copy of the application to the following persons: the child, a parent of the child unless a parent cannot be located, and the chief executive (child safety) or a person nominated by that chief executive for the purpose. While the definition of parent includes the chief executive (child safety), serving the chief executive as a parent should only occur if no other parent can be found after reasonable enquiry. Service of the chief executive (child safety) as a parent, by virtue of an order under the *Child Protection Act 1999*, does not preclude service on the biological parents.

The copy of the application must state the time and location that the application is to be heard and that the magistrate considering the application may hear and decide the application, whether or not the person attends the hearing of the application.

The Childrens Court magistrate has discretion to hear any person served with a copy of the application if the person appears at the hearing of the application. However, if a person served with a copy of the application does not appear at the time and place of the application, the magistrate may decide the application in his or her absence.

Section 488G 'Making DNA sample order' requires a Childrens Court magistrate to be satisfied on reasonable grounds that a child DNA sampling offence may have been committed, the analysis of a DNA sample taken from the child will help identify the person who committed the child DNA sampling offence, or establish whether the offence has been committed, and taking a DNA sample from the child is justified in the circumstances. To determine whether or not it is justified in the circumstances the Childrens Court magistrate must balance the best interests of the child and the public interest.

In balancing those interests, the Childrens Court magistrate is to give priority to the wellbeing of the child. Other matters to which the Childrens Court magistrate must have regard include the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence, whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to identify the person that

committed the offence or establish whether the offence has been committed, if the child or a parent of the child has been asked for and refused to give a forensic procedure consent, the reasons for the refusal to the extent they are known to the magistrate or can reasonably be discovered by the magistrate, and any other factor the magistrate considers relevant.

In having regard to the seriousness of the circumstances of the suspected offence, the Childrens Court magistrate must have regard to the age difference between the suspected offender and the victim of the offence, the relationship between the suspect and the victim, whether the suspected offence was premeditated, and any harm likely to have been, or that may have been done to the victim.

Section 488H 'Provisions of DNA sample order' states what must be included in the DNA sample order.

Section 488I 'Powers for enforcing DNA sample order' provides the powers available to a police officer in the enforcement of a DNA sample order.

Section 488J 'Procedure before entry' provides the obligations imposed on a police officer who intends to enter a place under the authority of a DNA sample order. The police officer need not comply with those obligations if the police officer reasonably believes that immediate entry to a place is required to enforce the DNA sample order.

Section 488K 'Use of DNA sample' limits the use of a DNA sample taken under Division 3A to the investigation and prosecution of the child DNA sampling offence for which the order was made. The DNA sample may not be used in the investigation or prosecution of any other offence.

Section 488L 'Obstruction of police officer enforcing DNA sampling order' includes a person who without a reasonable excuse, prevents, or attempts to prevent, a police officer from enforcing a DNA sample order, as an offence under section 790 'Offence to assault or obstruct police officer' of the PPRA. Whether or not the person's actions prevent the enforcement of the DNA sample order is irrelevant. For example, if a person attempts to stop or discourages the child from fulfilling the obligations of the order, that person will have obstructed the police officer. Equally, if a person prevents a police officer from entering a place to enforce a DNA sample order, that person will have obstructed a police officer. However, the child named in the DNA sample order will not obstruct a police officer under section 790 if the child resists, declines or otherwise prevents a police officer from enforcing the order.

Clause 63 allows the Commissioner to enter into an arrangement about the analysis of DNA samples with the chief executive (health) and other forensic laboratories. Any forensic laboratory with which the Commissioner enters into an arrangement must be accredited by the National Association of Testing Authorities, Australia (NATA) or an organisation that does the equivalent function to NATA. The accreditation must indicate compliance with the prescribed standard.

Clause 64 provides that the DNA sample, taken from a person who is the subject of an interstate parole order under section 487A, is not subject to the destruction requirements under section 490, with minor drafting amendments.

