

**QPS Briefing to the Legal Affairs and Community Safety Committee – Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018**

**Background**

1. The Police and Other Legislation (Identity and Biometric Capability) Amendment Bill (the Bill) amends:
  - the *Police Service Administration Act 1990* (PSAA) and the *Transport Planning and Coordination Act 1994* (TPCA) to create a legislative framework to facilitate Queensland's participation in the Identity Matching Services (IMS);
  - the *Police Powers and Responsibilities Act 2000* (PPRA) and the TPCA to remove the requirement for police to obtain access approval orders before obtaining Department of Transport and Main Roads (DTMR) digital images for non-transport related offences;
  - the TPCA to remove the existing requirement for the DTMR to report annually to parliament via the Minister on access to Queensland driver licence images;
  - the *Transport Operations (Road Use Management) Act 1995* (TORUM) to expand the scope of identity documents able to be verified through the Document Verification Service (DVS);
  - the Criminal Code to expand the scope of the explosive offence contained in section 470A and to increase the maximum penalty associated with that offence and the explosive offence created by section 540; and,
  - the *Liquor Act 1992* to provide for extended trading arrangements during the 2018 Gold Coast Commonwealth Games.

**Amendments to facilitate Queensland's participation in the Identity Matching Services**

**Context**

2. On 13 April 2007, the Council of Australian Governments (COAG) entered into the *Intergovernmental Agreement to a National Identity Security Strategy* (NISS) to enhance nationally consistent processes for securing, verifying and authenticating identity and identity credentials.
3. The National Identity Security Coordination Group, chaired by the Commonwealth Attorney-General's Department (AGD) and with all jurisdictions, including Queensland represented, is tasked with leading and coordinating whole-of-government implementation of the NISS, on behalf of COAG's Law Crime and Community Safety Council (now the Ministerial Council for Police and Emergency Management (MCPEM)).

4. In 2009, the Document Verification Service (DVS) was established through the auspices of the NISS. The DVS is an online system that enables an organisation to verify identity documents against the records of the issuing agency.
5. In 2012, a National Biometrics Interoperability Framework was developed to facilitate greater collaboration between agencies using biometric systems across government, and to provide a platform for participating jurisdictions to exchange and compare facial biometrics.
6. In April 2015, COAG agreed to implement a recommendation from the *Martin Place Siege: Joint Commonwealth – New South Wales Review* (Martin Place Siege Review) for government agencies which issue documents relied upon as primary evidence of identity to strengthen name-based identity checking processes and explore greater use of biometrics, including via Identity Matching Services through the National Facial Biometric Matching Capability (NFBMC).
7. On 5 October 2017, Queensland signed the Intergovernmental Agreement on Identity Matching Services (the IGA) (Attachment 1). Under the IGA, each jurisdiction is required to ensure their legislative framework supports the collection, use and disclosure of facial images and identity information between entities participating in the Identity Matching Services.

#### ***What are the Identity Matching Services (IMS)?***

8. The capability does not create a central repository of images. Rather, it is a technological capability that allows the sharing and matching of biometric templates derived from images between participating agencies on a query and response basis through a central interoperability hub (hosted by the Department of Home Affairs – the host agency). In this way, the capability avoids risks associated with the creation of a central database of images and enables the effective oversight and auditing of the use of the capability.
9. Key sources of information include driver licence images and associated data held by states and territories, and passport and visa information held by the Commonwealth. This information is currently shared on an ad hoc manual basis. Given the volume and growing importance of this information for counter terrorism and law enforcement, the NFBMC will establish a streamlined and nationally consistent process for sharing it.
10. The Identity Matching Services is an umbrella term that encompasses a number of specific services. The key services are:
  - The **Face Verification Service** – this is a one to one image matching service that will be used to confirm that a person is who they say they are by comparing an image of the person with images held by government agencies against their known or claimed identity.

- The **Face Identification Service** – this is a service for enforcement and national security agencies only and will allow an image of an unknown person to be matched against images held by government agencies.
- The **One Person One Licence Service** – this is a service directed at enhancing the integrity of driver licences by identifying people that hold multiple licences including licences under a false identity.

