Legal Affairs and Community Safety Committee

Response to Submissions for the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019

TITLE OF BILL: Police Powers and Responsibilities and Other Legislation Amendment Bill 2019

REPORT OF: Queensland Police Service

DATE: 18 October 2019

INTRODUCTION AND SUMMARY

On 18 September 2019, the Police Powers and Responsibilities and Other Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly and referred to the Legal Affairs and Community Safety Committee (the Committee) for consideration.

The Bill will amend access information provisions in relevant Queensland legislation to ensure there is no ambiguity as to the scope of information that police and commission officers (Crime and Corruption Commission officers) can lawfully access on, or through, a digital device. The Bill more generally provides efficiencies and improved operability for the Queensland Police Service (QPS) and the Prostitution Licensing Authority and increases community safety.

On 14 October 2019, senior officers from the QPS assisted the Committee in a public briefing of the Bill. Additionally, the Committee sought public submissions on the Bill and requested the QPS provide a written response to these submissions.

The following submissions have been received by the Committee:

Submission Number	Submitter Name
1	Robert Heron
2	Soroptimist International Brisbane
3	Prostitution Licensing Authority
4	Rape & Domestic Violence Services Australia
5	Bravehearts
6	Firearm Dealers Association QLD
7	Queensland Police Union of Employees
8	Respect Inc and Decrim QLD
9	Queensland Law Society
10	Scarlet Alliance, Australian Sex Workers Association

The QPS response to these submissions is as follows:

Submission 1 – Robert Heron

Mr Heron submits the proposed amendments that change 'storage device' to 'digital device' may be limiting as not all devices are digital, for example, a VHS tape.

Mr Heron also suggests the penalty for modifying a firearm, whether an armourer or not, should be a maximum of 200 penalty units or 4 years imprisonment.

QPS response

The definition of 'digital device' is sufficiently broad to capture electronic devices where access can be prevented by password, encryption code or biometrics (for example, a fingerprint or facial recognition). It is anticipated the definition of 'digital device' will also capture emerging technology such as drones and implants that may be capable of storing electronic information.

Under new section 70A, 'Obligations of armourers when modifying firearm to become different category of weapon' of the Bill the maximum penalty for failing to check that a person is licensed to carry a firearm modified so as to place it in a new category is 100 penalty units. This penalty is consistent with many other offences under the *Weapons Act 1990* (Weapons Act) including sections 60(2) 'Secure storage of weapons', 68 'Dealers to be licensed' and 69 'Armourers to be licensed'. The penalty also adequately reflects the seriousness of the offence.

Recommendation:

No change.

Submission 2 – Soroptimist International Brisbane

Soroptimist International works to ensure that the voices of women and girls around the world are included in international decision making and the policy setting, as well as within Australia.

Soroptimist International supports the Bill as it improves efficiency and effectiveness of the courts and agencies, and clarifies, strengthens and updates the relevant legislation within the PPRA and other legislation.

Soroptimist International strongly supports the objectives to clarify powers of law enforcement to access information on or through electronic devices so there is no ambiguity as to the scope of information that can be lawfully accessed.

QPS response

The support for the Bill and clarification of access information provisions is noted.

Submission 3 – Prostitution Licensing Authority (PLA)

The PLA supports amendments to the *Prostitution Act 1999* (Prostitution Act) noting the amendments are intended to improve the operational efficiency and effectiveness of the brothel licensing framework and to facilitate (PLA) oversight of the licensed sector of Queensland's sex industry.

QPS response

The support for Prostitution Act amendments in the Bill is noted.

Submission 4 – Rape & Domestic Violence Services Australia

Rape & Domestic Violence Services Australia (RDVSA) is a non-government organisation that provides a range of specialist trauma counselling services to people who have been impacted by sexual, domestic, or family violence and their supporters.

With regard to access to information on or through electronic devices, RDVSA states that the language should be simplified as much as possible to reduce any ambiguity or confusion as to interpretation.

RDVSA commends the Queensland Government on taking proactive steps in relation to the investigation of criminal activity and incorporating legislative amendments to reflect the digital age we now live in. They recommend the ongoing review of the proposed amendments and access information provisions to ensure police powers keep pace as new technologies emerge in the future.