Clause 65 inserts a new section 490B 'When DNA sample taken from child in particular circumstances must be destroyed'. The new section is applicable to a DNA sample taken under a DNA sample order or forensic procedure consent for the investigation and prosecution of a child DNA sampling offence. The section outlines when a DNA sample and the results of a DNA analysis of the sample must be destroyed. There is no authority to allow for the retention and storage of the DNA sample or the results of the DNA analysis that is not consistent with this section. Similar to other destruction provisions of the PPRA, the DNA analysis may be destroyed by deleting any identifiable information in the QDNA.

Clauses 66 to 72 amend the relevant sections of Chapter 17, Part 7 'Forensic procedures performed by doctors and dentists' to include a forensic nurse examiner as an authorised person to perform a forensic procedure under the chapter.

Clauses 73 to 75 apply the offences contained in sections 526, 530 and 531 to the destruction of DNA samples under the existing section 490A 'When DNA sample taken from reportable offender and results must be destroyed' and new section 490B 'When a DNA sample taken from child in particular circumstances must be destroyed'.

Clauses 76 and 77 expand the application of Chapter 18 beyond sexual offences and serious assault to any offence that may involve the transmission of certain bodily fluids.

Clause 78 redefines a chapter 18 offence as any offence where semen, blood, saliva or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin, of a victim of the offence. Because of the expansion of the offences to which the chapter has

application, the existing subsection (3)(a) has become redundant and is, therefore, deleted.

The clause also specifically applies the chapter to a police officer or public official who suffers a needle stick injury from a used hypodermic syringe or needle that the police officer or public official reasonably suspects has previously been used by the relevant person to penetrate his or her own skin. The suffering of a needlestick injury does not require the commission of an offence resulting in the police officer being a victim of the offence. For example a police officer may suffer a needlestick injury while searching a person and being pricked by the uncapped used hypodermic syringe or needle, in the person's possession.

Clause 79 clarifies that an application for a disease test order does not require the application to be witnessed by a Justice of the Peace or Commissioner for Declarations prior to the magistrate considering the application.

Furthermore, the clause clarifies that where an application is made for a disease test order for a child, the application may be made to a Childrens Court magistrate and does not require the Childrens Court to be convened to consider the application.

Clause 80 also clarifies that where an application is made for a disease test order for a child, the application may be made to a Childrens Court magistrate and does not require the Childrens Court to be convened to consider the application.

Clause 81 provides that a police officer may receive and act upon a complaint of excessive noise from an anonymous complainant. This clause does not remove the requirement for a complaint to be made, as stated in subsection (2), prior to investigating the complaint.

Clause 82 amends the heading of section 581 'Powers of police officer to deal with excessive noise' to better reflect the section.

Clause 83 inserts a new section 581A 'Powers of police officer to deal with excessive noise-extended noise abatement direction'. The section applies if a police officer is reasonably satisfied that the noise is excessive in the circumstances and an extended noise abatement direction is necessary to deal with the excessive noise. An extended noise abatement direction is an alternative to a noise abatement direction. In deciding whether or not an extended noise abatement direction is necessary, the police officer may consider any relevant matters.

The police officer may then enter the place without warrant to issue an extended noise abatement direction. If the police officer does enter the place without warrant, the police officer must give the person responsible for the noise a written direction to abate the excessive noise. The written direction is an extended noise abatement direction, which must include the time the direction was given, the name and particulars of the person to whom the direction was given, the noise abatement period for which the excessive noise is to be abated, and the address of the place to which the extended noise abatement direction applies.

Clause 84 amends the offences contained in section 582 'Compliance with noise abatement direction' to capture non-compliance with an extended noise abatement direction. Furthermore, the clause introduces a new limb to the definition of noise abatement period. That is, the noise abatement period for an extended noise abatement direction is the period of not less than 12 hours but no more than 96 hours from the time the extended noise abatement direction was issued.

