Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021

Explanatory Notes

Short title

The short title of the Bill is the Police Legislation (Efficiencies and Effectiveness) Amendment Bill 2021.

Policy objectives and the reasons for them

The objective of the Bill is to improve the delivery of policing services, reduce administrative processes, streamline police operations, increase productivity, and improve the detection, prevention and disruption of crime. The Bill supports the Government's Unite and Recover objective to deliver world-class frontline services in the area of community safety and the Government's digital transformation of frontline services.

The demands placed upon the Queensland Police Service (QPS) are ever increasing. The growth in calls for service, increasingly complex social issues, disaster management, growing community expectation and the QPS' role in response to the public health emergency significantly impact the QPS's resources to work with and for the community in providing policing services to all of Queensland.

To address demand issues and increase frontline effectiveness, the QPS needs to optimise existing systems and processes to free up frontline resources. This involves modernising practices and service delivery, and enhancing the use of modern technology in delivering policing services. The cumulative effect of the measures outlined below, is to assist the QPS to deliver policing services more efficiently and effectively.

Authorising Senior Police Officers to witness specified affidavits

Thousands of hours of police officers time is consumed by officers having to locate and attend before a Justice of the Peace (JP) or a Commissioner for Declarations (Cdec) to swear an oath of service or declare or affirm the veracity of information contained in a document. This is despite various initiatives over the last 20 years designed to overcome delays associated with police having to attend before a JP or a Cdec, for example:

- Notices to Appear (NTA) were created to provide an alternative way for police to start or continue proceeding against a person instead of having to attend before a JP to swear out a complaint and summons with an NTA legislatively having the same standing as if it was a complaint and summons under the *Justices Act 1886*; and
- in 2017, the *Domestic and Family Violence Protection Rules 2014* (DVFP Rules) were amended to allow officers to provide a statement of police service when required to personally serve a court order, rather filing an affidavit of personal service with the DVFP registry.

Normally police officers in Queensland are not able to witness declarations or affidavits under State legislation; however, they are permitted to witness statutory declarations under Commonwealth legislation. Queensland Police were permitted to witness

statutory declarations pursuant to the *Justice Legislation (COVID-19 Emergency Response – Documents and Oaths) Regulation 2020* (DO Regulation). The DO Regulation also enables the electronic or physical transmission of the document between signatory and witnessing officers. The DO Regulation and other temporary measures put in place for the COVID-19 emergency expire on 30 September 2021.

Significant time savings for front line police officers can be achieved by authorising senior police officers to witness affidavits made by other police officers in relation to

- proving the service of documents;
- bail proceedings under the *Bail Act 1980* and the *Youth Justice Act 1992*; and
- sworn applications made in compliance with section 801(4)(a) (Steps after issue of prescribed authority) of the *Police Powers and Responsibilities Act 2000* (PPRA).

Affidavits to prove service

Police are required to serve a large number of documents as part of various court processes. Proof of service is generally required in Queensland by way of affidavit. In the affidavit police swear that they served the document and the circumstances under which it was served (date, time etc). Enabling senior police officers to witness the affidavit removes the necessity for police officers to locate and attend before a JP or Cdec to swear an oath of service, will lead to significant time saving for police officers.

Objection to bail affidavits

Affidavits used in bail proceedings are completed by arresting officers to inform the court of information relevant to determining whether a person should be bailed or remanded in custody.

In 2020, a time and motion study was undertaken with plain-clothes units to identify the time taken to locate an available JP to finalise bail documentation. This analysis of 6,321 bail affidavits revealed that the time taken to locate and attend a JP ranged from 30 minutes to 2 hours, with an average of 60 minutes to have a document sworn and signed. The impact for policing in remote localities is often more significant. On some occasions an officer's entire shift is spent driving to a regional centre to have the objection to bail documents witnessed. Enabling a senior police officer to witness the objection to bail affidavit would potentially save between 5,491 and 21,924 hours of officers' time annually.

Sworn applications – section 801(4)(a) PPRA

Section 800 (Obtaining warrants, order and authorities, etc., by telephone or similar facility) of the PPRA enables a police officer to apply for, obtain and execute, a prescribed authority by phone, fax, radio, email or another similar facility because of urgent circumstances or the officer's remote location, prior to the application being sworn. Section 801 (Steps after issue of prescribed authority) of the PPRA requires the officer to subsequently send the sworn application to the issuer at the first reasonable opportunity following the exercise of the authority. As the authority had already been issued on the grounds of the unsworn application provided to the issuing authority, the post swearing of the application deals solely with attesting to the truth of the content of the application.

The witnessing of these three types of documents involve affirming the veracity of the contents of the document and do not involve any qualitative assessment of the contents by the witnessing officer.

Additional amendments to s 801 (Steps after issue of prescribed authority) of the PPRA

A police officer can apply for a prescribed authority by phone, fax, radio, email or another similar facility if the officer considers it necessary because of urgent circumstances or the officer's remote location, prior to the application being sworn.

The issuing authority is limited in how the approved authority is sent to the applicant police officer. Currently it must be faxed, or if a facsimile is not available the issuing authority must tell the officer the terms of the authority, with the officer writing down the terms of the authority. This is inconsistent with most other Queensland Acts dealing with remote or urgent issue of search warrants, which enable the emailing of the relevant authority. For example, s 599(3) (Coroner's search warrant) of the PPRA enables a coroner to send the search warrant to a police officer by fax or other electronic means.

Access Orders for seized digital devices

Pursuant to s 618 (Power to examine seized things) and s 619 (Extent of power to examine seized things) of the PPRA, where police have a power to seize a digital device, they have the authority to examine and search the digital device. Technology has enabled new methods of offending. Enhancements in encryption and electronic storage of information have made it easier to conceal and prevent access to evidence.

Section 154 (Order in search warrant about device information from digital devices) of the PPRA enables a magistrate or a Supreme Court judge to make an access order for a digital device in a search warrant they are issuing. The access order requires a specified person to provide access information (e.g. a password or encryption code) to a digital device to enable access to information stored on the digital device or accessible from the device.

Section 154A (Order after digital device has been seized) of the PPRA enables a magistrate or Supreme Court judge to make an access order for a digital device in circumstances where the digital device was seized under the search warrant issued by a magistrate or a Supreme Court judge and the search warrant did not originally contain the order or the search warrant did contain the access order but further access is required. The access order can be made where the magistrate or Supreme Court judge is satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of the commission of an offence.