### ***Outline of amendments***

#### ***Police Service Administration Act 1990 (PSAA)***

11. Part 5 of the Bill inserts a new Division 1AA in Part 10 of the PSAA. This new division provides the legislative framework for the QPS to participate in the IMS.
12. Clause 17 amends the PSAA to:
  - create definitions associated with the specific services and their operation (section 10.2FA);
  - provide an authority for the Commissioner to disclose, collect and use identity information for a purpose related to the operation of the IMS (sections 10.2FC and 10.2FD);
  - provide an authority for the host agency to collect, use and disclose identity information disclosed under the division (section 10.2FE); and,
  - constrain the authority to disclose, use or collect identity information to permitted purposes (section 10.2FF).
13. The delivery of the full IMS is a national project requiring the implementation of a complex information technology system and the passage of legislation by the Commonwealth and other participating jurisdictions.
14. To address this complexity, clause 18 of the Bill also inserts a transitional regulation-making power to enable a transitional regulation to make provision of a saving or transitional nature where it is necessary to do so to facilitate the change from the operation of the legislation as it was in force before the commencement of the Bill to the operation of the new provisions, if the Bill does not make sufficient provision.
15. The transitional regulation-making power expires 2 years after commencement.

#### ***Transport Planning and Coordination Act 1994 (TCPA)***

16. Part 7 of the Bill amends the TCPA to insert a new Part 4D to provide a legislative framework for DTMR to participate in the IMS.
17. Clause 24 provides:
  - definitions associated with the specific services and their operation (section 28EI);

- authority for the Chief Executive to disclose, collect and use identity information for a purpose related to the operation of the IMS (sections 28EM and 28EN);
  - authority for the host agency to collect, use and disclose identity information disclosed under the division (section 28EO); and,
  - constrains the authority to disclose, use or collect identity information to permitted purposes (section 28EP).
18. TMR currently participates in the Document Verification Service (DVS). Clause 24 also creates a new section 28EK which supports DTMR's continued participation in the DVS should the service be administered by the host agency for the IMS in the future.
19. Clause 24 of the Bill also creates a new offence provision in the TPCA (section 28EQ). This offence will apply to any person who collects, uses or discloses identity information for a purpose other than a permitted purpose. The maximum penalty associated with this offence is 100 penalty units.
20. Clause 25 of the Bill omits section 37A of the TPCA which currently imposes a requirement to provide an annual report to Parliament on the number of times digital photos are accessed. This requirement will become impractical with the advent of the IMS given the number of agencies involved that may be accessing the relevant images and the frequency of this access.
21. Clause 26 of the Bill also inserts a transitional regulation-making power to enable a transitional regulation to make provision of a saving or transitional nature where it is necessary to do so to facilitate the change from the operation of the legislation as it was in force before the commencement of the Bill to the operation of the new provisions, if the Bill does not make sufficient provision.
22. The transitional regulation-making power expires 2 years after commencement.

*Transport Operations (Road Use Management) Act 1995 (TORUM)*

23. The TORUM facilitates the operation of the DVS by allowing verification of driver licences and industry accreditation documents. However, other similar documents issued by DTMR such as photo identification cards are not able to be verified through the DVS. The Bill amends the TORUM to enable these documents to be verified through the DVS should the need arise, as more identification documents are incorporated into the operation of the IMS under the IGA.

### ***Commonwealth Legislation***

24. The Commonwealth has introduced legislation to facilitate the implementation of the IMS at a national level.
25. The Commonwealth Bill and Explanatory Notes are provided for the Committee's reference (Attachments 2 and 3 respectively).

### **Gold Coast Commonwealth Games 2018 (GC2018)**

26. If the Bill is passed prior to the commencement of GC2018, the QPS will have access to available components of the IMS, and will also have direct access to DTMR images for national security, law enforcement, community safety, road safety and identity assurance purposes.

### ***Privacy Safeguards***

27. The Bill constrains the use of the capability to specific permitted purposes which are contained in clauses 17 and 24 of the Bill. The permitted purposes are:
  - the prevention, detection, investigation and prosecution of identity crime;
  - the prevention, detection, investigation and prosecution of other offences against State and Commonwealth law;
  - national security related investigations and intelligence gathering;
  - the security of a participating agencies assets or personnel;
  - identifying individuals who are at risk of, or who have experienced, physical harm;
  - improving road safety; and
  - verifying an individual's identity with consent or as authorised by law.
28. As outlined, under the TPCA the Bill creates an offence to collect, use or disclose information from the IMS other than for a permitted purpose.
29. QPS staff are already subject to a rigorous statutory framework that governs improper disclosure. Specifically, section 10.1 of the PSAA (Improper disclosure of information) provides offences for the unlawful disclosure of information that has come to the officer's knowledge through the exercise or use of any power. Depending on the individual circumstances of the disclosure, the officer may also be dealt with for misconduct in relation to public office or computer hacking under the Criminal Code.
30. Further, the Commonwealth Government's Identity Matching Services Bill 2018 also creates a framework of privacy safeguards at the Commonwealth level, including:

- constraining the use of the capability to specific purposes that are defined in a substantially similar way to the Queensland Bill;
  - the creation of an offence provision for the unauthorised disclosure or recording of information from the interoperability hub;
  - reporting requirements on the use of the capability;
  - a requirement for the responsible Commonwealth minister to consult with the Information Commissioner and the Human Rights Commissioner where there is an intention to expand the Identity Matching Services by way of Statutory Instrument; and
  - a mandatory five-year review of the capability.
31. In addition to the legislative provisions outlined, the policy regime that will frame the use of the capability also provides additional privacy safeguards.
32. Part 11 – ‘Governance and accountability’ of the IGA provides that the Ministerial Council for Police and Emergency Management (MCPEM) will exercise ministerial oversight of the Identity Matching Services.
33. The National Identity Security Coordination Group (NISCG) will be accountable to the MCPEM for the efficient and effective delivery and management of the Identity Matching Services. The NISCG includes representatives from the AGD and all First Ministers’ Departments. The NISCG will also include the Office of the Australian Information Commissioner as an observer (IGA clause 11.9).
34. The NISCG will report to the MCPEM and is required to report to the MCPEM on the operation of the NFBMC and coordinate a review every three years (IGA clauses 11.6 and 11.7).
35. An authorisation regime will be developed for QPS staff access to the IMS. Access to the Face Identification Service (FIS) component of the IMS will be limited to specific and appropriately trained individuals. Access by these authorised QPS staff will be auditable through the IT system and any access or disclosure breaches would be dealt with through internal discipline processes (or criminal charges, if appropriate).
36. Each participating agency must enter into a legally binding participation agreement that will detail the terms and conditions that apply to the use of the IMS. Detailed data access policies will also be required for participating entities, such as DTMR and the QPS.
37. Participating agencies are required under the IGA to undertake independent privacy impact assessments designed to ensure any potential privacy issues are identified and addressed.
38. The Commonwealth will retain discretion to refuse, modify, suspend or terminate access should an agency breach any of the associated conditions.



39. It is proposed that the FIS will only be able to be accessed by a select group of appropriately trained QPS officers. The QPS will establish internal regimes around access and training to complement the existing legislative framework governing the misuse of information.

#### **Removal of legislative barriers to QPS access to DTMR digital photographs**

40. The Bill will enable improved access for law enforcement agencies as intended by the IMS. Specifically, the amendments make changes to the PPRA, namely to remove current restrictions contained in Chapter 7, part 5A of the PPRA, "Accessing registered digital photos and other information".
41. These changes, along with the amendment to section 28ED(4) of the TPCA, will remove the existing requirement for the QPS to obtain the authority of a justice of the peace to access images for non-transport law enforcement purposes. The amendments will instead ensure that information provided directly by DTMR to QPS is treated consistently to that shared via the IMS.
42. Access to DTMR images by the QPS will need to be for one of the permitted purposes as defined in the new section 28EP(2) (clause 24 of the Bill).
43. This amendment, of course, represents a change in the current access that the QPS has to DTMR images. While the QPS would no longer need to obtain authority to access DTMR images in non-transport related circumstances, the QPS has a rigorous existing legislative framework governing access to computer systems by QPS staff including offence provisions for the improper use and disclosure of information.
44. If this amendment is not made, it will result in the potentially perverse outcome of the QPS not having the same access to DTMR images as other jurisdictions and the continuation of the current situation where the QPS can directly access DTMR images for traffic offences but not for more serious offences such as terrorism or homicide.

#### **Criminal Code Amendments (Explosives)**

45. Highly volatile homemade explosives pose an increasing risk to the safety of the community and emergency services personnel. The Criminal Code contains a number of explosives offences and the most commonly used with regard to homemade explosives are sections 470A and 540.
46. Section 470A 'Unlawful deposition of explosive or noxious substances' makes it an offence to wilfully and unlawfully throw, leave down or otherwise deposit any explosive or noxious substance in any place whatsoever under circumstances where it may cause injury to any person or damage to property of any person.