Given that clause 81 specifically allows a police officer to act upon an anonymous complaint, clause 84 provides an evidentiary provision to ensure the police officer need not prove that a complaint of excessive noise was made nor that the complainant reasonably believed the noise to be excessive.

Clause 85 applies the police powers under section 583 of the Act to an extended noise abatement direction.

Clause 86 removes an occupier's entitlement to accompany a police officer during a search of a place, entered under the authority of this section, if the police officer reasonably suspects that allowing the person to accompany a police officer during the search will result in injury to any person. However, before the search may be conducted, the occupier must be warned by a police officer, to whatever extent is practicable, that he or she will is not entitled to accompany the police officer during the search of the place due to the police officer's reasonable suspicion. The lawfulness of the search, and anything seized during the search, is not affected due to a police officer being unable to warn the occupier prior to the search of the place. The police officer who warns the occupant does not have to be the same police officer conducting the search or holding the reasonable suspicion.

Clause 87 inserts a new section 619A 'Powers relating to persons in holding cells at police stations' to remove any ambiguity about the power

of a police officer to take any steps reasonably necessary to ensure the good management of the police station. A police officer who for the time being is in charge may be the officer in charge of the police station, the senior officer on duty at that time or for that rostered shift, or a shift supervisor. The power of a police officer to take any steps reasonably necessary includes, but is not limited to, moving the person to another holding cell within the station or transporting the person to a watchhouse.

Clause 88 states that a pat down search under the new sections 52A 'Power to conduct pat-down search for ss 50-52' or 53C 'Power to conduct pat-down search of minor' does not authorise a police officer to require a person to remove all items of clothing or all items of outer clothing from the upper or lower part of the body.

Clause 89 requires a police officer to leave written notice of any damage caused when exercising a power 'as soon as reasonably practicable' as opposed to 'promptly'. This will allow the police officer to continue his or her duties prior to serving the written notice. The notice of damage must be left as soon as a reasonably practicable in the context of the incident. However, given subsection (3), the notice will always be given prior to police leaving the vicinity of the place.

Clause 90 clarifies that if a police officer is asked for the officer's details outlined in subsection (2), regardless of whether the officer is the senior officer, the officer is to provide his or her details to the person. A police officer is not required to provide another officer's details. Further, this provision requires a police officer who has supplied their details to, upon request, repeat the information given, if reasonably practicable to do so. The clause neither intends for, nor obligates, a police officer to continually repeat information.

Clauses 91 and 92 extend the power of a watch-house officer to include the use of reasonable force to transfer a person in custody to, from and between watch-houses, a correctional facility, a court facility which includes a court cell, or a hospital. The transfer of a prisoner by a watch-house officer does not remove the person in custody from the custody of the watch-house manager just because the person in custody is being transferred by the watch-house officer.

Clause 93 relocates section 67 'Functions of property officer' of Schedule 10 'Responsibilities code' of the PPRR to section 688A 'Functions of property officer' of the PPRA.

Clauses 94 and 95 create consistency in the process for advertising the disposal property in the possession of the Police Service. The clauses require a general notice of the proposed sale by advertisement in a newspaper circulating in the locality where the property came into the possession of the Police Service. The notice will direct the reader to the QPS website for greater detail of the property. The detail of the description to be included on the website does not extend to information that is not readily available to the Commissioner.

Clause 96 requires a general notice of the proposed sale of an impounded vehicle by advertisement in a newspaper circulating in the locality where the vehicle was impounded directing the reader to the QPS website for greater detail of the vehicle. The detail of the description to be included on the website does not extend to information that is not readily available to the Commissioner.

Clause 97 amends section 786 to include a debt held by the owner of the vehicle with the State Penalties Enforcement Registry (SPER) in the disbursement of funds where a vehicle is forfeited to the State and sold. The SPER debt will be paid prior to the owner of the vehicle receiving any share of the proceeds of the sale of the vehicle.