RDVSA have some concerns that 'access information powers' will be used against those who have experienced sexual, domestic and/or family violence in an attempt to gain access to their electronic device to investigate the crime committed. RDSVA asserts that police should only gain access to the electronic device of a complainant by consent.

RDVSA support QPS use of civilians to share information under the *Domestic and Family Violence Protection Act 2012* (DFVPA) provided they receive adequate training on how to safely handle information and not improperly disclose information.

QPS response

The support for the Bill and clarification of access information provisions is noted. Along with removing ambiguity associated with the meaning of 'stored information' the Bill aims to establish consistency in wording in access information provisions across the *Police Powers and Responsibilities Act 2000* (PPRA), *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, the *Public Safety Preservation Act 1986,* the *Crime and Corruption Act 2001* (CCA) and the Criminal Code.

Access information provisions are attached to search warrant and crime scene warrant provisions in the PPRA. Neither type of warrant could be used to gain access to a complainant's device without their consent.

Staff members of the QPS are currently playing a valuable role in domestic violence services but are not enabled to share information under the DFVPA. These staff members are fully aware of the importance of handling domestic violence information with care and for the benefit of victims of domestic violence. Only suitably trained staff will be undertaking these tasks. The DFVPA includes additional safeguards in relation to information sharing, including penalties for inappropriate use or disclosure of information.

The PPRA is regularly reviewed as per the legislative obligation under section 807, 'Review of Act' of the PPRA. The QPS will continue to monitor the PPRA in its efforts to keep pace with developing and emerging technology.

Recommendation:

No change.

Submission 5 – Bravehearts

Bravehearts works with, and advocates for, survivors of child sexual harm.

Bravehearts fully supports clarifying definitions within the PPRA to resolve the ambiguity around the meaning of the term 'stored' in relation to 'information' to ensure that law enforcement can access all password protected information through any application on or through any electronic device.

In addition, Bravehearts note and support the amendments, in line with recommendations through the 2015 Queensland Organised Crime Commission of Inquiry, to clarify necessary powers to allow police to access information on or through any electronic device.

Bravehearts fully supports the proposed amendment to enable selected civilian QPS staff to share information between government agencies and/or relevant non-government organisations.

QPS response

The support for the Bill, particularly clarification of access information provisions and enabling civilian staff members of the QPS to share domestic violence information, is noted.

Submission 6 – Firearm Dealers Association QLD

Extending licence suspension period

The Firearms Dealers Association Qld (FDAQ) support the extension of the weapons licence suspension notice from 30 days to 90 days, as the authorised officer will retain the ability to lift the suspension prior to 90 days.

QPS response

The FDAQ support of this aspect of the Bill is noted.

Obligation on armourers when modifying a firearm to become a different category

The Bill provides a new obligation on armourers when modifying a firearm to become a different category of weapon, namely to:

- be satisfied the customer holds the appropriate weapons licence to possess the modified firearm prior to conducting the modification work;
- immediately enter in the weapons register for each modification the particulars prescribed by regulation; and
- notify an authorised officer in the approved form of each modification within 14 days.

In objecting, the FDAQ state that sufficient safeguards exist when such modification occurs in practice as armourers must notify QPS Weapons Licensing when they modify a firearm to change the calibre or change the category. The FDAQ state that the existing practice of requiring that the licensee obtain a Permit to Acquire prior to retaking possession of a firearm that has been modified to a different category is in itself a sufficient safeguard. The FDAQ object that the term *immediately* is not defined and that the penalty for failing to check the licensee's licence prior to modifying a firearm is excessive (Maximum penalty - 100 penalty units).

QPS response

Currently, armourers who modify a firearm in such a way that it changes its category under the Weapons Categories Regulation 1997 are under no obligation to ensure the owner has the required licence to possess the modified firearm prior to conducting the work. Nor do they have a responsibility to notify QPS Weapons Licensing about the modification.

While the licensee must obtain a Permit to Acquire to retake possession of the weapon after any modification work that changes the weapon's category, this may not occur immediately. Consequently, QPS Weapons Licensing are not made aware of the modification unless a Permit to Acquire is applied for by the licensee. Updating the weapons register immediately will rectify this shortcoming.

