Parliamentary Committees



Police Powers and Responsibilities and Other Legislation Amendment Bill 2018

Report No. 17, 56th Parliament
Legal Affairs and Community Safety Committee
August 2018

Legal Affairs and Community Safety Committee

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Acknowledgements

The committee acknowledges the assistance provided by the Queensland Police Service and Queensland Corrective Services.

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Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service
BAQ/Association	Bar Association of Queensland
CCC	Crime and Corruption Commission
CMC	Crime and Misconduct Commission
committee	Legal Affairs and Community Safety Committee
CPOROPOA/CP(OROPO)A	*Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*
Criminal Code	The Criminal Code under the *Criminal Code Act 1899*
CSA	*Corrective Services Act 2006*
DPSOA	*Dangerous Prisoners (Sexual Offenders) Act 2003*
EON	evasion offence notice
explanatory notes	Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 explanatory notes
FLP	fundamental legislative principle
HRMP	high-risk missing person
LSA	*Legislative Standards Act 1992*
Minister	Hon Mark Ryan MP, Minister for Police and Minister for Corrective Services
NCN	number plate confiscation notice
PACT	Protect All Children Today
PBQ	Parole Board Queensland
PPRA	*Police Powers and Responsibilities Act 2000*
PPRR	Police Powers and Responsibilities Regulation 2012
PS Act	*Penalties and Sentences Act 1992*
QCS	Queensland Corrective Services
QCU	Queensland Council of Unions
QLS	Queensland Law Society

QPS	Queensland Police Service
Register	child protection register
RIA	*Racing Integrity Act 2016*

Chair's foreword

The committee is tabling this report during the 30th anniversary of national missing persons' week. Over 38,000 missing person reports are submitted to police every year in Australia.[1] The family and friends of those people are left to deal with the uncertainty of not knowing what has happened to their loved one. It falls to the police across our nation to try to find these missing people, or sadly, where they have met with foul play, to find the person or persons responsible and bring them to justice.

In its examination of this Bill, the committee's task was to consider the policy aims to be achieved by the legislation as well as the application of fundamental legislative principles, including whether the Bill has sufficient regard to the rights and liberties of individuals.

Among the measures proposed in this Bill are increased powers for Queensland police to search properties associated with high risk missing persons such as young children or prior victims of domestic violence. The committee is aware that there is a trade-off between increased police powers and the rights and liberties of those persons whose homes might be searched, however we consider that the safe return of vulnerable high risk missing persons must be given priority and police must be given the legislative tools they need to locate them, or to find answers as to what has happened to them. Accordingly, the committee recommends that the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 be passed.

On behalf of the committee, I thank those organisations who made written submissions and gave evidence at the public hearing. I also thank the Commissioner of Police and other officers from the Queensland Police Service and Queensland Corrective Services who assisted the committee at the public briefing. Finally, I would like to thank our Parliamentary Service staff for their assistance.

I commend this report to the House.

Peter Russo MP

Chair

[1] https://missingpersons.gov.au/about

Recommendation

Recommendation **3**

The committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 be passed.

1 Introduction

1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* and the Standing Rules and Orders of the Legislative Assembly.[2]

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services
- Fire and Emergency Services.

Portfolio committees are responsible for examining each bill in their portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles.[3]

The Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 (Bill) was introduced into the Legislative Assembly and referred to the committee on 12 June 2018. The committee is to report to the Legislative Assembly by 9 August 2018.

1.2 Inquiry process

The committee opened its inquiry on 20 June 2018, inviting stakeholders, subscribers and the public to make written submissions on the Bill. Five submissions were received. See Appendix A for a list of the submitters.

The Queensland Police Service (QPS) provided the committee with a written briefing and a written response to matters raised in submissions.

On 19 July 2018, the committee received a public briefing about the Bill from the QPS and Queensland Corrective Services (QCS). The committee held a public hearing on the same day. See Appendix B for a list of officials and witnesses at the briefing and hearing.

The submissions, correspondence from the QPS and transcripts of the briefing and hearing are available on the committee's webpage.

1.3 Policy objectives of the Bill

The objectives of the Bill are to:

- amend the *Police Powers and Responsibilities Act 2000* (PPRA) to:
  - introduce a new concept to missing person investigations - searching places for high-risk missing persons (HRMPs) – to assist a police officer investigating the whereabouts of a HRMP
  - introduce the term 'crime scene threshold offence' to simplify when a crime scene may be established
  - enable police to apply to a Supreme Court judge or magistrate for an access approval order for a storage device that has been seized under a crime scene warrant

[2] *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

[3] *Parliament of Queensland Act 2001*, s 93(1).

  - allow police to inspect electronic storage devices in the possession of a person who has been convicted of an offence of administering a child exploitation material website and/or encouraging the use of a child exploitation material website
  - allow a police officer to search a person who has been taken into custody to prevent a breach of the peace when they are required to be transported by police
  - introduce a new offence to deal with a person who assaults or obstructs a civilian watch-house officer
  - separate the offence of assault or obstruct a police officer into two offences
  - include in schedule 2, offences relating to unlawful bookmaking and to opening, keeping, using or promoting an illegal betting place
  - include in schedule 5, an offence relating to the use of a service or a facility at an illegal betting place
  - give effect to the seven legislative recommendations of the 2011 Crime and Misconduct Commission (CMC) review into the evade police provisions
  - introduce a new offence to ensure vehicles subject to a number plate confiscation notice (NCN) remain at the address without modification, sale or disposal until the NCN period ends
  - allow police to take a person issued with a police banning notice from the scene for the purpose of taking their photograph
  - widen the methods by which service of a notice to appear may be effected
- amend the Police Powers and Responsibilities Regulation 2012 (PPRR) in relation to HRMPs, crime scene and information access orders for electronic storage devices, to reflect the proposed changes to the PPRA
- amend the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004* (CPOROPOA) to include ten child sex offences under the *Criminal Code Act 1995* (Cth) as reportable offences in Queensland
- make amendments to the *Corrective Services Act 2006* (CSA) relating to the Parole Board Queensland (PBQ)
- amend the *Police Service Administration Act 1990*, the *Transport Planning and Coordination Act 1994*, the *Maritime Safety Queensland Act 2002*, the *Motor Accident Insurance Act 1994* and the *State Penalties Enforcement Act 1999* to remove the obligation for proof of a delegation to accompany an evidentiary certificate.

1.4 Government consultation on the Bill

The Queensland Government sent an exposure draft of the Bill to the following stakeholders, receiving a submission from each:

- Aboriginal and Torres Strait Islander Legal Service (ATSILS)
- Bar Association of Queensland (BAQ)
- Crime and Corruption Commission (CCC)
- Queensland Council for Civil Liberties
- Queensland Law Society (QLS)
- Queensland Police Commissioned Officers' Union of Employees
- Queensland Police Union

- State Coroner.[4]

The explanatory notes advise that amendments were made to the Bill as a result of the feedback including:

- *clarifying there is a positive obligation on police to advise the occupant of a dwelling of their entitlement to alternative accommodation should that person be unable to live in the dwelling due to the exercise of crime scene powers or the new missing person powers;*
- *clarifying that the new power to search a person for a breach of the peace is limited to the occasions where the detained person is required to be transported by police; and*
- *clarifying that an access information order for a storage device seized in relation to a crime scene warrant limits a police officer to information stored on or accessible only by using the storage device.*[5]

1.5 Should the Bill be passed?

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

Recommendation

The committee recommends the Police Powers and Responsibilities and Other Legislation Amendment Bill 2018 be passed.

[4] Police Powers and Responsibilities and Other Legislation Amendment Bill 2018, explanatory notes (explanatory notes), pp 27-28. All submissions were kept confidential: explanatory notes, p 27.

[5] Explanatory notes, p 28.

2 Examination of the Bill

The Bill makes a number of amendments to the PPRA, the PPRR and the CSA as well as amendments to other Acts, including the CPOROPOA. This section of the report outlines the proposed amendments and discusses key issues raised during the committee's examination of the Bill.

2.1 High-risk missing persons

The Bill proposes to introduce a new framework to assist police in missing person investigations.

At present, in most missing person investigations, police are given permission to enter the missing person's home, workplace or vehicle to search for the person or to seek information that may help them find the missing person. If, however, an owner or occupier does not permit police to enter the premises, police cannot apply for a search warrant or a crime scene warrant to enter or search the premises unless there is some evidence that the missing person is the victim of a serious crime.[6]

The new provisions in the Bill would allow the police to search places for high-risk missing persons (HRMPs) by permitting a police officer to establish a missing person scene under a missing person warrant or, in urgent circumstances, before obtaining a missing person warrant.[7]

The Bill provides that a person is regarded as high-risk if they are aged under 13 years or there is a reasonable suspicion that they may suffer serious harm if not found as quickly as possible.[8] In making a decision about whether a missing person is high-risk, any of a number of matters specified in proposed new s 179C(3) may be taken into account including the person's need for medication, any history of domestic violence or other relationship problems affecting the person, and any disability of the person attributable to a cognitive, intellectual, neurological, physical or psychiatric impairment.[9]

Provided certain conditions are met,[10] a missing person scene may be established at:

- the missing person's residence, place of employment or vehicle if it is reasonably suspected that the person may be at the place or that an inspection of the place may provide information about the person's disappearance
- any other place if it is reasonably believed that the person may be at the place or that an inspection of the place may provide information about the person's disappearance.[11]

At a missing person scene, police officers:

> *… will be able to enter the missing person scene and, if necessary, enter another place to gain access to the scene; investigate, search or inspect the scene for the missing person or any information about the person's disappearance; exclude any person—for example, the occupier of any place—from the missing person scene; remove any obstruction from the scene; direct a person to leave the scene or prevent them from entering the scene; remove or cause to be removed an animal or vehicle from the scene; prevent a person from removing anything or*

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6 Hon Mark Ryan, Minister for Police and Minister for Corrective Services, Queensland Parliament, Record of Proceedings, 12 June 2018, p 1416; explanatory notes, pp 1-2.