Clause 98 separates the offences of assault police officer and obstruct police officer into two offence sections. The elements of the offences have not changed. The creation of separate offences enhances the ability to conduct a statistical analysis of the commission of those offences.

Clause 99 clarifies that the term 'relevant vehicle incident' used in section 125(1)(c) was not amended by section 205(4) of the *Transport and Other Legislation Amendment Act 2008*.

Clause 100 inserts a new Part 11 'Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2011'.

Clause 101 includes offences under section 77A(2) and (3)(a) and (b) 'Prostitute providing sexual intercourse or oral sex without a prophylactic' of the *Prostitution Act 1999* in the definition of controlled activity offence. This inclusion provides protection from liability to police officers involved in controlled activities relating to the offering or accepting an offer from a prostitute for sexual intercourse or oral sex without a prophylactic being used. By virtue of the inclusion of limited offences within the section, the protection from liability is limited to the offer and acceptance of an offer.

Clause 102 inserts the definitions introduced through the Bill and existing in the Act, into Schedule 6 'Dictionary' of the PPRA. The clause also makes corrections to various existing definitions to reflect current drafting practices.

Part 3 Amendment of the *Police Powers and Responsibilities Regulation 2000*

Clause 103 indicates that Part 3 amends the *Police Powers and Responsibilities Regulation 2000*.

Clause 104 inserts a new Division 4 'Other matters' into the PPRR. The new section 8MA 'Qualifications prescribed for forensic nurse examiners' prescribes the qualifications required for the appointment of a forensic nurse examiner. The new section 8MB 'Standard prescribed for forensic laboratories' prescribes the standard for which a forensic laboratory must be compliant.

Clause 105 deletes section 16 'Responsibilities Code' as Schedule 10 'Responsibilities Code' has been deleted with the content of the schedule being dispersed between the PRRR and the PPRA.

Clause 106 reorganises the PPRR by replacing the existing Part 4 with a new Part 4 'Provisions about search warrants, obtaining documents, and crime scenes' and relocating the following sections from Schedule 10 'Responsibilities code' of the PPRR into that Part with minor drafting amendments where required.

Responsibilities Code	Part 4 PPRR
Section 3 'Search warrant application'	Section 17 'Search warrant application-Act, s 150(5)(b) and(c)'
Section 4 'Statement to accompany copy of search warrant'	Section 18' Statement to accompany copy of search warrant-Act, s 158(3)'
Section 5 'Post-search approval application'	Section 19 'Post-search approval application-Act, s 161(2)(c)'

Section 6 'Appeal'	Section 20 'Report about post-search approval application'
Section 8 'Crime scene warrant application'	Section 21 'Crime scene warrant application- Act, s 170(2)(c)'
Section 9 'Crime scene warrant extension application'	Section 22 'Application for extension of crime scene warrant- Act, s 173(3)
Section 10 'Statement to accompany copy of crime scene warrant'	Section 23 'Statement to accompany copy of crime scene warrant- Act, s 175(3)'
Section 11 'Production notice application'	Section 24 'Production notice application- Act, s 180(3)(b) and (c)'
Section 12 'Access order application'	Section 25 'Access order application- Act, s 185(3)'
Section 13 'Production order application'	Section 26 'Production order application- Act, s 189(3)(b) and (c)'

The clause also relocates the following sections from Schedule 10 into Part 5 'Covert evidence gathering powers' of the PPRR, with minor drafting amendments where required.

Responsibilities Code	Part 5 PPRR
Section 14 'Monitoring order and suspension order application'	Section 27 'Monitoring order and suspension order application-Act, ss 199(2)(b) and 205(2)(b)'
Section 22 'Security of facilities used under a surveillance device warrant'	Section 28 'Security of facilities used under a surveillance device warrant'
Section 26 'Covert search warrant application'	Section 29 'Covert search warrant application- Act, s 212(2)(b) and (c)'
Section 27 'Covert search warrant extension application'	Section 30 'Application for extension of covert search warrant-Act, s 217(3)'
Section 28 'Report on covert search'	Section 31 'Report on covert search- Act, s 220(3)'

The clause also relocates the following sections from Schedule 10 into Part 6 'Arrest and custody powers' of the PPRR, with minor drafting amendments where required.