47. Section 540 'Preparation to commit crimes with dangerous things' makes it an offence to make or knowingly possess an explosive substance with intent to commit a crime by using it or enabling its use by another person.
48. Criminal Code offence provisions relating to explosive substances generally carry significant deterrent penalties. For example, maximum penalties of 14 years imprisonment apply to offences where a person deals with explosives with intent to destroy or cause bodily harm (sections 321 and 470). In contrast, the maximum penalties for section 470A (two years imprisonment) and section 540 (three years imprisonment) sit well below the other penalties in the Criminal Code for analogous explosive offences.
49. The Bill amends the Criminal Code to increase the maximum penalties for both sections 470A and 540 to 7 years imprisonment to address this anomaly and better deter offending.
50. Currently, the Criminal Code contains no offence that specifically applies to the making of explosives *in circumstances where there is a risk of injury or damage*. Whilst section 540 makes provision for the making of explosives, it is limited in application to cases where the prosecution can adduce evidence of an accompanying intent to commit a crime. Such an intention does not always exist or may not be able to be established on the available evidence.
51. An amendment to the current section 470A would adequately capture this category of offending. Consequently, the Bill includes amendments to the Criminal Code to:
  - extend the application of section 470A (Unlawful deposition of explosive or noxious substances) to include the making or possession of explosives in circumstances that may injure a person or damage property; and
  - increase the respective maximum penalties for both sections 470A and 540 to 7 years imprisonment.

### **Liquor Act 1992 Amendments**

52. The 2018 Commonwealth Games is a unique and significant event that will showcase Queensland on the world stage. Approximately 6,600 athletes and officials, and 672,000 visitors, are expected to attend. With the majority of the Commonwealth Games events being held on the Gold Coast, it is anticipated that there will be increased patronage of liquor licensed premises, particularly within the Broadbeach CBD and Surfers Paradise CBD safe night precincts (Gold Coast SNPs).
53. Accordingly, the Bill contains regulatory changes to help enhance tourism and hospitality experiences for Commonwealth Games participants and attendees, without compromising the integrity of the harm minimisation objectives of the *Liquor Act 1992* or the Government's *Tackling Alcohol-Fuelled Violence Policy*.



54. Specifically, the Bill seeks to amend the *Liquor Act* to:
- introduce a Commonwealth Games Extended Trading Hours Authority (Games Authority), which will automatically allow for licensees of licensed premises in the Gold Coast SNPs to serve liquor for an additional hour beyond the premises' current ordinary or permanently approved trading hours, for each day of the 2018 Commonwealth Games period;
  - ensure no additional application fees or extended or authorised trading hours risk criterion licence fees apply in respect of the additional hour of trading under a Games Authority;
  - clarify that, where a licensed premises is a regulated premises for ID scanning, the licensee will be required to continue scanning patron IDs during the additional hour of liquor trading authorised by the Games Authority; and
  - clarify that, where a licensed premises is not a regulated premises for ID scanning, the licensee will not become required to scan patron IDs due to the operation of the Games Authority.
55. The Bill also inserts a new power for the Commissioner for Liquor and Gaming, following a recommendation from the Police Commissioner or an Assistant Police Commissioner, to issue a public safety restriction notice (restriction notice) to a licensee to impose one or more of the following actions:
- revoke a Games Authority;
  - vary the liquor trading hours for the licence;
  - impose conditions on the licence (e.g. require a minimum number of security guards to be present on the premises); and/or
  - suspend the licence.
56. A restriction notice can only be issued by the Commissioner for Liquor and Gaming after receiving a written report from the Police Commissioner or an Assistant Police Commissioner stating a belief that alcohol-related violence, disorderly behaviour or anti-social behaviour is happening, or is likely to happen, at or in the vicinity of one or more licensed premises, and that violence or behaviour is likely to adversely impact public safety or public order.
57. The restriction notice has effect for a stated period, which cannot extend beyond the end of the 2018 Commonwealth Games period. For the purposes of the Bill, the 2018 Commonwealth Games period is taken to be 3 April 2018 to 17 April 2018 inclusive.
58. The operation of the restriction notice, and associated exclusion of review and compensation provisions, may breach fundamental legislative principles, as it abrogates existing rights, without compensation, and does not provide for natural justice.
59. However, it is considered that any potential breach of fundamental legislative principles associated with the restriction notice, including the lack of a review or

compensation payable, is justified on the basis of public interest. Ensuring public safety during the Commonwealth Games, which constitutes a significant security challenge for Queensland government agencies, should take greater precedence over the commercial interests of licensees for the limited period in which a restriction notice could be in effect.

60. More detailed information relating to background and policy intent of the *Liquor Act* amendments, as well as consultation undertaken on fundamental legislative principles issues, is provided in the Explanatory Notes for the Police and Other Legislation (Identity and Biometric Capability) Amendment Bill 2018.

### **Fundamental Legislative Principles**

61. The committee is referred to pages 8 – 11 of the Explanatory Notes to the Bill where potential breaches of fundamental legislative principles are identified and addressed.