7 Clause 27, inserting *Police Powers and Responsibilities Act 2000,* new ss 179D(1), 179E. The proposed high-risk missing person powers are modelled on the existing crime scene powers: Queensland Police Service, briefing paper, p 2.

8 Clause 27, inserting *Police Powers and Responsibilities Act 2000,* new s 179C(2).

9 Clause 27, inserting *Police Powers and Responsibilities Act 2000*, new s 179C(3).

10 For example: the missing person must be high-risk: cl 27, inserting *Police Powers and Responsibilities Act 2000*, new ss 179E(1)(a), 179K(3)(a); only a commissioned officer may authorise the establishment of a missing person scene if it is to be established before a missing person warrant is obtained: cl 27, inserting *Police Powers and Responsibilities Act 2000*, new s 179E(2).

11 Clause 27, inserting *Police Powers and Responsibilities Act 2000*, new ss 179E(3), 179K(3).

interfering with the scene or anything in it and, if necessary, detain and search that person; open anything; photograph the scene and anything in it; seize anything or part of a thing that may provide information about the missing person's disappearance; and take electricity for use at the scene if necessary.[12]

The information about a missing person's disappearance that police may seek at a place includes 'suicide notes, computer browser history and documents that may indicate a person's intention or state of mind.'[13]

In relation to the likely usage of the provisions the QPS advised:

… the new missing person scene powers are likely to be engaged on approximately 10 occasions per year in relation to those persons who were reported missing and are later located deceased. Additionally, the powers are likely to be used in a limited number of other occasions in relation to other high-risk missing persons who are at risk of serious harm if they are not found as quickly as possible and consent cannot be obtained to gain entry to search the place.[14]

The Minister highlighted the uniqueness of the HRMP powers:

… These are important and potentially lifesaving powers and this parliament should be proud to have a bill before it which provides an Australian first in respect of enhancing community safety and providing our police with those potentially lifesaving powers.[15]

While no Australian jurisdiction has similar missing person powers to those in the Bill, some Canadian provinces:

... have missing person legislation that generally allows police to make an application to a justice of the peace for an order to obtain specific information about the missing person, or to search a private dwelling or other place for a minor (generally a person under 18 years of age) or a represented adult. A represented adult is a person who is captured under the relevant adult guardianship legislation. For police to apply for an order to search for the minor, or the represented adult, they must have a reasonable belief that the missing person may be located at the premises.[16]

In addition, the Netherlands released draft legislation for consultation in 2017 that would allow police 'to apply for search warrants to search places for information as to the whereabouts of high-risk missing persons.'[17]

The QPS gave evidence on the impetus for including powers relating to high-risk missing persons in Queensland legislation:

… Back in 2012, the QPS homicide group conducted a review of missing persons cases reported in Queensland that subsequently ended up being sudden death investigations. They identified a gap in our legislative powers in relation to searching places for information that may lead us to understanding why that person had disappeared or, alternatively, trying to locate the missing person themselves. That review looked at the existing legislative powers that the QPS has, both with and without a warrant. … section 609 provides police with a power without warrant to enter a place if there is an imminent risk of injury to a person or damage to property, or if there is domestic violence that has occurred, is occurring or is about to occur. There is another

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12 Queensland Police Service, public briefing transcript, Brisbane, 19 July 2018, p 2. See also cl 27, inserting *Police Powers and Responsibilities Act 2000,* new ss 179P, 179Q.

13 Queensland Police Service, briefing paper, p 2.

14 Queensland Police Service, briefing paper, p 2.

15 Queensland Parliament, Record of Proceedings, 12 June 2018, p 1416.

16 Queensland Police Service, briefing paper, p 3.

17 Queensland Police Service, correspondence dated 13 July 2018, p 7.

provision—from memory, section 596—that talks about an ability for police to enter a place without warrant if a person is likely to be dead inside that residence or is in need of urgent medical treatment. Therefore, we already have those powers in those instances to enter without a warrant to make those inquiries.

However, the research that was conducted by the homicide group revealed that there are instances in between those scenarios—in between a search warrant or a crime scene warrant—where we have a suspected criminal offence and knowing that the person is in imminent need of medical treatment or we need to get in there to justify that the person is not injured. It is in those circumstances that we feel that the scheme is appropriately placed within the current legislative arrangements for entry, both with and without a warrant.[18]

To illustrate when the HRMPs powers may be used the QPS advised:

An example of when the high-risk missing person powers could have been used in Queensland was in the disappearance of two people who were reported as missing after embarking on a trip from Mount Isa to Cairns to attend a social function and collect a car that was being repaired. They failed to attend the social function or return to work and make appointments. Before it was apparent a crime had been committed, police attended the missing persons' residence but there was no legislative authority to gain entry and search the dwelling. Relatives had to be located so that an inspection could be made to determine if any evidence existed at the residence of the missing persons' whereabouts. Subsequent investigations revealed the missing persons had been murdered.[19]

The QPS provided further examples of situations the proposed amendments regarding HRMPs are intended to target:

A 14-year-old girl is reported missing by a parent who last saw the child when the child left home to walk to school. It is out of character for the child to go missing and she has no access to money. She is always reliable with no history of truancy. The child did not arrive at school and there are significant concerns for her safety. She has not accessed her social media accounts, mobile telephone or public transport Go-Card since her disappearance.

A 40-year-old married woman is reported missing by a close friend who states she was in the process of divorcing her husband. It is out character for the woman not to be in contact with her friends and her young children. The missing person has not accessed her telephone, bank accounts or social media. There is a history of domestic violence between the woman and her husband. Inquiries with support agencies and friends has failed to assist. The husband travelled interstate around the time of his wife's disappearance and is not cooperating with police.[20]

The Bill provides for the CCC to review the effectiveness of the HRMP provisions five years after the commencement of the provisions. The CCC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.[21]

2.1.1 Stakeholders' views

Stakeholders were divided over the proposed new powers to be used in HRMP cases.

The CCC supported the introduction of the powers to search places for HRMPs.

… These provisions include appropriate judicial oversight for establishing missing person scenes and the exercise of enter, search and seizure powers when searching for missing children under

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18 Queensland Police Service, public briefing transcript, Brisbane, 19 July 2018, p 5.

19 Queensland Police Service, briefing paper, pp 2-3.

20 Queensland Police Service, correspondence dated 13 July 2018, p 7.

21 Clause 44, inserting *Police Powers and Responsibilities Act 2000*, new s 879.

> *13 years of age or other vulnerable persons who may suffer serious harm if not found as quickly as possible. While many missing person cases do not fall within the CCC's major crime function, evidence secured by using these powers may help the CCC more effectively perform certain hearing powers, for example under the Serious Crime (Vulnerable Victims) General Referral 2013.*[22]

The Queensland Council of Unions (QCU) was of the view that the broadened police powers in relation to HRMPs and crime scenes were 'consistent with the on-going fight against domestic and family violence.'[23]

Protect All Children Today (PACT) was in favour of the amendments relating to HRMPs stating, amongst other things, that it supported amendments that 'ensure Police can access the missing person's residence, place of employment or vehicle in a timely manner to gain valuable information and evidence that may lead to the location of the missing person.'[24] PACT's only reservation was that the age cut off for children is too low; PACT argued that all children under 18 years should be regarded as high-risk 'due to their likely level of vulnerability and inability to adequately protect themselves.'[25]

The QLS and the BAQ expressed concerns about the proposed powers to deal with HRMPs.

The BAQ believed the factors relevant to whether the officer reasonably suspects a person may suffer harm if not found as quickly as possible are 'broad and subjective' and that they:

> *… do not adequately safeguard the exercise of powers which are a significant imposition on both common law and statutory rights of owners and occupiers, and which may interfere in a situation where a person's safety is dependent on an intentional decision to go 'missing' (for example, in situations of domestic and family violence).*[26]

The BAQ submitted that an officer should either have probative evidence that a person is high-risk or be required to apply for a warrant before establishing the missing person scene.[27]

The QLS held the view that the HRMP scheme is 'well-intentioned, but it has the potential for misuse.'[28] It expressed concern about:

- the privacy implications for missing persons and those associated with them
- the breadth of the powers that can apply on entry to a HRMP's residence or place of employment
- that a missing person scene may be established before a missing person warrant is obtained.[29]

The QLS considered it essential that a police officer obtain a warrant before a HRMP scene is established.[30]

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22 Crime and Corruption Commission, submission 1, p 2. See also, Crime and Corruption Commission, public hearing transcript, Brisbane, 19 July 2018, p 7.

23 Queensland Council of Unions, submission 5, p 1.

24 Protect All Children Today, submission 3, p 2.

25 Protect All Children Today, submission 3, p 1.

26 Bar Association of Queensland, submission 2, p 7.

27 Bar Association of Queensland, submission 2, p 7.

28 Queensland Law Society, submission 4, p 3.

29 Queensland Law Society, submission 4, p 3.

30 Queensland Law Society, submission 4, p 3.

2.1.2 Queensland Police Service's response to issues raised by stakeholders

In response to PACT's recommendation that all children under 18 years be regarded as high-risk, the QPS stated:

> *… Given the number of criteria for police to consider, the QPS holds the view that there is sufficient scope for a missing person aged between 13 and 18 years of age to be defined as a HRMP if the circumstances exist.*[31]

The QPS disagreed with the BAQ's assertion that the factors to be considered when determining whether a missing person is a HRMP are broad and subjective.