Section 178A (Order about digital device at or seized from a crime scene) of the PPRA enables a Supreme Court judge or a magistrate to make a digital access order in relation to a digital device situated at a crime scene or seized from a crime scene. The order authorises police officers to exercise the powers in relation to evidence of a crime scene threshold offence which is an indictable offence for which the maximum penalty is at least 4 years imprisonment or an offence involving deprivation of liberty. A judge or magistrate may make the order only if satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of the commission of the offence for which the crime scene was, or is to be, established.

Section 205A (Contravening order about device information form digital device) of the Criminal Code creates the offence for contravening the access orders with a maximum penalty of 5 years imprisonment.

The current digital access order scheme does not permit a magistrate or Supreme Court judge to make an order where a digital device is seized under a search warrant issued by a JP or otherwise lawfully seized under the PPRA. Furthermore, if a magistrate or a Supreme Court judge makes an order in a search warrant but, for reasons beyond police control, the digital device is seized under a provision of the PPRA not the search warrant, police cannot apply for a further access order.

Section 223 (Distributing intimate images), s 227A (Observations or recordings in breach of privacy) and s 227B (Distributing prohibited visual recordings) of the Criminal Code are offences predominately existing is the digital environment and help to illustrate the issues with obtaining digital access orders. For example, if police locate a person using a mobile phone to take unauthorised pictures of another person in a communal change room and lawfully seize the mobile phone at that location, they cannot apply for a digital access order.

Furthermore, if police were exercising crime scene powers and as result of their investigations reasonably suspected that the person was using a digital device to commit any of the three abovementioned offences, they would not be able to apply for a digital access order as the offences only have a maximum penalty of 3 years imprisonment and therefor are not crime scene threshold offences.

The inability to obtain an access order where devices are seized other than under a search warrant issued by a magistrate or Supreme Court judge adversely impacts the investigation of offences. Currently, it is irrelevant how serious the offence is, how well the grounds are addressed, or how urgent the circumstances are, a magistrate or Supreme Court judge is not empowered to issue an access order.

In many serious investigations the suspects do not remain at the scene and actively avoid being located by police. In some instances, suspects have been located in the vicinity, but not at the location specified in the search warrant issued by a magistrate. Police take the person into custody and lawfully seize their digital device under various provisions of the PPRA but cannot apply for a digital access order.

Other examples include instances where police intercept a person in relation a matter and subsequently discover drugs, firearms and multiple mobile phones. Although the digital devices were lawfully seized, there were not seized under a search warrant issued by a magistrate or Supreme Court judge and an access order cannot be sought.

QPS alcohol and targeted substance testing

When a relevant person (police officers and certain unsworn staff) under the *Police Service Administration Act 1990* (PSAA) is involved in a 'critical incident' they may be required to submit to alcohol and targeted substance testing. A 'critical incident' includes discharging a firearm in circumstances that caused or could have caused injury to a person; a death of a person in custody; a vehicle pursuit; or a workplace incident at a police station or police establishment where a person dies or is admitted to hospital for treatment of injuries.

In 2009, the definition of a 'reportable death' in s 8 of the *Coroners Act 2003* was expanded to include a death in the course of, or as a result of, police operations. As a consequence, the QPS's Ethical Standards Command identified the current definition

of 'critical incident' is too limiting when the need for oversight of an officer's actions is legally required and/or necessary to ensure public confidence in police.

The current definition of 'critical incident' also does not capture the situation where a police officer accidently discharges a firearm in circumstances that caused, or could have caused, injury to a person.

The drug testing of police officers was introduced in 2003 and is used to identify if a relevant member has evidence of a targeted substance in their urine. This requirement delays testing as nursing staff and the QPS Alcohol and Drug Testing Coordinator based in Brisbane are required to travel to the scene of the incident. Delays are exacerbated when the incident occurs in a remote location. Current requirements also incur significant costs and place imposts on officers who may be required to moderate their eating, drinking and use of bathrooms while waiting for testing staff to arrive. Delays are also experienced as urine samples are required to be sent for laboratory testing with results unavailable for 48 hours.

Substances can be detected in urine days to weeks after consumption. The active constituents of the drug have been metabolised through the body and are being expelled as waste through urine. Urine testing can produce a positive result in those who are no longer impaired but may have taken a selected drug, days or even weeks in some cases prior to testing. This is commonly referred to as a lifestyle test.

Current technologies allow police to conduct an oral fluid (saliva) test which provides an immediate indication of the presence of certain dangerous drugs. Further follow up testing is then completed following a positive indication. Saliva testing is more effective in revealing recent drug use. Substances can be detected in oral fluid within one hour and always under one day of consumption of the targeted drug. Saliva testing's shorter detection timeframe provides a better indication of potential impairment within a specific timeframe. This is commonly referred to as an incident specific test. Saliva testing is also quicker and less invasive on an officer who has just been involved in a critical incident.

Saliva testing will also reduce impacts on Covert Operations in relation to periodical testing of operatives. An operative will not have to travel to another location to provide a urine sample. An officer, authorised by the Commissioner to take saliva samples, will be able to take and test the samples discretely.

Special Constables and non-State police officers to exercise the powers available to Queensland police officers

Section 5.16 (Special Constables) of the PSAA authorises persons to be appointed as 'special constables' to assist in the effectual administration of the PSAA and the efficient and proper discharge of the Commissioner's responsibilities. However, the existing provision is ambiguous as to the scope of the powers that can be exercised by special constables and whether the powers include powers under Acts other than the PSAA.

Special constables are primarily interstate police officers who, because of their work location (e.g. close proximity to the Queensland border) or the type of work they are involved in (e.g. joint investigations or special operations), require authorisation in Queensland to enable them to carry out their duties effectively. Other persons can be appointed as special constables, but this occurs infrequently, and powers authorised for these persons are significantly limited to the task they are undertaking. For example, during the Gold Coast Commonwealth Games, 12 Queensland Corrective Services

officers were appointed to allow them to perform offender management duties to receive and transport offenders.

The QPS has internal policy to cover the application and appointment process for special constables which includes a character fitness test and explanation of the requirement for appointment. The length, terms and conditions of appointment are determined on a case by case basis and limited to what is necessary to allow the person to carry out their prescribed responsibilities. Processes are also in place to ensure a regular review is conducted of all officers currently appointed as special constables to ensure the appointment is still justified.

Section 5.17 (Authorisation of non-State police officers) of the PSAA enables police officers from other jurisdictions to be authorised by the commissioner, if the commissioner reasonably believes their assistance is necessary to assist in dealing with a current or imminent terrorist incident, and it is impractical to appoint the officer as a special constable. This authorisation may also be limited to a specific length, application of specific powers or on any other conditions.