Responsibilities Code	Part 6 PPRR
Section 30 'DNA sample order application—child'	Section 32 'Application for order to take DNA sample from child- Act, s 488'
Section 31 'Disease test order application'	Section 33 'Disease test order application- Act, s 540(3)(c)'

The clause also relocates the following sections from Schedule 10 into Part 7 'Investigations and questioning for indictable offences' of the PPRR, with minor drafting amendments where required.

Responsibilities Code	Part 7 PPRR
Section 43 'Removal order application'	Section 34 'Removal order application- Act, s 399(4)(c)'
Section 44(3) 'Detention period extension application'	Section 35 'Application for extension of detention period—Act, s 405(2)'

The clause also relocates the following sections from Schedule 10 into Part 8 'The register' of the PPRR, with minor drafting amendments where required.

Responsibilities Code	Part 8 PPRR
Section 54 'Searches of persons'	Section 36 'Searches of persons'
Section 55 'Searches of vehicles'	Section 37 'Searches of vehicles'
Section 56 'Searches of places other than vehicles'	Section 38 'Searches of places other than vehicles'
Section 57 'Arrests and detentions'	Section 39 'Arrests and detentions'

Section 58 'Search warrants'	Section 40 'Search warrants'
Section 59 'Production notices'	Section 41 'Production notices'
Section 60 'Production orders'	Section 42 'Production orders'
Section 64 'Things seized other than during a search'	Section 43 'Things seized other than during a search'
Section 65 'Directions given'	Section 44 'Directions given'
Section 65A 'Exclusions of support persons from questioning'	Section 45 'Exclusions of support persons from questioning'
Section 61 'Monitoring orders and suspension orders'	Section 46 'Monitoring orders and suspension orders'

The clause also relocates the following sections from Schedule 10 into Part 9 'Dealing with things in the possession of police service' of the PPRR, with minor drafting amendments where required.

Responsibilities Code	Part 9 PPRR
Section 66 'Receipt for seized property'	Section 45 'Receipt for seized property-Act, s 622(4)'
Section 68 'Order after property seized'	Section 46 'Order after property seized-Act, ss 694(3) or 695(4)'

Clause 107 deletes Schedule 10 'Responsibilities code' as the contents have been disbursed within the PPRR and the PPRA.

Part 4 Amendment of the *Evidence Act 1977*

Clause 108 indicates that Part 4 amends the *Evidence Act 1977*.

Clause 109 allows an evidentiary certificate to be issued by both the chief executive (health) and the chief executive officer (however described) of

the forensic laboratory with which the Commissioner of Police has entered an arrangement under section 489 of the PPRA.

Clause 110 amends the definition of DNA analysts to include the appointment of an employee of the forensic laboratory with whom the Commissioner has entered an arrangement under section 489 of the PPRA. The appointment to DNA Analyst is subject to the chief executive officer of the laboratory being satisfied that the employee has the necessary qualifications and experience for the appointment.

Such appointment is effective from the date the notice is given or the date stated in the notice, whichever is applicable.

Part 5 Amendment of *State Penalties Enforcement Act 1999*

Clause 111 indicates that Part 5 amends the *State Penalties Enforcement Act 1999*.

Clause 112 amends section 34 'Default in paying fine, penalty or other amount under court order' of the *State Penalties Enforcement Act 1999* to ensure non performance amounts ordered under section 102 of the PPRA can be received and enforced by the State Penalties Enforcement Registry.

Part 6 Minor and consequential amendments

Clause 113 makes minor and consequential amendments to relevant legislation, both caused by the Bill and to reflect current drafting practices.