> *… These factors are considerations for the relevant police officer, judge or magistrate when determining if there is reasonable suspicion a missing person may suffer serious harm if they are not found as quickly as possible. No one set of descriptors will cover the wide and varied set of circumstances in which a person may go missing. In some cases, one single factor may justify a missing person being high risk, while in another case a combination of factors may indicate high risk.*[32]

In response to the concerns expressed by the QLS in relation to an exposure draft of the Bill about evidence obtained at a missing person scene, the QPS contended that police officers would not use the HRMP powers 'as a quasi-search warrant power allowing them to gain entry to a place and, through chance discovery, obtain evidence that would allow offenders to be prosecuted for offences that are not serious.'[33] The QPS stated:

> *… there currently are enough checks and balances in the HRMP scheme to prevent this occurring such as:*
>
> - *the criteria to be met for establishing a HRMP scene;*
> - *commissioned officer approval;*
> - *judicial oversight; and*
> - *the fact that police must obtain a warrant unless as a matter of urgency it is necessary to establish a HRMP scene.*[34]

Further:

> *It is noted that there are many instances under the* Police Powers and Responsibilities Act 2000*, where police officers may gain entry to a place without a warrant. For example, a police officer may enter a place if the officer reasonably suspects there is an imminent risk of injury to a person or damage to property. There is no limitation placed on police about evidence that may be obtained through chance discovery.*[35]

In relation to balancing police powers and the impact on individuals, the QPS advised:

> *In developing this aspect of the bill the QPS has been mindful to provide a proportionate and reasonable balance between additional police powers designed to find a high-risk missing person and the rights and liberties of individuals. Apart from the judicial oversight previously mentioned, safeguards include that police will be required to electronically record the use of the high-risk missing person powers—for example, by the use of a body worn video camera or an audio*

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31 Queensland Police Service, correspondence dated 13 July 2018, p 9.

32 Queensland Police Service, correspondence dated 13 July 2018, p 7.

33 Queensland Police Service, correspondence dated 13 July 2018, p 10.

34 Queensland Police Service, correspondence dated 13 July 2018, p 10. See also Clause 27, inserting *Police Powers and Responsibilities Act 2000*, new ss 179E, 179F, 179J, 179K.

35 Queensland Police Service, correspondence dated 13 July 2018, pp 10-11.

recorder. Police will have to enter the details of the use of missing person powers in the police register of enforcement acts and the Crime and Corruption Commission is to conduct a review of the scheme five years after commencement. The CCC will be required to provide a copy of the report to be tabled in parliament. Our objective is to deliver an integrated missing person warrant scheme that will assist in returning those vulnerable high-risk missing people back to their loved ones as soon as possible. The bill is pivotal in reaching this objective and is a first for Australia.[36]

2.2 Crime scenes

The Bill proposes to simplify when a crime scene may be established and to align Queensland with other Australian jurisdictions that do not distinguish between primary and secondary crime scenes.[37] The new 'crime scene' definition 'maintains all the main elements of the current definition but replaces the need for a serious and violent offence to have occurred at a secondary crime scene.'[38]

Under the Bill, a crime scene would be able to be declared at a place where a crime scene threshold offence happened, or at another place if there may be evidence of a significant probative value of the commission of a crime scene threshold offence at that other place. It would have to be necessary to protect the place for the time reasonably necessary to search for, and gather evidence of, the commission of the crime scene threshold offence.[39]

The Bill would reduce the crime scene threshold offence from an indictable offence for which the maximum penalty is at least seven years imprisonment, or an offence involving deprivation of liberty, to an indictable offence that carries a maximum penalty of at least four years imprisonment, or an offence involving deprivation of liberty.[40] The explanatory notes noted that the lowered threshold would more closely align Queensland with New South Wales and Western Australia (threshold of five years or longer) and the remaining Australian jurisdictions which have a threshold lower than four years imprisonment.[41]

The QPS advised that the reason for lowering the threshold is that there are a number of offences that are not currently captured by the seven year threshold:

… unlawful stalking, which is punishable by a maximum of five years imprisonment; grooming of a child under 16, which is punishable by a maximum of five years imprisonment; unlawful drink spiking, which is a five-year imprisonment offence; dangerous operation of a vehicle whilst intoxicated or speeding, which is punishable by a maximum of five years imprisonment; discharging a weapon in, through, towards or over a public place, which is punishable only by four years imprisonment; and dangerous conduct with a firearm, which is a four-year imprisonment offence.

… section 40B, reckless conduct category 1 under the Electrical Safety Act, punishable by five years imprisonment—it is where a person exposes an individual to risk of death, serious injury or illness; section 31, reckless conduct category 1 under the Work Health and Safety Act; and section 21, reckless conduct category 1 under the Safety in Recreational Water Activities Act, both punishable with a maximum of five years imprisonment.

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36 Queensland Police Service, public briefing transcript, Brisbane, 19 July 2018, p 3.

37 Explanatory notes, pp 2, 28.

38 Queensland Police Service, public briefing transcript, Brisbane, 19 July 2018, p 3.

39 Clause 23, inserting *Police Powers and Responsibilities Act 2000*, new s 163B; explanatory notes, p 13.

40 Explanatory notes, p 13.

41 Explanatory notes, p 28. But note, 'In the Australian Capital Territory, a police officer may establish a crime scene if they reasonably suspect an offence punishable by imprisonment has been committed, however if the occupier of the premises does not consent to a crime scene being established the threshold rises to an offence punishable by imprisonment for five years or longer': explanatory notes, p 28.

> *Those last three offences are important for the Police Service to capture as crime scene offences. In 2011 the QPS and Department of Justice and Attorney-General signed a memorandum of understanding between the two organisations that the QPS would be the lead agency investigating those serious workplace incidents until they were relieved by the relevant workplace investigators. The ability to establish a crime scene is important for police in that it gives us some extra powers that we do not have under a search warrant. Those powers are to direct persons at the scene and direct persons from entering the scene so that we can control it and also conduct our forensic examinations at the scene and seize things from the scene to conduct further investigations. It goes beyond a search warrant. Our operational police are telling us those offences are offences that need to be captured within the crime scene definition.*[42]

The Minister used the following example to illustrate the potential benefit of the new framework:

> *… A good example under the current regime is that if someone discharges a firearm from a motor vehicle and those bullets from that firearm end up in a house or some other location—a secondary crime scene under the current definition—if there is an uncooperative witness, police have great difficulty in obtaining the evidence, which would be the bullet from that secondary crime scene. The changes in this bill will allow police to be able to better investigate those offences, particularly where there may be uncooperative witnesses.*[43]

2.2.1 Stakeholders' views

The BAQ submitted that the current definitions of 'crime scene' and 'secondary crime scene' have had a long history in Queensland:

> *The definitions of* crime scene*,* primary crime scene *and* secondary crime scene *have remained in their present form since the enactment of the PPRA more than 16 years ago. Indeed, the same definitions were contained in the current Act's predecessor, the* Police Powers and Responsibilities Act 1997*, which was itself the result of many years of consultation and development following the Fitzgerald Inquiry.*[44]

The BAQ considered that the exercise of crime scene powers 'represents a significant imposition on both common law and statutory rights of owners and occupiers of properties' and should not occur 'unless there is a strong justification for doing so'.[45] The BAQ had 'serious reservations' about broadening the range of offences that would allow police to establish a crime scene, commenting that the proposed reduction in the crime scene threshold offence would mean that most offences under the Criminal Code would be included, not just serious offences, and that many offences that have high penalties are often committed in ways that do not justify a high penalty.[46] The BAQ provided the following example: 'Stealing is regarded as a serious offence. There is a high maximum penalty, but this could have application for quite minor offences where very low sentences are usually given.'[47]

The BAQ suggested that the Bill could be amended to overcome the BAQ's concerns about the lowering of threshold by making specific reference in a schedule to particular offences, rather than having any offence over four years being included.[48]

The QLS expressed concern about 'secondary crime scenes':

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42 Queensland Police Service, public briefing transcript, 19 July 2018, p 5.

43 Queensland Parliament, Record of Proceedings, 12 June 2018, p 1417.

44 Bar Association of Queensland, submission 2, p 5.

45 Bar Association of Queensland, submission 2, p 5.

46 Bar Association of Queensland, submission 2, p 5.

47 Bar Association of Queensland, public hearing transcript, Brisbane, 19 July 2018, p 2.

48 Bar Association of Queensland, public hearing transcript, Brisbane, 19 July 2018, p 2.

In relation to crime scene warrants, presently, the law has different thresholds for "secondary crime scenes" where there might be evidence. A secondary crime scene can only be searched for a "serious violent offence" (as defined in Schedule 6). Lowering the bar to a four year offence effectively opens up many new areas to search under the crime scene powers. The crime scene powers might then be used in preference to the search warrant powers. We do not consider that it is appropriate to describe these secondary places as "crime scenes".[49]

The QCU and PACT supported the proposed amendments.[50] PACT submitted:

PACT supports the need to provide new definitions of what constitutes a crime scene and to simplify when a crime scene may be established by dispensing with the multiple definitions currently used. It is pleasing to note this will align Queensland with other Australian jurisdictions that do not distinguish between primary and secondary crime scenes.[51]

2.2.2 Queensland Police Service's response to issues raised by stakeholders

The QPS advised that the current multiple definitions required to determine if crime scene powers can be used are 'impractical'.[52] It considered that the amendments 'provide a singular inclusive, workable definition of 'crime scene'.'[53]

With respect to the proposed reduction in the offence threshold, the QPS advised that the 'seven-year imprisonment offence threshold prevents forensic police from gathering evidence from crime scenes where other serious offences have been committed'.[54] Regarding the particular value of including certain workplace offences, the QPS submitted:

The use of crime scene powers at workplaces is particularly important given the 2011 Memorandum of Understanding (MoU) between the QPS and the Department of Justice and Attorney General. That MoU outlines that the QPS will lead investigations into reportable workplace deaths and all other serious workplace or electrical incidents until the QPS determines that there is no issue relating to the incident that they need to progress further.[55]

As regards the BAQ's concerns about the imposition of crime scene powers on the rights of owners and occupiers of properties, the QPS advised:

In recognising there may be legitimate reasons for an occupier not wanting a crime scene warrant executed at their dwelling, the existing safeguards around crime scene warrants will continue to ensure the rights and liberties of occupiers are maintained, by ensuring:

- *police must make a sworn application for a crime scene warrant to a Supreme Court Judge or a magistrate;*
- *where applicable, an occupier may make submissions to the issuing justice which must be taken into consideration before the warrant is issued. The occupier may also apply to the issuer for an order revoking the warrant if the application was made in their absence and without their knowledge, or the occupier had a genuine reason for not being present.*

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49 Queensland Law Society, submission 4, p 7.