While the word *immediately* is not defined in the amendment, it is already an existing term that all licensed dealers and armourers should be familiar with. Currently, section 71(2) 'Licensed dealers and armourers to keep register' of the *Weapons Act 1990* requires that licensed dealers or armourers must immediately enter in the weapons register the particulars prescribed under a regulation for each transaction involving a weapon. The amendment is consistently worded with existing obligations on armourers. While *immediately* is not defined in the Bill or the Weapons Act, it is given its ordinary meaning as noted by the FDAQ.

The new offence is punishable by a maximum of 100 penalty units where a licensed armourer fails to ensure they are satisfied the person seeking to modify their firearm to a new category, holds an appropriate licence for the new category of weapon. The new penalty is consistent with other existing offences under the Weapons Act such as section 70 'Employees of dealers and armourers' that places a positive obligation on licensed dealers and armorers to ensure they do not employ a person who will have access to weapons, unless they are at least 18 years and hold an appropriate licence. That offence is punishable by a maximum of 100 penalty units. The new offence penalty is considered appropriate to ensure licensees seeking modification

work that changes their firearms category are appropriately licensed prior to their request for modification work being conducted.

The Bill also introduces two new offences into section 71 (Licensed dealers and armourers to keep register) of the Weapons Act, both of which are punishable by a maximum penalty of 20 penalty units or 6 months imprisonment, namely:

- section 71(3A) – a licensed armourer must, for each modification of a firearm under section 70A, enter immediately in the weapons register the particulars prescribed by regulation; and
- section 71 (3B) –a licensed armourer must notify an authorised officer in the approved form of each modification of a firearm under section 70A within 14 days after the modification happens.

The maximum penalty for these offences is identical to existing penalties under section 71 of the Weapons Act. For example, section 71(2) has the same punishment where a licensed dealer or armourer fails to immediately enter in the weapons register the particulars prescribed under a regulation for each transaction involving a weapon. The new penalties are considered appropriate in order to place a positive obligation on licensed armourers to enter details in the weapons register and to provide details to an authorised officer of the weapon modified to another weapons category.

Recommendation:

No change.

Amended definition of magazine

The FDAQ supports the amended definition of magazine in the Weapons Act that provides separate definitions of *detachable magazine*, *integral magazine*, *magazine* and *magazine capacity*.

QPS response

The FDAQ support of this aspect of the Bill is noted.

Changing the word *or* to *and* for the prescribed weapon details provided to QPS Weapons Licensing

The Bill amends sections 8, 57, 59, 103 and 104 of the Weapons Regulation 2016 to provide that both the chamber capacity *and* the magazine capacity of a weapon is included as one of the prescribed details required under the Weapons Act. Those sections relate to applications for a weapons licence; licensed dealer/armourer weapons register requirements; collection register requirements; permit to acquire information requirements; or otherwise sells or disposes of a weapon information requirements. Currently, the requirement refers to the magazine *or* chamber capacity of the weapon.

The amendment ensures that the total ammunition capacity of a weapon is captured, for example where a weapon has a chamber capacity of more than one round of ammunition, in addition to any magazine capacity that may be applicable.

The FDAQ provides that the amendment will cause enormous consequences, requiring amendments to the weapons register and supporting forms.

QPS response

The amendment will require minor changes to the supporting forms and register as indicated by the FDAQ. However, providing the additional information is not expected to be overly burdensome with the additional information simply being the inclusion of a 'chamber capacity' in the respective forms and register.

Recommendation:

No change.

Submission 7 – Queensland Police Union of Employees

The Queensland Police Union of Employees (QPUE) supports the Bill, particularly access to digital information powers.

The QPUE states existing powers are extremely useful when investigating serious crimes such as paedophilia, terrorism and sexual offences such as rapes. Unfortunately, with advances in technology and the increasing use of widely available encryption, criminals have become more sophisticated in their attempts to avoid apprehension.

QPS response

The support for the Bill, particularly the addressing of access information provisions, is noted.

Submissions 8 & 10 – Respect Inc and Decrim QLD (joint submission), and Scarlet Alliance, Australian Sex Workers Association

Expansion from licensed brothels to anywhere sex work occurs

Respect Inc, Decrim QLD and Scarlet Alliance, Australian Sex Workers Association (the organisations) do not support proposed amendments in the Bill to the *Prostitution Act 1999* (Prostitution Act).

Under new section 61A of the Prostitution Act, an authorised officer may at any reasonable time enter premises that are a licensed brothel, or that the authorised officer suspects on reasonable grounds are being used for prostitution.