However, authorised non-State police officers are currently limited to exercising the police powers contained in the PPRA and the *Public Safety Preservation Act 1986.* Whilst a majority of police powers are contained in those Acts, the current provision prevents authorised non-State officers from being authorised to exercise other commonly used police powers which may be necessary in responding to the terrorist incident.

Allowing special constables and non-state police officers to exercise the powers of a Queensland police officer under the provisions approved by the Police Commissioner, creates operational efficiencies and removes any confusion about the role of officers from other jurisdictions when they come to Queensland to assist with major events, disasters or terrorism incidents.

Extending time period for the temporary possession of weapons to six months

Currently a weapons licence holder can store a firearm for other person for up to three months. This commonly occurs when a person's weapons licence expires, is suspended due to court or serious health matters, or during the administration of deceased estates. After this date, the licensee must either acquire or dispose of the weapon.

The three months temporary possession limit is often insufficient, especially during the administration of deceased estates. The Bill extends the period to six months to provide the unlicensed owner with an appropriate time to address the reason for temporary storage before administrative processes are reinstituted.

Civilian technical officer to issue evidentiary certificates for the *Weapons Act 1990*

Only a police officer can use the evidentiary provisions under s 63 of the *Weapons Act* to have a document produced as evidence as to a category of weapon. This is despite non-sworn officers who are trained technical officers, having the capacity to determine a weapon's category.

To enhance the management of workloads in the QPS Ballistics Section, the Bill allows a non-sworn technical officer, who is an approved officer, to prepare a document to be produced as evidence as to the category of a weapon. The approval supports provisions of the *Weapons Act* which enables the Commissioner to appoint police officers and

public service officers who have the necessary experience or expertise as approved officers for the *Weapons Act*.

Enabling approved licensed firearms dealer to retain and deal with an anonymously surrendered firearm or prescribed thing

At the Ministerial Council for Police and Emergency Management (MCPEM) in November 2019, jurisdictions agreed to the establishment of a permanent national firearms amnesty.

The *Corrective Services and Other Legislation Amendment Act 2020* (the Amendment Act) amended the *Weapons Act* to give effect to the MCPEM resolution by creating a legislative framework for a permanent firearms amnesty in Queensland. These amendments commenced by proclamation on 1 July 2021, to align with the commencement of the national firearms amnesty.

The permanent firearms amnesty framework in Queensland does not allow firearms dealers, who are approved to participate in the amnesty, to retain firearms or other prescribed things, that have been surrendered anonymously. As a result, registered firearms dealers must currently transport any anonymously surrendered firearms to a police station.

This current approach creates unnecessary risks due to the additional transportation of firearms and the need to store increased numbers of firearms at police stations. In addition, this approach imposes unnecessary operational burdens on local police stations, many of which are in regional and remote communities with smaller staffing establishments.

Registered firearms dealers may view this is a barrier to their ongoing participation in the permanent amnesty. In previous amnesties, most firearms have been surrendered to dealers. Consequently, the broad participation of firearms dealers in the permanent amnesty is considered critical to its success.

The issue will be resolved by amending the *Weapons Act* to allow registered firearms dealers to retain anonymously surrendered firearms in circumstances where an Authorised Officer, Weapons Licensing, QPS approves them to do so.

Achievement of policy objectives

The Bill achieves its objectives by amending the following Acts:

- the *Oaths Act 1867* and creating the *Oaths Regulation 2021*;
- PPRA;
- PSAA; and
- *Weapons Act*.

Creation of an Oaths Regulation

The Bill, subject to Parliament passing the *Oaths Act* amendments contained in the Justice Legislation (Covid-19 Emergency Response – Permanency) Amendment Bill 2021, amends the *Oaths Act* and creates the Oaths Regulation to:

- Restrict the witnessing function of police officers to a ‘senior police officer’ who is:

  - an officer-in-charge of a station or establishment or watchhouse or a police officer nominated to be in charge of a police station or establishment or watchhouse in the absence of the officer-in-charge; or
  - a watchhouse manager; or
  - a police officer of, or above the rank of sergeant.
- Prescribe 'senior police officers' as persons who can witness the affidavits of another police officer in relation to:
  - affidavits used in bail proceedings under the *Bail Act 1980* and the *Youth Justice Act 1992;*
  - affidavits to prove the service of documents; and
  - sworn applications made under s 801(4)(a) (Steps after issue of prescribed authority) of the PPRA.
- Enabling the witnessing of prescribed affidavits:
  - on a physical document;
  - in the form of an electronic document, including the use of electronic signatures; and
  - by audio visual link.
- Restricting the use of witnessing via audio visual link for affidavits used in bail proceedings under the *Bail Act* and the *Youth Justice Act* to circumstances in which it is not reasonably practicable for the 'senior police officer' to witness the document in the presence of the deponent officer.

Amendments to the PPRA

Amendments to s 801 (Steps after issue of prescribed authority) of the PPRA

The Bill amends s 801 to:

- Enable the issuing authority to send a copy of the prescribed authority to a police officer or law enforcement officer by email and other forms of electronic communication in addition to facsimile.
- Ensure that a copy of a prescribed authority sent by electronic communication has the same effect as if it was the prescribed authority signed by the issuing authority.
- Enable a copy of an electronically sworn application for a prescribed authority pursuant to s 800(4) of the PPRA to be sent to the issuing authority.

Ensuring consistency in the use of the term 'electronic communication' in the PPRA

To create consistency in the use of terms relating to 'electronic communication' the bill:

- Inserts the meaning of the term 'electronic communication' into Schedule 6 (Dictionary).
- Replaces the term 'electronic means' with 'electronic communication' in sections:
  - 53BAC (Police power for giving official warning for consorting); and
  - 599 (Coroner's search warrant).

Access orders to be made for a digital device lawfully seized under the PPRA

The Bill will amend s 154A (Order after digital device seized) to:

- enable a police officer to apply to a magistrate or Supreme Court judge for an access order where the where the digital device was lawfully seized under a provision of the PPRA including under a search warrant was issued by a JP; and
- enable a magistrate or Supreme Court judge to make an access order where they are satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of a crime scene threshold offence or an offence against the Criminal Code sections:
    - 223 (Distributing intimate images);
    - 227A (Observations or recordings in breach of privacy); or
    - 227B (Distributing prohibited visual recordings).