50 Queensland Council of Unions, submission 5, p 1; Protect All Children Today, submission 3, p 2.

51 Protect All Children Today, submission 3, p 2.

52 Queensland Police Service, correspondence dated 13 July 2018, p 4.

53 Queensland Police Service, correspondence dated 13 July 2018, p 5.

54 Queensland Police Service, correspondence dated 13 July 2018, p 5.

55 Queensland Police Service, correspondence dated 13 July 2018, p 5.

- *police must provide suitable alternative accommodation where the occupier cannot continue to live in their dwelling while a crime scene is established because of a direction given by police, or damage to the dwelling by police.*[56]

The QPS also addressed the BAQ's reservations regarding the proposed definition of 'crime scene':

> *In relation to the use of the word <u>may</u> in the s 163B definition of a crime scene, this is a direct carry over from the current definition of a secondary crime scene contained in schedule 6 of the PPRA. The use of the word may has not been problematic.*[57]

2.3 Storage devices

Under a crime scene warrant police may seize storage devices, such as mobile phones and computers, that are reasonably suspected of containing evidence of the crime scene offence. In some instances, the person with knowledge of the access information (for example, a password or PIN code) may refuse to provide it to police. This can mean that incriminating evidence on the storage device may not be able to be accessed.[58]

The Bill would allow police to apply to a Supreme Court judge or a magistrate for an order for access information for a storage device at, or seized from, a crime scene.[59] A person who contravenes an order made under the new provision would face a maximum penalty of five years imprisonment.[60]

The Minister explained the rationale for the additional police power:

> *Our front-line police investigators have reinforced to me the very need to be able to access electronic storage devices seized from crime scenes. For example, police may be investigating the disappearance of a woman at her residence when it becomes apparent after initial investigations that the woman has been murdered. Police then declare the house as a crime scene and locate and seize the home computer, tablets, laptops and mobile phone prior to charging the husband with murder. If the offender refuses to provide police with access information to those devices, such as the pass codes to those devices, extensive delays can occur as specialist police attempt to gain access to those devices.*
>
> *Gaining access to a locked electronic storage device may not always be successful due to offenders using the latest encryption technology to block access. In such cases, vital evidence that may be located on the storage device cannot be accessed and used in the investigation. This amendment will allow police to respond to the challenges of policing in a growing technological age. As police respond to criminal offending which more and more uses the latest technology, we need to ensure that not only our police have the latest technology but also they have the laws to ensure that they are able to investigate any criminal offending which may be associated with that technological advancement or are able to gain evidence from that technological device and advancement.*[61]

2.3.1 Stakeholders' views

The QLS did not support the proposed amendment regarding access information for a locked storage device because the QLS considered the amendment has the potential for abuse.[62] The QLS

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56 Queensland Police Service, correspondence dated 13 July 2018, p 5.

57 Queensland Police Service, correspondence dated 13 July 2018, p 5.

58 Explanatory notes, p 3; Queensland Police Service, briefing paper, p 5.

59 Clause 25, inserting *Police Powers and Responsibilities Act 2000*, new s 178A.

60 Clause 11, amending Criminal Code, s 205A; explanatory notes, p 3.

61 Hon Mark Ryan, Minister for Police and Minister for Corrective Services, Queensland Parliament, Record of Proceedings, 12 June 2018, p 1417.

62 Queensland Law Society, submission 4, p 2.

acknowledged that being unable to access a storage device can obstruct a police investigation but it was of the view that 'procedural and departmental efficiencies should not alone be adequate justification for impinging on the rights and liberties of individuals who are subject to these powers.'[63] The QLS held the view that 'limits must be placed on the use of these powers to ensure that they are not misused.'[64]

The BAQ had 'serious reservations' about police being able to access information on a storage device located at a crime scene without first obtaining a search warrant, particularly given the low threshold proposed for a crime scene threshold offence.[65] The BAQ considered the amendment to be unjustified, submitting:

> *… If investigating police had reasonable grounds for suspecting a storage device contained evidence of the commission of an offence, then they would conceivably be entitled to apply under s 154A for a warrant to seize, and access information on, the device.*[66]

Unlike the BAQ and QLS, the CCC supported the proposed amendment and considered that the Bill includes 'appropriate judicial oversight of the proposed new powers.'[67] The CCC was of the view that 'in principle the scope of the proposed new powers should be consistent with those available under PPRA, section 154, now and in future.'[68]

PACT was also supportive of the amendment, especially its potential application to offences of administering child exploitation material:

> *Given the amount of evidentiary material available on a range of storage devices, we support amendments to allow this evidence to be obtained as quickly as possible through an access information order providing a Judge or Magistrate is satisfied there are reasonable evidentiary grounds.*
>
> *PACT is very supportive of the Bill amendments which allow Police to inspect electronic storage devices in the possession of a person who has been convicted of an offence of administering child exploitation material.*[69]

2.3.2 Queensland Police Service's response to issues raised by stakeholders

The QPS noted that the proposed new power allowing police to apply to a judge or magistrate for an access approval order for storage devices seized when executing a crime scene warrant is similar to existing powers that apply when police execute a search warrant, but that a search warrant can be applied for in relation to any offence whereas a crime scene warrant is only in relation to a crime scene threshold offence.[70]

The QPS advised that the proposed amendments would be beneficial for police investigations:

> *Section 178A will alleviate the frustration of frontline police trying to access locked electronic storage devices such as mobile telephones and computers that have been lawfully seized under a crime scene warrant but the person in possession refuses to provide police with the password or other information to access the device.*[71]

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63 Queensland Law Society, submission 4, p 2.

64 Queensland Law Society, submission 4, p 2.

65 Bar Association of Queensland, submission 2, p 6.

66 Bar Association of Queensland, submission 2, p 6.

67 Crime and Corruption Commission, submission 1, pp 2-3.

68 Crime and Corruption Commission, submission 1, p 3.

69 Protect All Children Today, submission 3, p 2.

70 Queensland Police Service, correspondence dated 13 July 2018, p 6.

71 Queensland Police Service, correspondence dated 13 July 2018, p 6.

2.4 New offences as prescribed internet offences for s 21B of the PPRA

Section 21B of the PPRA allows police to inspect a storage device in the possession of a reportable offender convicted of a prescribed internet offence up to four times in a 12 month period. The inspection power 'assists police to ensure the offender's compliance with the provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004.*'[72]

The Bill proposes to extend the power under s 21B to include ss 228DA (Administering a child exploitation material website) and 228DB (Encouraging use of child exploitation material website) of the Criminal Code.[73] The QPS advised that these offences 'are directly linked to child sex offending through an online forum and, as such, are suitable for inclusion in s 21B as a prescribed internet offence.'[74]

2.4.1 Stakeholders' views

PACT submitted that it strongly supported the amendments to include aspects of child sex offending through an online forum.[75]

2.5 Searching persons to be transported for a breach of the peace

If a police officer reasonably suspects a breach of the peace is happening or has happened, or there is an imminent likelihood of a breach of the peace, or there is a threatened breach of the peace, the police officer may take reasonable steps to prevent the breach of the peace, including receiving a person into custody.[76] According to the explanatory notes, taking a person into custody 'often calms a situation and is an alternative to arrest in many instances.'[77]

The Bill proposes to provide police with a power to search a person who has been detained in relation to a breach of the peace and is to be transported by police.[78] The police would be able to take and retain, while the person is in custody, anything that could endanger the person or the police.[79]

The intent of the proposed amendment is to 'ensure the safety of police and the detained person.'[80] The QPS advised:

> *… It is not unusual for people to secrete things on their clothing and whatnot. It is a matter of safety that we be able to search them—for their safety, our safety and other people's safety. … It is definitely something that our front-line police are seeking to get clarified.*[81]

In response to a request from the committee for examples of possible breaches of the peace that would require the person to be transported by police, Senior Sergeant Carroll stated:

> *I can give my own practical example in relation to the legislative amendment. I used to work at Oakey Police Station in the Darling Downs where quite often you work by yourself in a marked vehicle in uniform. I can remember an occasion where there was a disturbance outside a licenced premises. There was only one taxi in town, and the disturbance was over jumping in the taxi;*

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72 Queensland Police Service, briefing paper, p 7.

73 Clause 19, amending *Police Powers and Responsibilities Act 2000*, s 21B; explanatory notes, p 16.

74 Queensland Police Service, briefing paper, p 7.

75 PACT, submission 3, p 2.

76 *Police Powers and Responsibilities Act 2000*, s 50.

77 Explanatory notes, p 3.

78 Clause 30, amending *Police Powers and Responsibilities Act 2000*, s 442.

79 *Police Powers and Responsibilities Act 2000*, ss 442-444. See also, Queensland Police Service, briefing paper, p 5.