The organisations submit the extension of enforcement powers to cover all places where sex work occurs extends the reach of regulation covered by the Prostitution Act beyond licensed brothels. This amounts to a significant extension of regulation that is better suited to consideration as part of a comprehensive review of sex work legislation.

QPS response

The proposed amendments in the Bill are not an extension of police powers. Further, PLA officers will not utilise powers outside of their existing legislative function to monitor and have oversight of the licensed sector of Queensland's sex industry.

The proposed amendments amalgamate existing police powers under the Prostitution Act with new powers for authorised officers of the PLA. An authorised officer under the proposed amendments is any of the following: (a) a police officer of at least the rank of inspector; (b) a police officer authorised by a police officer of at least the rank of inspector to exercise enforcement powers; (c) a staff member authorised under section 60 by the executive director to exercise enforcement powers.

While authorised officers of the PLA do not have powers of arrest and will conduct their powers in the confines of licensed brothels, authorised police officers may utilise the power of entry for premises reasonably suspected of being used for prostitution. The provision was intentionally drafted this way and is modelled on section 50 of the *Tattoo Industry Act 2013*. Under that Act, an authorised officer includes a police officer and an inspector appointed under the *Fair Trading Act 1989*. The drafting of the provisions in this way prevents the need to draft separate parts in the Prostitution Act containing powers for authorised police and authorised officers of the PLA. While the PLA would rightly have an interest in unlicensed prostitution investigations the QPS are conducting, PLA officers have no interest and no role in exercising powers outside of licensed brothels.

Police will have a power of entry for premises that are suspected on reasonable grounds of being used for prostitution if the entry is authorised by warrant, if the occupier of premises consents to entry, or the premises are open for business or otherwise open for entry. To obtain a warrant for premises suspected of being used for prostitution a magistrate will need to be satisfied there are reasonable grounds for suspecting the place has a thing that may provide evidence of the commission of an offence against the Prostitution Act. Police can already obtain a warrant in these circumstances under section 150 of the PPRA, so there is no extension of powers for police, just an option of whether to apply for a warrant under the Prostitution Act or the PPRA. Further, police are currently able to enter premises with the consent of an occupier and able to enter premises open for business.

It is incorrect to say the Prostitution Act is solely concerned with licensed brothels and the power to enter premises reasonably suspected of being used for prostitution extends beyond the reach of the Prostitution Act. The Prostitution Act contains offences regarding unlawfully conducted sex work, for example under Part 6, 'Offences', Division 1 'General offences relating to prostitution'. Section 76(1)(a), 'Nuisances connected with prostitution' applies to conduct that happens in the vicinity of a place reasonably being suspected of being used for prostitution. Section 77 is the offence of 'Duress' for making another person provide prostitution by threat, harassment etc. This offence has a maximum penalty of 200 penalty units or 7 years imprisonment.

It stands to reason that to properly detect and enforce these offences authorised officers who are police officers, would be equipped with the power to enter premises reasonably suspected of being used for prostitution. Conversely, Part 6, Division 2 of the Prostitution Act lists

'Offences relating to the operation of a licensed brothel.' For the licensed brothel industry to be effective and not be undermined by unlicensed prostitution effective powers and offences for both licensed brothels and premises reasonably suspected of being used for prostitution are required.

Recommendation:

No change.

Role of Prostitution Licensing Authority

The organisations reiterate their submission the PLA's role should not be extended to all sex industry businesses.

QPS response

As explained above, an authorised officer under the proposed amendments includes authorised police officers and staff members authorised by the Executive Director of the PLA. However, in practice, section 101 of the Prostitution Act, which lists the functions of the PLA has the effect that the PLA will retain oversight and have their legal authority restricted to licensed brothels.

The current practice is that authorised police officers will generally not use their powers as authorised officers in licensed brothels, unless the PLA require police assistance, for example to investigate a more serious breach of the law in a licensed brothel that might result in the arrest and charging of an individual. Part of the rationale for providing powers to PLA officers is to limit the use of police resources in licensed brothels as far as possible and limit police contact with the licensed sex work industry. Conversely, powers for authorised officers to enter into premises suspected of being use for prostitution fall outside the functions of the PLA under the Prostitution Act and will only be utilised by authorised police officers.