Amendments to the PSAA

To improve the effectiveness and efficiency of the PSAA the Bill:

- Amends s 5.16 (Special Constables) and s 5.17 (Authorisation of non-State police officers) to ensure that the Commissioner is able to authorise a special constable or non-State police officer to exercise any or all powers available to a Queensland police officer.
- Amends the meaning of 'critical incident' for the purposes of triggering alcohol and targeted substance testing under Part 5A (Alcohol and drug tests) to:
    - Include deaths occurring in the course of, or as a result of, police operations (to align with the definition of reportable death in section 8(3)(h) of the *Coroners Act 2003*;
    - Include incidents where a person suffers from injuries consistent with the Criminal Code definition of 'grievous bodily harm' while in police custody or in the course of, or as a result of, police operations;
    - Include the accidental discharge of a firearm in circumstances that caused, or could have caused, injury to a person; and
    - Exclude the use of less than lethal rounds which are currently captured by subsection (a) of the definition of 'critical incident'. (Where the use of less than lethal rounds resulted in the death of a person, or the person suffered injuries consistent with the definition of 'grievous bodily harm', the officer would be subject to alcohol and targeted substance testing).
- Provide for the use of saliva testing as an alternative to urine testing for the purposes of targeted substance testing under Part 5A.
- Amends the Police Service Administration Regulation 2016 supports the Act changes providing for saliva testing as an alternative to urine testing for the purposes of targeted substance testing under Part 5A.

Amendments to the *Weapons Act*

To improve the effectiveness and efficiency of the *Weapons Act* the Bill:

- Amends s 35 (Acquisition of weapons) and s 36 (Sale or disposal of weapons) to extend the time frames under which an appropriately license person can temporarily hold a weapon on behalf of another weapons licensee from three months to six months.
- Amends s 163 (Evidentiary provisions) to enable a non-sworn technical officer, who is an approved officer under the Act, to prepare a document to be produced as evidence as to the category of a weapon.
- Amends s 168B (Amnesty for firearms and prescribed things in particular circumstances) and s 168C (Dealing with surrendered firearm of prescribed thing) to allow a licensed firearms dealer to retain and deal with an anonymously surrendered firearm or prescribed thing, in circumstances where an authorised officer from Weapons Licensing, QPS approves the licensed dealer to do so.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than by legislative reform.

Estimated cost for government implementation

While it is anticipated that the changes will provide the QPS with a positive resource outcome, any upfront and continuing costs associated with the amendments, including the review of the officer witness provisions, will be met through existing QPS budgets.

Consistency with fundamental legislative principles

The amendments have been drafted with due regard to section 4 of the *Legislative Standards Act 1992* (LSA) by achieving an appropriate balance between individual rights and liberties, the broader protection of the Queensland community, and the efficient and effective operation of the QPS.

<u>Access Orders for seized digital devices</u>

Existing access information powers under search warrant and crime scene warrant provisions of the PPRA enable police to apply to a magistrate or a Supreme Court judge for an order requiring a specified person to provide access information, for example a password or swipe pattern, to a storage device such as a computer or mobile phone.

Once access is provided to a storage device police can gain access to information stored on or accessible through a device. The provisions may be viewed as a breach of the fundamental legislative principles that legislation have regard to the rights and liberties of individuals and maintain the privilege against self-incrimination under s 4(2)(a) and s 4(3)(f) of the LSA.

The proposed amendments will not provide police with unfettered access to information on a person's storage device as the scope of information accessed will be limited by the offence for which a storage device has been seized. For example, if police seize a device due to a reasonable suspicion it contains child exploitation material, they would not be able to apply for an access order requiring passwords for a specified person's bank accounts. Judicial oversight will ensure the access sought and granted is relevant to the offence/s being investigated.

Under existing provisions in s 154B and s 178B of the PPRA a person is not excused from complying with an access information order on the ground that compliance may tend to incriminate the person. The exclusion of the privilege against self-incrimination is consistent with like provisions in Queensland legislation and other jurisdictions, for instance access information provisions under s 465AAA(6) of the *Crimes Act 1958* (Victoria).

Departure from fundamental legislative principles is justified as the objective of the provisions cannot be achieved unless police can access all information relevant to offences.

Special constables

The Bill provides the Police Commissioner with a broad power to appoint special constables with the powers of a Queensland police officer. Currently those powers are limited to the provisions of the PSAA.

While special constables are primarily interstate police officers who, because of their work location (e.g. close proximity to the Queensland border) or the type of work they are involved in (e.g. joint investigations or special operations), require authorisation to enable them to carry out their duties effectively, there are others who are not. For example, during the Gold Coast Commonwealth Games, 12 Queensland Corrective Services officers were appointed to allow them to perform offender management duties to receive and transport offenders.

To safeguard to the potential impact on the rights and liberties of individuals in the Queensland community, the Commissioner will be able to limit the type of powers to be exercised by a special constable.

The QPS also has internal policy to cover the application and appointment process for special constables which includes a character fitness test and explanation of the requirement for appointment. The length, terms and conditions of appointment are determined on a case by case basis and limited to what is necessary to allow the person to carry out their prescribed responsibilities. Processes are also in place to ensure a regular review is conducted of all officers currently appointed as special constables to ensure the appointment remains justified.

QPS alcohol and substance testing

The proposed amendment to the definition of ‘critical incident’ may raise the fundamental legislative principle of having sufficient regard to the rights and liberties of individuals and the rights of employees as it is broadening the circumstances when a police officer or certain (QPS) staff members can be directed to provide samples for alcohol and targeted substance testing following a ‘critical incident’.

Police officers are given extensive powers and use of force options to assist them to carry out their duties. There is a community expectation that QPS members are not adversely affected by alcohol or other substances when making decisions or taking action during critical incidents. This amendment will ensure that in instances where a person dies or suffers injuries consistent with the definition of ‘grievous bodily harm’ while in custody or in the course of or as a result of police operations that timely action is taken to obtain the necessary samples. This will establish if the QPS members involved had any alcohol or nominated substances in their system and a negative test protects the member from subsequent allegations.

Consultation

Consultation feedback on a consultation draft of the Bill was sought from:

- the Chief Justice;
- the Chief Judge;
- the Chief Magistrate;
- the State Coroner;
- Crime and Corruption Commission;
- Bar Association of Queensland;
- Queensland Law Society;
- Aboriginal and Torres Strait Legal Service;
- Legal Aid Queensland;
- Queensland Council for Civil Liberties;
- Queensland Human Rights Commission;
- the Information Commissioner;
- the Chief Customer and Digital Officer;
- Queensland Police Union of Employees; and
- the Queensland Commissioned Officers' Union of Employees.