80 Queensland Police Service, briefing paper, p 5.

81 Public briefing transcript, Brisbane, 19 July 2018, p 13.

there was a dispute over the cab. There was pushing and shoving so it fulfilled those elements of a breach of the peace or a potential breach of the peace in terms of being a violence or a threat of violence. I drove one of the warring parties a short distance away to their hotel—they were from out of town—and the other party caught the taxi. That was an example where I transported a person who I had effectively detained for a breach of the peace and drove them a short distance away to the local hotel.[82]

2.5.1 Stakeholders' views

The QLS did not support the proposed amendment to extend the search powers for persons in custody to those being detained in relation to a breach of the peace.[83]

While the safety of police officers is an important consideration, it should not be overlooked that in most circumstances the proposed provision would permit people who have not committed, or are not suspected of committing, an offence to be detained and searched. …

The power seems highly susceptible to abuse – ordinarily search powers in such a context rely upon either a reasonable suspicion of the person having something (drugs, weapons, evidence etcetera) or on their having been arrested for an offence.[84]

The QLS was of the view that if the proposed amendment is legislated, training of police should include a refresher on what constitutes a breach of the peace. The QLS submitted:

… In our view, behaviour that would cause a constable to believe that a breach of the peace has occurred (or will occur) must relate to violence. Such a breach occurs when harm is actually done, or is likely to be done, to a person or, in his or her presence, to his or her property. Alternatively, such a breach occurs where a person is put in fear of being so harmed through an assault, affray, unlawful assembly or other disturbance; Howell [1981] 3 WLR 501. *However, the Court in* Howell *states that, "the word 'disturbance' when used in isolation cannot constitute a breach of the peace."*

…

Therefore, loud, rude, disobedient, obnoxious or disorderly behaviour does not constitute a breach of the peace. A refusal to leave when directed to do so by a constable is not a breach of the peace. Lying in the road in a distressed or intoxicated state is not a breach of the peace. It is essential that the term breach of the peace is appropriately defined and construed narrowly.[85]

2.5.2 Queensland Police Service's response to issues raised by stakeholders

The QPS was of the view that QLS's concerns had been addressed:

The QLS had made comments based on the original consultation draft of the Bill. The final Bill has restricted the searching of detained persons only when they are to be transported by police. This will ensure officer and offender safety. The omission of this caveat was a drafting mistake in the consultation draft and has been rectified in the Bill.[86]

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82 Public briefing transcript, Brisbane, 19 July 2018, p 13.

83 Queensland Law Society, submission 4, p 5.

84 Queensland Law Society, submission 4, p 5.

85 Queensland Law Society, submission 4, p 6.

86 Queensland Police Service, correspondence dated 13 July 2018, p 11. See also, explanatory notes, p 28.

2.6 Evade police provisions

The CMC conducted a review of the evade police provisions in the PPRA in 2011.[87] The Bill proposes to give effect to the seven legislative recommendations of the review.[88]

The Bill would require the owner of a vehicle involved in an evade police offence to provide the following additional information in a statutory declaration in response to an evasion offence notice (EON):

- *where the owner was when the evasion offence happened;*
- *the usual location of the vehicle when it is not being used;*
- *the name and address of each person (a potential driver) known by the owner to have access to drive the vehicle when the evasion offence happened;*
- *the way each potential driver has access to drive the vehicle;*
- *how frequently each potential driver normally uses the vehicle and for how long each potential driver normally uses the vehicle;*
- *whether each potential driver uses the vehicle in connection with a business or for private use.*[89]

The maximum penalty for failing to provide a statutory declaration in response to an EON to police within 14 business days without a reasonable excuse is 100 penalty units ($13,055[90]).[91]

If a person does not respond to an EON, the person is taken to have been the driver of the motor vehicle involved in the relevant evasion offence, even though the actual offender may have been someone else. It is, however, a defence for the person to prove, on the balance of probabilities, that the person was not the driver of the motor vehicle involved in the relevant evasion offence.[92]

The Bill proposes to amend the PPRA to limit the circumstances in which a person who did not provide a statutory declaration can use evidence that was required to be included in the statutory declaration. The Bill would prevent a person relying on the evidence in their defence unless:

- at least 21 business days notice is given to the prosecuting authority, and
- the court grants the person leave to rely on the evidence.

The court may grant leave only if it is satisfied:

- the person had a reasonable excuse for not giving the statutory declaration, or
- the evidence came to the person's knowledge more than 14 business days after the person was given the EON, or
- the interests of justice require that the person be able to rely on the evidence.[93]

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87 Crime and Misconduct Commission, *An alternative to pursuit – a review of the evade police provisions*, June 2011. See also, Queensland Government response to Crime and Misconduct Commission's report, 'An alternative to pursuit – a review of the evade police provisions'.

88 Explanatory notes, p 5.

89 Explanatory notes, p 14. See also, cl 40, inserting *Police Powers and Responsibilities Act 2000*, new s 755A.

90 The current value of a penalty unit is $130.55: Penalties and Sentences Regulation 2015, s 3; *Penalties and Sentences Act 1992*, ss 5, 5A.

91 Clause 39, amending *Police Powers and Responsibilities Act 2000*, s 755.

92 *Police Powers and Responsibilities Act 2000*, s 756; cl 41.

93 Clause 41, inserting *Police Powers and Responsibilities Act 2000*, new s 756(5)-(7),(11).

The QPS advised that allowing the owner the opportunity to seek leave of the court was not part of the CMC's recommendation; the provisions were introduced to ensure natural justice because the minimum mandatory penalties for the evade offence were introduced after the CMC recommendations.[94]

The Bill would provide that if a person provides information that enables the identification of another person as the actual offender, the period of limitation (within which a proceeding for the relevant EON may be started against the actual offender) starts on the day the prosecuting authority receives the statutory declaration.[95]

2.6.1 Stakeholders' views

The CCC submitted that it is satisfied that the Bill appropriately implements the recommendations made in its 2011 report. It stated:

> *… The CCC considers the amendments provide an appropriate balance to reduce the danger to the community of police pursuits and promote the detection and prosecution of evasion offences consistent with the principle that everyone in the community has a social responsibility to help police officers prevent crime and discover offenders.*[96]

It further stated that the 2011 recommendations are still current and will remedy the shortcomings in the legislation.[97]

In relation to the evade police provisions, ATSILS advised:

> *The vast majority of these situations where police start to follow a car are for relatively minor offences. As has probably already been canvassed, a fail-to-stop charge gets the driver into much more trouble than they were in originally. The difficulty is that this deeming of an owner to be the driver at the time and the requirement for the owner to supply some sort of description to the police are not unreasonable; however, the timing is unreasonable and I would also note for the committee that it is also an offence for an owner of a car if the declaration does not comply with the expanded requirements.*[98]

2.6.2 Queensland Police Service's response to issues raised by stakeholders

The QPS did not have an opportunity to respond to issues raised at the public hearing by ATSILS.

2.7 Notice to appear for traffic offences

The Bill proposes to amend the PPRA to allow a notice to appear for an offence against the *Transport Operations (Road Use Management) Act 1995* or the *Heavy Vehicle National Law (Queensland)* to be served on a person by registered post to the person's place of business or residence last known to police. This is in addition to the current service options that allow for service at an address stated on the person's driver licence or current certificate of registration for the person's motor vehicle.[99]

The intent of the amendment is to ensure that the most current address can be used by police for service of a notice to appear for certain traffic matters.[100] The amendment to the methods of service would enable service of a notice to appear where an alleged offender has recently moved to a new

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94 Queensland Police Service, briefing paper, p 4. The minimum mandatory penalties for the evade offence are 50 penalty units ($6,527.50) or 50 days imprisonment: Queensland Police Service, briefing paper, p 4.

95 Clause 41, inserting *Police Powers and Responsibilities Act 2000*, new s 756(8)-(11).

96 Crime and Corruption Commission, submission 1, p 2.

97 Public hearing transcript, Brisbane, 19 July 2018, p 7.

98 Public hearing transcript, Brisbane, 19 July 2018, p 9.

99 Clause 28, amending *Police Powers and Responsibilities Act 2000*, s 382(4); explanatory notes, p 44.

100 Queensland Police Service, briefing paper, p 6.

address and has not updated his or her licence or registration address details with the Department of Transport and Main Roads.[101] The QPS elaborated:

> *… the current provisions in the Police Powers and Responsibilities Act around service of a notice to appear for traffic offences allow for service by registered post. Otherwise a notice to appear has to be served personally … Service of notices to appear for traffic matters can be done by registered post, and the current restriction is that it has to be posted in a way provided for by way of sections 56(2) and (3)* [of the *Justices Act 1886*]*, which means service at the person's registered address for their vehicle or their registered driver's licence address under section 56. That has presented some problems for police where the person has not updated their driver licence address or registered vehicle address within the 14 days but they have a more current address that we are aware of. They may have even provided that address subsequent to the traffic intercept. We are restricted technically in interpreting that section by only using the registered post address for their registered vehicle or their driver licence. Expanding it in this proposed way is just an option. It will give our traffic adjudicators and police who serve notices to appear for traffic matters the option of serving that notice to appear for the traffic matter by registered post at their most recent business address or residence address known to us. It is really trying to help the process and make sure they are aware of the complaint.*[102]

2.7.1 Stakeholders' views

The QLS did not support the proposal to enable service of notices to appear at a person's most recent address because the last address the QPS has for the person's residence could be 'years out of date.'[103] The QLS considered that the amendment:

> *… might lead to a significant increase in people failing to appear on notices to appear due to people not receiving the relevant notices. … That may lead to convictions in absence … for people who have no idea they are being prosecuted, and applications for warrants.*
>
> *Defendants failing to appear causes a significant financial cost to the judicial system and ultimately the tax payer. Any fail to appear, whether it is punishable or a means to produce a person before a court, requires a duplicity of the resources of Queensland Police, the judicial system and potentially Queensland Legal Aid (if in custody).*
>
> *We suggest the current model be retained. Most notices to appear for traffic matters are served on the spot. Therefore, if the decision is made not to issue a notice to appear in a particular case, then Queensland Police Service should bear the onus to track down the person and to personally serve a notice to appear to ensure that it is received. Due to the rare occurrence of this situation, it is unlikely that this will be a resource intensive exercise*.[104]

2.7.2 Queensland Police Service's response to issues raised by stakeholders

In response to QLS's concerns, the QPS submitted: 'It is illogical to suggest a complainant police officer would, given the option, effect service at an outdated address when a more recent address is known to police.'[105]

2.8 Failure to appear

Section 389 of the PPRA enables a court to hear and decide a complaint in the absence of a person who has failed to appear, or to order immediate arrest of the person. Subsection 389(5) provides that

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101 Explanatory notes, p 6.