Recommendation:

No change.

Removal of anti-corruption protections, arbitrary police and PLA powers, nil support for new section 61C (Authorised officer's general powers in premises) or new section 61G (Obstructing authorised officer)

QPS response

Many of the complaints of the organisations are based on the misconception that PLA officers will exercise powers outside of licensed brothels and that police have expanded powers in the Bill. This has been addressed above.

There are further concerns that the Bill will also result in a disproportionate amount of involvement of police in the licensed brothel industry resulting in corruption and working against recommendations of the *Fitzgerald Report*. The Bill has exactly the opposite effect by providing powers of entry, search and seizure to the PLA to monitor licensed brothels. Further,

the amendment in the Bill to reduce the breach of a licence condition from an indictable offence to a simple offence is an attempt to reduce police involvement in the licensed sex industry as well as to reflect the nature of seriousness of a breach. The PLA are pursuing approval to make this simple offence along with a number of other offences suitable for a Penalty Infringement Notice (PIN). This limits police involvement in the licensed sex industry as PLA officers can issue a PIN but have no powers to make an arrest and commence proceedings, which they currently require police assistance for.

Currently, under section 101(c) of the Prostitution Act, it is a function of the PLA to monitor the provision of prostitution through licensed brothels, but the Act does not give PLA officers the authority to enter brothel premises, in order to conduct compliance audits and inspections and investigate complaints, and to search and seize where necessary.

It is unusual for a regulatory authority not to have the necessary powers to fulfil their roles as an industry regulator.

Under the *Tattoo Industry Act 2013,* for example, authorised officers (which includes an inspector appointed under the *Fair Trading Act 1989*) have powers of entry and seizure and it is an offence to obstruct an authorised officer in the course of their duty. Authorised officers and officials under the *Liquor Act 1992*, *Transport Operations (Road Use Management) Act 1995* and a myriad of other Queensland Acts have sufficient powers and offences (for example, obstruction offences), which enable them to carry out their functions as licensing authorities and not be obstructed in their duties.

Recommendation:

No change.

No protection or privacy for sex workers

The organisations are also concerned that the welfare and privacy of sex workers is not protected by the Bill.

Since inception, the PLA has been conscious that sex workers (who at licensed brothels are female) are vulnerable to exploitation and has prioritised the agency and freedom of choice of these workers accordingly. These powers will enhance the PLA's capacity to ensure that sex workers rights are maintained by brothel owners and management.

It has been the experience of the PLA that sex workers at brothels welcome the ability of the PLA to access and inspect brothels because they realise that it safeguards their health, safety and wellbeing. They understand that their health and welfare are a priority for the PLA and its officers. Whilst the impact on women would be a relevant consideration if the PLA had never entered brothels before and conducted audits and inspections, it has done this regularly for almost 20 years. In the last 19 years there has not been a single complaint from sex workers about the PLA's operational impact on their work, privacy or dignity.

The PLA compliance unit is intentionally a mixed gender team. The compliance officers have extensive experience in monitoring brothels. They are alive to the sensitivities of sex workers and compliance methodologies reflect this. Several brothels almost exclusively rely on sex

workers from interstate on a 2-week fly in fly out roster system. A significant number of these sex workers are Asian, in Australia on visas and have limited to no English language skills. It is imperative that PLA officers have explicit powers, at least commensurate with transport inspectors and tattoo industry inspectors, to enter licensed brothels not only to ensure the brothel operates lawfully but also to ensure the health, safety, welfare and agency of sex workers is protected.

PLA officers do this by engaging with sex workers, sometimes without the licensee or manager being present, ensuring they have received adequate induction on their rights, sexual health and safe sex practices for example. This engagement also provides an opportunity to ensure that sex workers are well informed of their right of choice to accept or reject a client and provide only those sexual services they are comfortable with. It is significant, as stated above, that there has never been a complaint from a sex worker about the conduct of compliance officers or the activities they perform, arising from an audit or inspection of a licensed brothel.

Further, at present when a manager or licensee of a brothel refuses entry to the PLA it is merely the offence of breaching a licence condition. This would be dealt with at court by a low monetary penalty or not proceeded with at all in the public interest, which would be preferable for a manager or licensee who is delaying or preventing PLA entry in order to conceal serious offences. Serious offences could include anything from a minor working in a brothel to human trafficking and associated offences of servitude, slavery and debt bondage. Brothel owners and managers may obstruct the entry of compliance officers by pretending the brothel is closed for business, even though entry was required during brothel business hours, or by delaying entry through other means.