The Bill, as a result of the comments provided by stakeholders, was amended by restricting the level of police officer who can take an affidavit for prescribed documents to a 'senior police officer'. This will reinforce the importance of ensuring the contents of the affidavit are truthful and accurate and ensuring that the oath or affirmation is properly administered when witnessing the signing of the affidavit. QPS policy will specify the obligations on senior police officers who able witness affidavits. Furthermore, QPS policy will ensure there is no conflict of interest by restricting a senior police officer who was involved in the investigation, or a witness to the events set out in the affidavit, from witnessing the affidavit.

Additionally, the Bill has been further amended to limit the witnessing of objection to bail affidavits under the *Bail Act* and the *Youth Justice Act* by audio visual link to circumstances where it is not reasonably practicable to take the affirmation and witness the documents in the physical presence of the deponent officer.

Consistency with legislation of other jurisdictions

The Bill is generally consistent with legislation in Queensland and with other Australian jurisdictions. For example:

<u>Senior police officers as witnesses for service of documents and veracity of statements</u>

South Australia, Tasmania and Western Australia prove service by completing a certificate or memorandum of service, which is not required to be witnessed. In New South Wales (NSW), proof of service is achieved by the completion of a statement of service, which is not required to be signed or witnessed. In Victoria, proof of service can be achieved by the completion of a statutory declaration or affidavit. Any police officer

can witness a statutory declaration and a police officer of at least the rank of sergeant or an officer in charge of a police station can witness affidavits. In the Northern Territory, proof of service is by way of affidavit with any police officer in the Northern Territory having the authority to witness affidavits. In the Australian Capital Territory (ACT), proof of service requires an affidavit.

While in Victoria, police have to provide sworn evidence in support of an objection to bail, other jurisdictions simply require police to prepare a document stating reasons for police objection to bail, which is not required to be witnessed.

Access Orders for seized digital devices

Western Australia allow police to apply to a magistrate for a data access order where the police officer has lawful possession or access to the device and the offence has a penalty of imprisonment for 5 years or more.

South Australia allows police to apply to magistrate for an order requiring a suspect or third party to provide any information or assistance that is reasonably necessary to access data in respect of a child exploitation offence.

Victoria allows police at the rank of senior sergeant or above to apply to a magistrate for a search warrant for an indictable offence to authorise a police officer executing the warrant to give a direction to a specified person to provide any information or assistance that is reasonably necessary to allow the police to access data held in, or accessible from a computer or data storage device. This applies to a device, that is on warrant premises or has been seize under the warrant premises or has been seized under the warrant and is at a place other than the warrant premises.

The *Crimes Act 1914* (Cwlth) allows Federal, State or Territory police to apply to a magistrate for an order requiring a person to provide information/assistance reasonably necessary to allow police to access data sorted on a computer or data storage device, during execution of a search warrant or following seizure under a search warrant or following seizure under a search warrant. This includes search warrants issued by a JP or other authorised person employed in a court of a State or Territory. Mobile telephones are not included as a data storage device.

Authorising special constables with the powers of a Queensland police officer

The Australian Federal Police, Victoria, Northern Territory, Tasmania and Western Australia provide additional powers to interstate Police. NSW confers or imposes on a Special Constable any of the functions of a police officer of the rank of constable, including any functions of a police officer that are specified in the *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

Notes on provisions

Part 1 – Preliminary

1. Short title

Clause 1 provides that upon commencement, the short title of the Act will be the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021.*

2. Commencement

Clause 2 provides that Parts 2 (Amendments to the *Oaths Act 1867*) and 7 (Other matters) and schedule 1 (Oaths Regulation 2021) of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* will commence on a date to set by proclamation. The remainder of the provisions of the Bill will commence on assent.

Part 2 – Amendments to the *Oaths Act 1867*

3. Act amended

Clause 3 provides that Part 2 of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* amends the *Oaths Act.*

4. Insertion of new s 43A

Clause 4 inserts new s 43A (Regulation made by the Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021 into the *Oaths Act*.

Section 43A clarifies that the Oaths Regulation is subordinate legislation to the Oaths Act and is exempt from Part 6 (Procedures after making of subordinate legislation) of the *Statutory Instruments Act 1992*, which requires subordinate legislation to be published and tabled in the Parliament after it has been made.

Part 3 – Amendments to the *Police Powers and Responsibilities Act 2000*.

5. Act amended

Clause 5 states that Part 3 amends the PPRA.

6. Amendment of s 53BAC (Police powers for giving official warning for consorting)

Clause 6 creates consistency in terminology used within the PPRA by omitting the term *electronic means* and replacing it with the term *electronic communication* which is being inserted into Schedule 6 (Dictionary) by clause 12.

The clause also removes the definition of *SMS message* from s 53BAC which, in effect, is relocated to Schedule 6 (Dictionary) by clause 12 as the definition is now used in a number of sections in the PPRA. The definition of *electronic means* is omitted with the replacement term *electronic communication* being inserted into Schedule 6 by clause 12.

Subclause (3) amends the definition of *prescribed way* under ss 53BAC(9) to reflect the change in terminologies from sending a document electronically through *electronic means* to *electronic communication*.

7. Amendment of s 149A (Definitions for chapter)

Clause 7 inserts the definition of *crime scene threshold offence* into the definitions section for chapter 7 of the PPRA. The combined effect of clauses 7 and 9 is the relocation of the definition of *crime scene threshold offence* from s 163A (Definitions for part) to the definitions sections for the chapter due to the inclusion of the term in s 154A facilitating amendments to when access orders can be made for seized digital devices.

8. Amendment of s 154A (Order after digital device has been seized)

Clause 8 amends s 154A by expanding the circumstances when a magistrate or Supreme Court judge may grant an access order for a seized digital device.

Subclause (1) replaces the existing ss 154A(1)(a) and sets out the circumstances when the section applies. Subsection 154A(1)(a) replicates the existing application of s 154A to circumstance where the digital device was seized under a search warrant issued by a magistrate or Supreme Court judge.

Subsection 154A(1)(b) expands the application of the section to include where the digital device is otherwise lawfully seized under the PPRA. This includes where the digital device is seized under a search warrant issued by a JP and other seizure powers under the PPRA, for example, section 196 (Power to seize evidence generally. Subsection154(1)(b) also excludes the application of this section to digital devices seized under s 176(1)(j) (Powers at a crime scene) of the PPRA as access information provisions for digital devices at or seized at crime scenes exist under s 178A (Order about digital device at or seized from a crime scene) of the PPRA.