102 Public briefing transcript, Brisbane, 19 July 2018, p 16.

103 Queensland Law Society, submission 4, p 4.

104 Queensland Law Society, submission 4, p 4.

105 Queensland Police Service, correspondence dated 13 July 2018, p 11.

a court may delay the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court. The QPS advised that the interpretation of s 389(5):

> *… has led to some magistrates noting court files and not issuing a fail to appear warrant pending the location of the defendant, while other magistrates issue the warrant and allow it to lie on file pending the location of the defendant.*
>
> *… Clause 29 amends section 389(5) of the PPRA to ensure consistency by removing the option to delay the issue of a fail to appear warrant by a magistrate. The courts will continue to be able to postpone the enforcement of a fail to appear warrant for the arrest of the relevant person if they choose.*[106]

The QPS explained the background to the amendment:

> *… it has come at the request of the Chief Magistrate. He requested that the current provision be amended to as it is in the bill. The current provision allows a magistrate the option of issuing a fail-to-appear warrant for a person who fails to appear under the Police Powers and Responsibilities Act. That magistrate can issue that fail-to-appear warrant immediately or they can delay the issue of that fail-to-appear warrant.*
>
> *In practice, a magistrate might do that. They might delay the issue of the fail-to-appear warrant if, for instance, the defendant is legally represented and they feel confident that that legal representative can bring the defendant before the court again and there will be no need to have that fail-to-appear warrant sent to police for enforcement. The option for that magistrate is to either issue the fail-to-appear warrant and, in that example that I gave, let it lie on the file and not be enforced by the police and have an understanding with the court, or with the defendant's legal representative, that they will be brought before him or her—the magistrate—and they will not need to execute that warrant or, as I said before, alternatively, not even issue it and just have that inquiry made by the courts or the person's legal representative.*
>
> *There is an inconsistency in the approach by some magistrates in the court in terms of issuing it and letting it lie on the file or not issuing it and letting the inquiry be conducted. The request came to have a consistent procedure for the courts: if a magistrate were presented with a person appearing under the Police Powers and Responsibilities Act and that person had failed to appear then a warrant would be issued on every occasion and it will still be at the discretion of the court whether that fail-to-appear warrant would be sent to the police for enforcement or be allowed to lie on the file pending the location of the defendant. …*[107]

2.8.1 Stakeholders' views

The QLS did not support the proposed amendment to s 389(5), arguing that it is 'misconceived and does not materially change the issue of warrants.'[108]

2.8.2 Queensland Police Service's response to issues raised by stakeholders

The QPS advised that the Chief Magistrate requested the amendment to s 389 'to ensure that all magistrates actually issue a fail to appear warrant when a defendant does not appear in court.'[109] The QPS further advised: 'If the presiding magistrate so wishes, the warrant can still lie on file pending

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106 Queensland Police Service, briefing paper, p 6.

107 Public briefing transcript, Brisbane, 19 July 2018, p 17.

108 Queensland Law Society, submission 4, p 4.

109 Queensland Police Service, correspondence dated 13 July 2018, p 11. See also Queensland Police Service, public briefing transcript, Brisbane, 19 July 2018, p 17.

location of the defendant. The amendment will ensure administrative consistency regarding the issue of the warrants.'[110]

2.9 Reportable offences

The CPOROPOA provides for the establishment of a child protection register (Register) and imposes certain requirements on offenders who are sentenced for reportable offences.[111]

At the May 2017 joint meeting of the Attorneys-General, Justice and Police Ministers it was agreed that each jurisdiction would include all of the Commonwealth child sex offences in their reportable offender legislation to provide national consistency and allow management of reportable offenders across jurisdictions.[112]

The Bill proposes to amend the CPOROPOA to include ten Commonwealth child sex offences that are not currently listed as reportable offences in Queensland. The offences to be added include trafficking in children, sexual intercourse and sexual activity with children outside Australia, dealing with child abuse material through the post, and certain aggravation offences.[113]

2.9.1 Stakeholders' views

PACT was 'extremely supportive of the amendment to ensure the 10 additional Commonwealth child sex offences are captured as reportable offences in Queensland legislation.'[114] PACT expects the amendment to result in 'enhanced protection of Queensland's vulnerable children and young people.'[115]

The BAQ, on the other hand, opposed the inclusion of some of the child sex offences[116] into schedule 1 of the CPOROPOA. The BAQ was concerned that young people who engage in consensual sexting may be included on the Register and therefore be subject to onerous reporting requirements. The BAQ contended that if the offences are to be added to schedule 1, the amendment 'should only take place with statutory safeguards included to prevent young people who engage in consensual sexting being listed on the Register.'[117]

The BAQ further suggested that an amendment be considered that would apply the laws against sexual exploitation of children only where the 'exploited' child is at least two years younger than the alleged offender. The BAQ recommended that the Law Reform Commission inquire into, and report, on the matter.[118]

2.9.2 Queensland Police Service's response to issues raised by stakeholders

The QPS advised that the objective of the proposal to include additional Commonwealth child sex offences as reportable offences in Queensland legislation is to enhance the protection of children who are at risk of sexual offenders. According to the QPS, the inclusion of a person on the Register 'provides

110 Queensland Police Service, correspondence dated 13 July 2018, p 11.

111 *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, s 3.

112 Explanatory notes, p 7.

113 Clause 4, amending *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, schedule 1; explanatory notes, p 7.

114 Protect All Children Today, submission 3, p 3.

115 Protect All Children Today, submission 3, p 3.

116 That is *Criminal Code* (Cth), ss 471.20, 471.22, 471.26.

117 Bar Association of Queensland, submission 2, p 2.

118 Bar Association of Queensland, submission 2, p 2.

an opportunity for police to engage in early intervention strategies, to detect and disrupt future offending, including referral to support agencies.'[119]

With respect to the BAQ's concerns about children being included on the Register, the QPS outlined the protections in place:

> *Notwithstanding the diversionary and restorative provisions of the* Youth Justices Act 1992*, it is important to note that there are additional layers of protection to prevent children who do not pose an ongoing risk to the lives and sexual safety of children from being placed on the child protection register.*
>
> *Children are only placed on the child protection register when the offending is of a serious nature and reflected in the related court outcome. The CP(OROPO)A includes specific protections for children under section 5(2)(c)(i), (ii) and (iii) which excludes entry on the register when the offender, as a child, committed a single offence of possessing or publishing child pornography.*
>
> *In addition to the CP(OROPO)A protections, the Office of the Director of Public Prosecutions Guidelines 5(v)(a) and (b) states a child should not be prosecuted for an offence in which they are also a complainant and for sexual experimentation involving children of similar ages in consensual activity, which would include sexting. However, in circumstances where there is evidence of coercion, grooming or there is an imbalance of power, a child, upon conviction and sentence, may be placed on the child protection register. It is important to note that some children do sexually offend against other children outside the realms of what is considered normal sexual exploration. For this reason, it is not appropriate to arbitrarily limit the age to 'at least two years younger' than the offender.*
>
> *When a child is placed on the child protection register, their risk to the lives and sexual safety of children is assessed using an empirically validated risk assessment tool and additional information available to police. Where the commissioner of police is satisfied, on reasonable grounds that the offender does not pose a risk to the lives or sexual safety of 1 or more children, or of children generally, the commissioner may suspend the person's reporting obligations by virtue of section 67(C).*
>
> *For those very few children who are required to report to police, one report is required to be made in person, the remaining reports can be made on-line or by telephone and the period of reporting is half that of an adult convicted for the same offence. While contact with other children (reportable contact) is required to be reported, continual reporting about contact with the same child is not required nor is there a requirement to report incidental child contact as defined in section 9 of the CP(OROPO)A. Reportable contact is an important mechanism to disrupt and prevent the grooming cycle.*[120]

2.10 Prisoners serving life sentences reapplying for parole

If PBQ refuses to grant a prisoner's application for a parole order, the CSA currently requires PBQ to decide a period of time, of not more than six months after the refusal, within which a further application for a parole order by the prisoner must not be made without PBQ's consent.[121]

The Bill proposes to amend the CSA to extend to 12 months the period of time within which a further application for a parole order by prisoners serving a life sentence must not be made without PBQ's

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119 Queensland Police Service, correspondence dated 13 July 2018, p 4.

120 Queensland Police Service, correspondence dated 13 July 2018, p 4.

121 *Corrective Services Act 2006*, s 193(5). The requirements relating to the period of time do not apply to exceptional circumstances parole orders: *Corrective Services Act 2006*, s 193(5).

consent. The period would remain at six months for other prisoners. All prisoners would still be able to apply for an exceptional circumstances parole order.[122]

QCS advised that under the Bill if PBQ refuses to grant parole to a life sentenced prisoner, it could permit the person to reapply within a shorter period:

> *There is a minimum requirement that it is 12 months, but there is nothing to preclude the board from setting a lesser period. That is the same at the moment. The provision in terms of the current six months—it is six months for all prisoners currently—does not set it out, but it does not preclude the board from saying, 'You are two months away from finishing a rehabilitation program. We would like you to reapply after that program is completed.' …*[123]

QCS identified the reasons for the amendment:

> *… both Corrective Services and the Parole Board invest a great deal of time in parole applications, especially for prisoners such as life sentence prisoners who, as you can imagine, have committed very serious offences. A great deal of time and effort goes into making recommendations to the board and the board's consideration of those prisoners.*
>
> *The issue with life sentence prisoners, particularly in the current period of time, is that some of them present a very great risk to the community. Some may never be released because of the risk they present. There is a cost to both the board and Corrective Services in having to deal with applications which have an incredibly low chance of being approved. As I said, if a life sentence prisoner appears to be genuinely nearing release for parole and the board feels that, the board would be able to say, 'We want you to return sooner than 12 months.' …*[124]

2.10.1 Stakeholders' views

The BAQ was opposed to increasing the length of time life sentenced prisoners have to wait between parole order applications. The BAQ submitted:

> *It is acknowledged that there is a superficial appeal to the proposal that prisoners serving life for murder only be allowed to apply for parole every 12 months, rather than every 6 months. The Association also concedes that some prisoners serving life for murder do not have a realistic prospect of ever being released.*
>
> *The Association, however, is very much aware of the dangers associated with leaving people incarcerated, potentially, for life without regular reviews. Despite the workload involved in such reviews (triggered by applications by the prisoner), the Association would be concerned if a person who has already served more than 20 years in jail was not able to apply at least every six months.*
>
> *It is crucially important to our society that we are not seen to have thrown away the key for long term prisoners. Such a perception may lead to a loss of hope such that prisoners cease any continuing attempts at gaining rehabilitation.*[125]

2.10.2 Queensland Police Service's response to issues raised by stakeholders

In response to BAQ's concerns about increasing the period of time within which a further application for a parole order may not be made by a life sentenced prisoner, the QPS stated that the amendment 'recognises that for those imprisoned for a significant period, the level of risk is unlikely to change

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122 Clause 6, amending *Corrective Services Act 2006*, s 193. See also, explanatory notes, p 18.