Subclause (2) amends ss 154A(3) of the PPRA establishing when and to who an application for an access order for a seized digital device may be made. Subsection 154A(3) has, in effect, been extended to accommodate the new access information order powers under subsection (1). An application for a digital device access order seized under a search warrant issued by a Supreme Court judge must be made to a Supreme Court judge. In all other circumstances the application must be made to a magistrate.

Subclause (3) replaces the existing ss 154A(5) to expand the circumstances where a magistrate or a Supreme Court judge may make an order for access to a digital device following the seizure of a digital device.

New ss 5(a) replicates the existing ability for a magistrate or Supreme Court judge to make in access order where the digital device was seized under a warrant issued by a magistrate or Supreme Court judge and the magistrate or judge is satisfied that there are reasonable grounds for suspecting that the device information from the digital device may be evidence of the commission of an offence or evidence that may be confiscation related evidence.

Subsection (5)(b) enables a magistrate or Supreme Court judge to make the order where the device was seized under a search warrant issued by a JP or otherwise lawfully seized under the PPRA, where the judicial officer has reasonable grounds to suspect there is digital information on the device that may be evidence of a crime scene threshold offence, that is an indicatable offence with a maximum penalty of at least 4 years imprisonment, or an offence involving deprivation of liberty, or evidence of an offence under s 223 (Distributing intimate

images), s 227A (observations or recordings in breach of privacy) and s 227B (Distributing prohibited visual recordings) of the Criminal Code.

9. Amendment of s 163A (Definitions for part)

Clause 9 removes the definition of *crime scene threshold offence*. The combined effect of clauses 9 and 7 is the relocation of the definition of *crime scene threshold offence* from s 163A (Definitions for part) to the definitions sections for the chapter due to the inclusion of the term in s 154A, facilitating amendments for when access orders can be made for seized digital devices.

10. Amendment of s 599 (Coroner's search warrant)

Clause 10 amends ss 599(3) of the PPRA by replacing the term 'other electronic means' with *electronic communication*. The amendment creates consistency with terminology used within the PPRA. The meaning for the term is inserted in Schedule 6 (Dictionary) of the PPRA by clause 13.

11. Amendment of s 801 (Steps after issue of prescribed authority)

Clause 11 amends s 801 of the PPRA by expanding the methods for how an issuing authority is able to provide a copy of the prescribed authority to a police officer or law enforcement officer from a facsimile to electronic communication, which includes by email, MMS and SMS message.

Subclause (2) is a consequential amendment to ss 801(2) as a result of the expansion of the method of providing a copy of the prescribed authority under ss (1).

Subclause (3) replaces ss 801(3) to recognise the move from facsimile to electronic communication by ensuring that an electronic copy of a prescribed authority signed by the issuer has the same effect and authority as if it were the signed original prescribed authority. Subsection (3) also incorporates the existing ss (6).

Subclause (4) amends ss 801(4) to expand the method of how an officer may send the sworn application to the issuing authority. In addition to sending the issuing authority a hard copy of the sworn application, the sworn application may be sent electronically where the application was electronically sworn.

Subclause (5) omits ss 801(6) which declared the effect of the prescribed authority as this is now located in ss 801(3).

Subclause (7) inserts new ss 801(7) which defines the meaning of electronically sworn for the purposes of ss 801(4).

12. Amendment of Schedule 6 (Dictionary)

Clause 12 inserts the meaning of the terms data, electronic communication and SMS message for the purposes of the PPRA.

Subclause (2) is a consequential amendment as a result of the definition of *crime scene threshold offence* being moved from s 163A (Definitions for part) for Part 3 (Crime scenes) to s 149A (Definitions for chapter) for Chapter 7 (Search warrants, obtaining documents, accessing registered digital photos and other information, and crime scenes) of the PPRA.

Part 4 – Amendment of *Police Service Administration Act 1990*

13. Act amended

Clause 13 states that Part 4 of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* amends the PSAA.

14. Amendment of section 1.4 (Definitions)

Clause 14 inserts a definition for *saliva analysing instrument* for the purposes of Part 5A (Alcohol and drug tests) for the purposes of targeted drug testing of relevant police and staff members by saliva tests.

15. Amendment of s 5.16 (Special constables)

Clause 15 amends s 5.16 of the PSAA to clarify that the Police Commissioner may authorise special constables to exercise any powers a Queensland police officer under any Act, subject to the Commissioner limiting those powers in the terms and conditions of the special constable's appointment.

16. Amendment of se 5.17 (Authorisation of non-State police officers)

Clause 16 extends s 5.17 of the PSAA to allow the Police Commissioner to issue an authority for a non-State police officer to exercise the same powers a Queensland police officer can use under any Act, if a terrorist act has been committed or there is an imminent threat of a terrorist act. The authority issued by the Police Commissioner will specify the extent of the powers to apply to particular Acts or all Acts that confer a power on a Queensland police officer.

Subclause (4) amends ss 5.17(15) to require the Police Commissioner to include the details of the empowering Acts authorised for each non-State police officers, in the QPS Annual Report.

Subclause (6) inserts definitions for the new terms used in s 5.17.

17. Amendment to s 5A.2 (Definitions for part 5A)

Clause 17 replaces the definition of critical incident for the purposes of Part 5A of the PSAA. The new definition will include incidents that cause grievous bodily harm and extends the types of incidents where death or grievous bodily harm may occur to include any operational activity of the police service. The definition of 'critical incident' also captures a workplace incident at a police station or establishment where a person dies or suffers grievous bodily harm or is admitted to hospital for treatment of their injuries. A definition of grievous bodily harm is included and refers to the Criminal Code, schedule 1 which means:

(a) the loss of a distinct part or an organ of the body; or

(b) serious disfigurement; or

(c) any bodily injury of such a nature that, if left untreated, would endanger or be likely to endanger life, or cause or be likely to cause permanent injury to health;

whether or not treatment is or could have been available

Examples of what might constitute an operational activity of the police service the purposes of critical incident include vehicle pursuit for the purposes of

apprehending a person or an evacuation. These examples are a guide and do not limit what might be considered an operational activity.

The definition of firearm is inserted to exclude a firearm that is used with a less than lethal round, such as a bean bag round, from being a 'critical incident'. However, if the use of such a round caused death or grievous bodily harm, this would fall within the definition of critical incident.

The definition of evidence of a targeted substance in a person's urine and targeted substance test have been amendment to include presence of a targeted substance in a person's saliva. The amendment recognises the new saliva testing regime and its application in the testing for a dangerous drug, a substance that is a controlled drug, a restricted drug or a poison under the *Health Act 1937* that may impair a person's physical or mental capacity; or another substance that may impair a person's physical or mental capacity.