123 Public briefing transcript, Brisbane, 19 July 2018, p 9.

124 Public briefing transcript, Brisbane, 19 July 2018, p 10. See also, Queensland Corrective Services, public briefing transcript, Brisbane, 19 July 2018, p 18.

125 Bar Association of Queensland, submission 2, p 3.

within a relatively short period of time after a refusal to grant an application for parole.'[126] The QPS added:

> *To extend the period between parole applications for life sentenced prisoners is not inconsistent with the approach already taken to prisoners under the Dangerous Prisoners (Sexual Offenders) Act 2003 (DPSOA) or to the prisoners serving an indefinite sentence under Part 10 of the Penalties and Sentences Act 1992 (PS Act). Sections 27 and 28 of DPSOA, provides for annual reviews of a continuing detention order after the first review is done; and section 171 of* [the PS Act] *provides for reviews at intervals of not more than two years after the first review is done.*[127]

2.11 Delegations

Evidentiary certificates relied on in court proceedings are often signed by an authorised officer pursuant to an instrument of delegation authorised under an Act. In such instances, the prosecution must tender proof of the instrument of delegation; failure to do so may result in the dismissal of the charges.[128]

The QPS provided the following example to illustrate when a proof of delegation may be required:

> *… when a camera detected traffic offence is contested, the prosecution must provide an evidentiary certificate that certifies that an infringement notice was served by mail to the offender for the camera detected offence. This evidentiary certificate is signed by a delegate and therefore a copy of the State Penalties and Enforcement Register (SPER) instrument of delegation must also be provided. This instrument delegates authorising power from the chief executive of transport under section 160 of the* State Penalties Enforcement Act 1999 *to the persons who hold the delegated positions specified in the schedule to the delegation. The QPS Traffic Camera Office produces approximately 450 full briefs of evidence per annum and each requires a certified copy of the SPER delegation for each prosecution.*[129]

The Minister explained the administrative impact of the requirement to tender proof of the instrument of delegation.

> *… Currently, officers from the Queensland Police Service, the State Penalties and Enforcement Registry, the Department of Transport and Main Roads and the Motor Accident Insurance Commission are required to provide a certified copy of a delegation on every occasion an evidentiary certificate is tendered in a court proceeding. This results in the need to update, copy and certify thousands of pages of delegations each year. Delegations are also required to be updated, reprinted, recopied and resent to each prosecution corps each time they change. …*[130]

The Bill would remove the requirement for a proof of delegation in a proceedings unless the defendant gives the entity responsible for prosecuting the proceedings a notice of intention to challenge the delegation at least ten business days before the hearing date.[131]

The QPS described the expected benefits of the proposed amendment:

> *Removing the obligation for a proof of the delegation to accompany an evidentiary certificate will have minimal impact on court proceedings but will result in efficiencies for prosecuting authorities who are required to obtain certified copies of each relevant delegation and provide*

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126 Queensland Police Service, correspondence dated 13 July 2018, pp 7-8.

127 Queensland Police Service, correspondence dated 13 July 2018, p 8.

128 Explanatory notes, p 8; Queensland Police Service, briefing paper, p 8.

129 Queensland Police Service, briefing paper, p 8.

130 Hon Mark Ryan, Minister for Police and Minister for Corrective Services, Queensland Parliament, Record of Proceedings, 12 June 2018, p 1422.

131 Clauses 12-17, 52-59; explanatory notes, pp 8-9.

these to prosecution corps state-wide. Without the amendment, new certified copies must be obtained and distributed each time a delegation is updated.[132]

2.11.1 Stakeholders' views

ATSILS asserted that an offence should be properly proved because proof of the delegation 'properly forms part of the elements to prove in that offence that there was a properly delegated officer who was performing that function.'[133] According to ATSILS this is important because:

An offence can have such serious consequences that someone could lose their licence, lose their means of livelihood or lose their means of paying off their mortgage. In communities up north, it could affect accessing health care, accessing food, accessing basic services, responding to Centrelink appointments et cetera.[134]

2.11.2 Queensland Police Service's response to issues raised by stakeholders

The QPS did not have an opportunity to respond to issues raised at the hearing by ATSILS.

2.12 Other amendments

The Bill proposes to make a number of other amendments that stakeholders did not comment on. Selected amendments are outlined below.

2.12.1 Number plate confiscation notices

The Bill proposes to introduce a new offence provision into the PPRA to ensure that vehicles subject to a NCN are not modified, sold or otherwise disposed of during the number plate confiscation period. The maximum penalty for failing to comply with the provision is 40 penalty units ($5,222).[135]

The Bill also proposes to clarify the details that must be provided in a NCN, and that a NCN may be attached to a motor vehicle whether or not number plates are attached to the vehicle. The Bill would also mandate that a police officer remove and confiscate any number plates attached to a vehicle if the police officer attaches a NCN.[136]

2.12.2 Transporting an offender to take a photograph for a banning notice

The Bill proposes to clarify that a police officer may detain and transport a person to a police vehicle, watch-house or police station to photograph the person.[137] The provision would be relevant in instances in which police do not have a suitable photographic device.[138] The detention would only extend for the period necessary to take the photograph.[139]

The QPS explained the background to the amendment:

… At the moment, the powers in relation to a police banning notice allow police to take a photograph of the respondent who is subject to a police banning notice at a police vehicle, watch house or police station. Quite often our operational police have an appropriate police camera to take the respondent's photograph when they are dealing with a banning notice matter and they can take the photograph using their police iPad device. They can do that at the scene.

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132 Queensland Police Service, briefing paper, p 8.

133 Aboriginal and Torres Strait Islander Legal Services, public hearing transcript, Brisbane, 19 July 2018, p 9.

134 Aboriginal and Torres Strait Islander Legal Services, public hearing transcript, Brisbane, 19 July 2018, p 9.

135 Clause 22, inserting *Police Powers and Responsibilities Act 2000*, new s 105CA.

136 Clause 21, amending *Police Powers and Responsibilities Act 2000*, s 74H. See also, explanatory notes, p 34.

137 Clause 32, amending *Police Powers and Responsibilities Act 2000*, s 602S. See also, explanatory notes, p 45.

138 Explanatory notes, p 45.

139 Clause 32, inserting *Police Powers and Responsibilities Act 2000*, new s 602S(3). See also Queensland Police Service, briefing paper, p 6.

If for whatever reason they are being processed—for instance, they have been arrested for a public nuisance offence at a public licensed premises and they are being processed at a police station or watch house—they can take the photograph there, in accordance with the legislation. They have a power to transport them for the purpose of taking the photo because they have been arrested. However, there is no provision to transport a respondent subject to a police banning notice for the purpose of taking their photograph at a police vehicle, police station or watch house.

The scenario in which that might be required would be where police are responding urgently to a disturbance at a licensed premises and they do not have their iPad or police i-device to take a photograph there and then. It is really just clarifying—as I say, police up north in Cairns have brought it to our attention—where they may attend to a disturbance and they have not arrested the person for public nuisance but they want to have the person subject to a police banning notice, they want to take them to a police vehicle, station or watch house for the purpose of having photograph taken, attach it to a police banning notice and release the person. …[140]

2.12.3 New offence for assaulting or obstructing a civilian watch-house officer

Currently, if a civilian watch-house officer is a victim of obstructive or violent behaviour in the course of their duties, the only option for taking action is to prefer charges under the Criminal Code, such as common assault or serious assault, even if the behaviour is fairly minor, such as a shove.[141]

The Bill proposes to insert a new offence to prohibit a person from assaulting or obstructing a civilian watch-house officer in the performance of their duties. The offence would have a maximum penalty of 40 penalty units ($5,222) or six months imprisonment, which is commensurate with the offence of assaulting or obstructing a police officer.[142]

2.12.4 Separating the offence of assault or obstruct a police officer

The PPRA currently provides that a person must not assault or obstruct a police officer in the performance of the officer's duties.[143] The Bill proposes to separate the offence into two separate offences to 'improve data analysis and ensure an offender's criminal history accurately reflects the title of the offence committed.'[144]

2.12.5 Controlled operations and controlled activities

Authorised police use controlled operations and controlled activities to obtain evidence of the commission of a particular offence without themselves being liable for committing the offence.[145]

The Bill proposes to extend the list of relevant offences for controlled operations and surveillance device warrants to include two offences under the *Racing Integrity Act 2016* (RIA) - ss 221 (Unlawful bookmaking other than by racing bookmaker etc.) and 223 (Prohibition on opening, keeping, using or promoting an illegal betting place).[146]

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140 Public briefing transcript, Brisbane, 19 July 2018, p 15.