18. Replacement of s 5A.4A (Analysts)

Clause 18 replaces s 5A.4A, which applies to the appointment by the Minister for Police of appropriately qualified persons to analyse urine and saliva tests for the QPS. The new s 5A.4A does not change the current way in which an appointment is made, it aligns the language of s 5A.4A with a new s 5A.4B (Operators of salvia analysing equipment).

Insertion of s 5A.4B (Operators of salvia analysing equipment)

Clause 18 inserts s 5A.4B to operationalise the new saliva testing regime. Section 5A.4B allows the Police Commissioner to authorise a police officer or staff member of the QPS to operate a saliva testing instrument in relation to targeted saliva testing. The Police Commissioner can make the authorisation only if satisfied the police officer or staff member is appropriately qualified to analyse the saliva test.

Subsection 5A.4B(2) allows the Police Commissioner to limit the authorisation to operate saliva analysing equipment, for example the authorisation may state who can analyse a sample given by a relevant person of a stated class, such as an officer or staff member whose duties include performing functions in a critical area.

19. Amendment of s 5A.12 (Targeted substance levels)

Clause 19 amends s 5A.12(1) and (3) of the PSAA by including saliva, as a bodily fluid that must not have evidence of a dangerous drug; a substance that is a controlled drug, a restricted drug or a poison under the *Health Act* that may impair a person's physical or mental capacity contrary to a direction of a doctor or a recommendation of the manufacturer of the substance; or another substance that may impair a person's physical or mental capacity, contrary to a direction of a doctor or a recommendation of the manufacturer of the substance.

20. Replacement of s 5A.14 and s 5A.15

Clause 20 replaces s 5A.14 (Providing specimen for targeted substance test) and s 5A.15 (Effect of failure to provide a specimen) to allow the sections to apply to saliva testing in a similar way as they currently apply to urine testing.

Section 5A.14 (Providing specimen for targeted substance test)

Provides the power for an authorised person to require a relevant member to provide a specimen of urine or saliva for analysis.

Subsection 5A.14(2) requires that where the specimen is required as a result of a critical incident, the requirement should be made as soon as is reasonably practicable after the incident occurred. It may not be possible to make a requirement immediately after a critical incident as the relevant member may be injured or in shock.

Subsections 5A.14(3) to (6) establish how a relevant tester may give a direction and how the specimen is dealt with.

Subsection 5A.14 defines the meaning of *authorised tester* and *registered nurse* for the purposes of the section.

Section 5A.15 (Effect of failure to provide a specimen) provides that a person who fails to provide a specimen will be taken to been positive to a targeted substance unless the person fails to provide the specimen due to a medical condition.

21. Amendment of s 5A.16 (If alcohol or targeted substance test positive)

Clause 21 amends s 5A.16(1)(b) and ss (2)(a) to apply to new saliva tests when a decision is made about the action to be considered where a person returns a test that is positive for a targeted substance; or the person is over the alcohol limit that applied to the person, under s 5A.6 and s 5A.7, at the time the test was taken.

22. Amendment of s 5A.19 (Interfering with specimens)

Clause 22 amends s 5A.19 to expand the section to apply to saliva tests. Accordingly, a person who interferes with a saliva specimen will be liable to the same maximum penalty as interfering with a breath or urine sample, 100 penalty units.

23. Amendment of s 5A.21 (Evidentiary provision)

Clause 23 amends s 5A.21 to allow an evidentiary certificate signed by an analyst to apply to a saliva sample in the same way it applies to a urine sample. That is, the sample has been tested in an analyst's laboratory by an authorised person and the result of the test.

24. Amendment of s 10.12 (Legal proceedings)

Clause 24 amends s 10.12(3) to allow a document signed by the Police Commissioner stating that a stated police officer or staff member was authorised, at the time a saliva sample was taken, to operate a saliva analysing instrument and was subject to a limitation or condition if applicable, to be evidence of those facts in any legal proceedings. The amendment reflects the new saliva testing regime and applies the document signed by the Police Commissioner in the same way as an analyst's certificate under s 5A.21.

Part 5 – Amendment of Police Service Administration Regulation 2016

25. Regulation Amended

Clause 25 states that Part 5 amends the *Police Service Administration Regulation 2016.*

26. Amendment of s 61 (Relevant person to advise details of medication etc.)

Clause 26 extends s 61 to apply to a saliva test. Accordingly, a relevant person is now required to tell an authorised person, prior to providing a specimen of saliva, of any medication or substance that may impact on a saliva test.

27. Amendment of s 62 (If relevant person claims to be unable to provide specimen because of a medical condition)

Clause 27 extends s 62 to include saliva tests. Subsections (1)(a) and (3)(b) will reflect saliva tests, while amendments to ss (1)(b) and (3) will apply where a relevant person tells an authorised tester, including a person who is authorised to use saliva testing equipment, that a saliva sample is not able to be provided because of a medical condition, and specified information about the medical condition.

28. Amendment of s 63 (Water may be drunk if relevant person claims to be unable to immediately provide specimen)

Clause 28 amends s 63 which allows water to be consumed where a specimen cannot be provided, to apply only to a urine test. A saliva sample requires a person to rotate their tongue around their mouth three times and then wipe the saliva analysing device down the tongue. There is no requirement for a liquid to be gathered by the tester.

29. Amendment of s 64 (Requirements about collecting and dealing with urine specimens)

Clause 29 extends s 64 to allow the requirements about collecting and dealing with specimens to apply to saliva specimens in the same way as urine specimens. Accordingly, where urine is mentioned in s 64, saliva has been included.

An amended ss (6) reflects the relevant Australian and New Zealand standards for the collection of urine and saliva samples.

30. Amendment of s 65 (Advice by commissioner to relevant person of test result)

Clause 30 extends s 65 to allow the Police Commissioner to advise a relevant person of the result of a saliva test in the same way as the results of a urine test are provided to a relevant person.

Part 6 – Amendment of *Weapons Act*

31. Act amended

Clause 31 states that Part 6 of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* amends the *Weapons Act.*

32. Amendment of s 35 (Acquisition of weapons)

Section 35(6)(c) enables the temporary storage of a firearm by a licence holder on behalf of another person. This commonly occurs due to the person's weapons licence expiring, serious health issues or during the administration of deceased estates. Clause 32 doubles the time a person can possess a weapon under s 35(6)(c) before the person is required complete an application to acquire the weapon, from three months to six months.

33. Amendment of s 36 (Sale or disposal of weapons)

Section 36(3)(c) enables the temporary storage of a firearm by a licence holder on behalf of another person. This commonly occurs due to the person's weapons licence expiring, serious health issues or during the administration of deceased estates. Clause 33 doubles the time a person can possess a weapon under s 36(3)(c) before the person is required to dispose of the weapon, from three months to six months.

34. Amendment of s 152 (Approved officers)

Clause 34 amends s 152 to reflect that an officer of the public service is now referred to as a public service officer. There is no change in policy regarding the amendment.

35. Amendment of s 163 (Evidentiary provisions)

Clause 35 extends s 163 to allow, in addition to a police officer who is an approved officer, a public service officer who, is appointed as an approved officer due to their training, experience or expertise, to prepare a document to be produced in court. A document signed by an approved officer who is either a police officer or public service officer under ss (2) is to be considered evidence of the facts stated in the document. The extension also allows a person who has been charged with an offence to call the police officer or public service officer as a witness in a proceeding.

Subclause (3) inserts a definition for *approved officer* for s 163. An approved officer is a police officer, or a public service officer appointed by the Police Commissioner under s 152 (Approved officers) of the *Weapons Act*.

36. Amendment of s 168B (Amnesty for firearms and prescribed things in particular circumstances)

Clause 36 amends s 168 to enable an approved licensed dealer to retain an anonymously surrendered firearm or prescribed thing in circumstances where an Authorised Officer approves them to do so in writing.

Currently, an approved licensed dealer commits an offence under ss 168B(4) if they don't provide a firearm or prescribed thing to a police officer where the firearm or prescribed thing has been surrendered to them anonymously under the firearms amnesty.

Subclause (2) replaces ss 168B(4) to ensure that an approved licensed dealer does commit an offence where the dealer has the approval of an Authorised Officer of the QPS to deal with the firearm or thing under new s 168D(2). Subclause (2) also creates a reasonable excuse exemption for failing to surrender the firearm or prescribed thing.

Additionally, subclause (2) inserts new ss 168B(4A) (which is subsequently renumbered as ss 168B(5)) to provide that it is a reasonable excuse for the approved licensed dealer to retain the firearm or prescribed thing where the dealer is seeking authorisation by an Authorised Officer of the QPS to deal with the firearm or prescribed thing under new s 168D(2). Seeking authorisation would also include a period of time, reasonable in the circumstances, following the surrender of the firearm or thing for the authorised licensed dealer to prepare and submit the application seeking authorisation under s 168D(2).

37. Amendment of s 168C (Dealing with surrendered firearm or prescribed thing)

Clause 37 clarifies that the definition of *prescribed thing* for the purposes of the section is the definition contained in s 168B(8).

38. Insertion of new s 168D

Clause 38 inserts new s 168D (Authorisation to deal with surrendered firearm or prescribed thing) which enables a QPS Authorised Officer to authorise an approved licensed dealer to deal with a firearm or prescribed thing that was surrendered under the amnesty, including an anonymously surrendered firearm or thing.

Subsection 168D(3) establishes that the firearm or prescribed thing becomes the property of the approved licensed dealer who may deal with it as stated in the authorisation or required or permitted under law. This enables, if approved, for the approved licensed dealer to retain or deal with it for commercial purposes.

39. Amendment of Schedule 2 (Dictionary)

Clause 39 removes the definition of *approved officer* under Schedule 2. The definition has been included in section 163 (Evidentiary provisions) of the *Weapons Act*.

Part 7 – Other matters

40. Making of Oaths Regulation 2021

Clause 40 enables the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* to make the Oaths Regulation 2021 in Schedule 1 for the purposes of prescribing police officers to be authorised to witness prescribed affidavits under s 41 of the *Oaths Act*. Upon commencement of Schedule 1, the *Oaths Regulation 2021* will cease to be a provision of the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* and commence as a regulation under the *Oaths Act*.

41. Automatic repeal

Clause 41 states that the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* is an amending Act for the purposes of s 22C (Automatic repeal of amending Act) of the *Acts Interpretation Act 1954*. The effect of clause 41 is to repeal the *Police Legislation (Efficiencies and Effectiveness) Amendment Act 2021* upon commencement of all of the provisions.

Schedule 1 – Oaths Regulation 2021

1. Short title

Section 1 provides that upon commencement, the short title of the Regulation will be the Oaths Regulation 2021.

2. Definitions for regulation

Section 2 defines the meanings of the specified terms for the purposes of the regulation.

3. Information witness must include on affidavit-Act, s 13E

Section 3 requires, for the purposes of s 13E(d) (Additional requirement for witness for affidavit or declaration) of the *Oaths Act*, a *senior police officer* who is witnessing an affidavit must record their rank in addition to their full name.

4. Prescribed persons for witnessing affidavits-Act, s 16A

Section 4 prescribes a *senior police officer* as a person who may take affidavits pursuant to s 16A(1)(e) of the *Oaths Act*.

5. Witnessing prescribed types of affidavits-Act, s 16A

Section 5 prescribes the types of affidavits that a *senior police officer* may witness for the purposes of s 16A(2)(a) of the *Oaths Act*.

6. Persons prescribed as witness-Act, s 16C

Section 6 prescribes a *senior police officer* as a person, for the purposes of s 16C(2)(a) (Affidavit or declaration electronically signed in physical presence of witness) of the *Oaths Act*, who can witness prescribed affidavits or declarations of a person in their presence in the form of an electronic document and may be witnessed and signed electronically.

7. Witnessing prescribed types of affidavits-Act, s 16C

Section 7 prescribes the types of affidavits in an electronic document that a *senior police officer* may take and electronically witness for the purposes of s 16C(3)(a) (Affidavit or declaration electronically signed in physical presence of witness).

8. Persons prescribed as witness-Act, s 31S

Section 8 prescribes a *senior police officer* as a person, for the purposes of s 31S(1) (Witness must be special witness or another prescribed person) of the *Oaths Act*, who can witness prescribed affidavits or declarations of a person by audio visual link.

9. Prescribed types of affidavits-Act, s 31S

Section 9 prescribes the types of affidavits that a *senior police officer*, for the purposes of s 31S(2)(a) (Witness must be special witness or another prescribed person) of the *Oaths Act*, may witness by audio visual link.

10. Prescribed condition-Act, s 31S

Section 10 limits the witnessing of objection to bail affidavits under the *Bail Act* and the *Youth Justice Act* by audio visual link to circumstances where it is not reasonably practicable for the *senior police officer* to take the affirmation and witness the documents in the physical presence of the deponent officer.