141 Queensland Police Service, briefing paper, p 7; Queensland Police Service, public briefing transcript, 19 July 2018, p 15.

142 Clause 33, inserting *Police Powers and Responsibilities Act 2000*, new s 655A; Queensland Police Service, briefing paper, p 7; explanatory notes, p 15.

143 *Police Powers and Responsibilities Act 2000*, s 790(1).

144 Queensland Police Service, briefing paper, p 7.

145 Queensland Police Service, briefing paper, p 7.

146 Clause 45, amending *Police Powers and Responsibilities Act 2000*, schedule 2.

The Bill would also extend the list of controlled activity offences to include an offence under the RIA – s 225 (Using an illegal betting place).[147]

The QPS explained that the proposed amendments 'will provide police with greater scope to investigate this illegal activity that is secretive in nature and difficult to investigate without the option of engaging in covert police strategies.'[148]

2.12.6 References to cannabis sativa

The Bill proposes to amend the PPRA to ensure its references to 'cannabis' are consistent with those in the *Drugs Misuse Act 1986* and the Drugs Misuse Regulation 1987.[149]

2.12.7 Police search powers for reportable deaths

The Bill would clarify that the PPRA authorises a police officer to search for anything at a place that the officer reasonably suspects may be relevant to an investigation of the death by a coroner.[150]

2.12.8 Parole Board Queensland

The Bill proposes to amend the CSA to:

- allow PBQ to consider a request for immediate suspension of a person's parole order and to issue a warrant[151]
- remove the requirement for a prescribed board member to issue a warrant for the prisoner's arrest if the prescribed board member decides to suspend the parole order[152]
- allow PBQ, sitting as three members, to consider the cancellation of a prescribed prisoner's parole order.[153]

The first of these amendments to the CSA omits the requirement that a prescribed board member considers an immediate parole suspension before PBQ considers it. The explanatory notes describe the current two stage process as 'inefficient' and state that it 'does not recognise the authority of the PBQ in the first instance.'[154]

The second amendment is to be effected through the replacement of the term 'must' with 'may' in s 208B(5), to provide for the situation in which the person is already in the custody of QCS and therefore a warrant does not need to be issued.[155]

At present PBQ must sit as five members to consider a prescribed prisoner's application for a parole order or the cancellation of a prescribed prisoner's parole order, but it can sit as three members to consider a suspension of a prescribed prisoner's parole order.[156] The explanatory notes advised of the rationale for the third amendment to the CSA:

> *… The requirement for the PBQ sitting as five members to determine prescribed prisoner matters is consistent with recommendation 45 of the Sofronoff Review.*

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147 Clause 46, amending *Police Powers and Responsibilities Act 2000*, schedule 5.

148 Queensland Police Service, briefing paper, p 8.

149 Clauses 34, 47; explanatory notes, pp 45, 50; Queensland Police Service, briefing paper, p 9.

150 Clause 31, amending *Police Powers and Responsibilities Act 2000*, s 597; Queensland Police Service, briefing paper, pp 8-9.

151 Clause 7, replacing *Corrective Services Act 2006*, s 208B.

152 Clause 7, replacing *Corrective Services Act 2006*, s 208B(5).

153 Clause 9, amending *Corrective Services Act 2006*, s 234.

154 Explanatory notes, p 17.

155 Explanatory notes, p 17.

156 *Corrective Services Act 2006*, s 234.

However, the cancellation or suspension of a prescribed prisoner's parole order is comparable in terms of decision making given both involve the same considerations as to the level of risk posed by allowing the prisoner to remain in the community.

Further, there is no requirement for the PBQ to set a suspension timeframe which means, in practice, a suspension can have the same effect as a cancellation in terms of the length of time the offender remains in custody.

Under the proposed amendment, if a decision is made to cancel the prescribed prisoner's parole order, the prisoner can submit a new parole application, which would be considered by the PBQ sitting as five members.

The amendment creates consistency across section 234 which allows three PBQ members to suspend a prescribed prisoner's parole but not to cancel that parole.[157]

2.13 Compliance with the *Legislative Standards Act 1992*

A number of clauses in the Bill raise potential issues relating to fundamental legislative principles (FLPs).

With respect to the new missing person scene powers, the committee considered the potential impact on the rights and liberties of individuals of police being able to search a place without a warrant and prevent persons from accessing a scene, and weighed it against the safeguards to be put in place and the objective of the provisions. On balance, the committee considered the potential breach of fundamental legislative principle is justified.

The proposal to extend the definition of 'prescribed internet offence' in s 21B of the PPRA to include two Criminal Code offences – ss 228DA (Administering child exploitation material website) and 228DB (Encouraging use of child exploitation material website) – potentially breaches FLPs because the inspection power in s 21B is being exercised by police without a warrant issued by a judicial officer. The committee considered the objective of the amendment and the protective mechanisms, such as the limit on the number of inspections per year, and was satisfied that any potential breach of FLP is justified.

The proposed reduction in the crime scene threshold offence would mean that crime scene warrants would be able to be issued for a wider range of offences. As a result, there would likely be more impacts on the rights and liberties of property owners and occupiers and members of the public. The committee was satisfied that any potential FLP breach would be offset by the benefits that would be achieved by the inclusion of offences such as unlawful stalking and certain weapons offences within the lowered threshold.

The rights and liberties of prisoners serving life sentences may be adversely affected by the proposed amendment to extend the period of time within which a life sentenced prisoner cannot make a further application for parole from six to twelve months. The committee is, however, satisfied that there would be sufficient safeguards in place - the Board would have the discretion to set a period of less than twelve months and prisoners would retain the ability to apply for exceptional circumstances parole – to counterbalance any potential FLP breach.

The Bill proposes to add certain offences under the RIA to schedules 2 and 5 of the PPRA to allow authorised police to undertake controlled operations and controlled activities when investigating these offences without being at risk of offending against those sections. The committee is satisfied that any potential FLP breach related to conferring immunity from proceeding or prosecution is justified because of the difficulty in investigating these offences without utilising undercover police.

The Bill's proposal to make it an offence to refuse to provide access information for a storage device at, or seized from, a crime scene, could be considered a breach of an individual's rights and liberties,

[157] Explanatory notes, p 17.

in particular the right to privacy. The committee considered the potential breach against the likely benefits of the police being able to obtain information linked to a crime scene offence. On balance, the committee decided that any potential FLP breach is justified.

The committee considered the Bill's proposal to provide police with a new power to search a person before transporting them, after they have been detained in relation to a breach of the peace, to determine whether the power is justified given that it would impact on the rights and liberties and the privacy of people. The committee took into account the need to ensure the safety of police, the person and others when a person is being transported as well as the safeguards in the PPRA, such as searching the person in a way to cause minimal embarrassment to them. Committee members were satisfied that any potential FLP breach is justified.

The Bill proposes to expand the information required in a statutory declaration in response to an EON. The committee considered whether this proposal has sufficient regard to rights and liberties of individuals as regards providing appropriate protection against self-incrimination. The committee weighed up the need to solve evasion offences with the impact on individual rights and decided that any potential FLP breach is justified.

At present, in a proceeding for an evasion offence, it is a defence for a person to prove, on the balance of probabilities, that the person was not the driver of the motor vehicle when the offence happened. The Bill precludes a vehicle owner or nominated person from relying on evidence in their defence (without leave of the court) if that evidence is information the person was required to include in their statutory declaration in response to an evasion offence notice, but did not provide. This restriction may adversely affect the rights and liberties of individuals. To determine whether a potential FLP breach was warranted, the committee considered the objective of the provision (to assist in identifying alleged offenders without resorting to police pursuits, which are potentially dangerous for the offender, police and the public), and the safeguard in the amendment (the court has discretion to allow the evidence in certain circumstances). On balance, the committee concluded that any potential FLP breach is justified.

The Bill would amend a number of Acts to remove the requirement for proof of a delegation or an authorisation in a proceeding except in certain circumstances. The Bill would also allow the use of evidentiary certificates. These proposals raise possible FLP issues relating to the principle of natural justice. Also in the case of evidentiary certificates, a potential FLP issue is raised because the certificates effectively reverse the onus of proof - the onus is on defendants to rebut the presumptions established by the certificates. The committee weighed the potential FLP breaches against the benefits that are expected to result from the proposed amendments. The committee also took into account that the Bill retains a defendant's right to challenge certain matters in a certificate, a proof of an authorisation or a delegation if the defendant gives notice at least ten business days before the hearing. The committee considered that the clauses strike an appropriate balance between administrative efficiency and the rights of defendants.

Appendix A – Submitters

Sub #	Submitter
001	Crime and Corruption Commission
002	Bar Association of Queensland
003	Protect All Children Today
004	Queensland Law Society
005	Queensland Council of Unions

Appendix B – Officials at public briefing and witnesses at public hearing

Public briefing

Queensland Police Service

- Commissioner Ian Stewart, Commissioner of Police
- Superintendent Dale Pointon, Superintendent Engagement, Road Policing Command
- Detective Inspector Damien Hansen, Operations Manager, Homicide Investigations Unit
- Detective Senior Sergeant Damien Powell, Operations Leader, Missing Persons Unit
- Senior Sergeant Ian Carroll, Instructing Officer, Legislation Branch

Queensland Corrective Services

- Ms Kate Petrie, Director, Policy and Legislation

Public hearing

Bar Association of Queensland

- Ms Elizabeth Wilson QC, Chair, Criminal Law Committee
- Mr Stephen Keim S.C., Member, Criminal Law Committee

Aboriginal and Torres Strait Islander Legal Service

- Ms Kate Greenwood, Barrister

Crime and Corruption Committee

- Ms Deborah Holliday, Acting Chairperson
- Mr Mark Docwra, Assistant Director, General Legal

Queensland Law Society

- Mr Bill Potts, Deputy President
- Ms Binari De Saram, Legal Policy Manager