For example, this year the PLA received a complaint that a brothel was open for business but was not being personally supervised by the licensee or an approved manager. Compliance officers attended the brothel to investigate but were unable to enter the brothel because the doorbell went unanswered, giving the appearance that the brothel was closed. Later, entry was gained, and it was established the brothel had been operating without being personally supervised.

In relation to another incident, brothel entry was delayed to PLA officers, which gave time for an unauthorised person who was on brothel premises to leave the building through a back door and over a fence. On another occasion PLA officers who had entered a brothel saw on CCTV at front reception, a sex worker wrapped in a bed sheet being escorted from a service room out a back entrance and headed toward a garden shed. These few examples highlight that when entry by PLA officers is delayed, there is a reasonable belief that this is for the purposes of concealing or destroying evidence.

Recommendation:

No change.

Further issues

The organisations also contend that advertising penalties against sex workers must be repealed, police entrapment laws must be repealed, and that sex work should be fully decriminalised.

QPS response

These issues fall outside the ambit of proposed amendments to the Prostitution Act in the Bill.

Recommendation:

No change.

Submission 9 – Queensland Law Society

Introductory comments

The Queensland Law Society (QLS) is concerned that proposed changes to access information powers will allow police to 'pry into the private affairs of people who are not suspected of any offence' and 'into matters beyond the scope of any suspected offence under investigation'.

The QLS makes several contentions about the proposed access information amendments as follow:

No threshold for the standard order in a search warrant

The QLS submit the most frequent ground on which a search warrant will be issued is by a Justice of the Peace (JP) if satisfied there are reasonable grounds to suspect evidence is at the place. The QLS say a JP may include in the search warrant a further order regarding electronic information. The QLS submit there is no threshold required for the order and no requirement that a JP be satisfied of anything before making the order, therefore the order may be included in the search warrant without any reason. The QLS contend that at a minimum, the legislation should require a JP to be satisfied that there is likely to be electronic information that is evidence of the commission of an offence.

QPS response

The first line of section 154(1) of the PPRA makes it clear that only a magistrate or a judge may issue an order to access electronic information. The Bill does not alter this requirement. Given the focus of QLS was a contention that a JP may issue an order for no reason, the fact that an order can only be issued by a magistrate or judge would seem to assuage those concerns.

However, for completeness it is necessary to point out that a threshold is tied to an access information order, by virtue of an access order under section 154 being tied to a search warrant (See section 154 heading, 'Order in search warrant…). As per Schedule 9 of the Responsibilities Code, when making a search warrant application under section 150 of the PPRA the application must state information or evidence relied on to support a reasonable suspicion that evidence of the commission of an offence is at the place. By extension, a magistrate or judge would consider whether the information or evidence relied upon supports a reasonable suspicion that evidence of the commission of an offence is contained on a digital device/s at the place.

This is further evidenced by section 154A of the PPRA, 'Order for access information after storage device has been seized' (Note the section heading does not tie an order to the initial

search warrant). This section applies where a device is seized in a warrant, but the original warrant did not contain an access order, or a further access order is required. Section 154A(5) states that a magistrate or judge may make an order under subsection (2) only if satisfied there are reasonable grounds for suspecting that information stored on the storage device may be relevant evidence. A section akin to 154A(5) is deliberately left out of section 154, because the test of reasonable grounds under section 154 is tied to the search warrant application under section 150 and the issue of the search warrant under section 151. In this respect, section 154 is similar to section 153, 'Order in search warrant about documents' that also makes no mention of a threshold test.

Recommendation:

No change.

People to who the standard order applies

The QLS submit that once an access order is made, it will apply to:

(a) every person in possession of any digital device at the place;
(b) every owner of a digital device at the place; and
(c) every person who has ever used a digital device at the place.

The QLS proceed to provide an example that if Mr A is suspected of downloading child pornography and Mr A works for the Department of the Premier and Cabinet, police would be able to obtain a search warrant for the office and with a standard access information order, require every person in the office who possesses a smart phone or computer to provide access to their devices.

QPS response

Neither the existing legislation or proposed amendments contain a 'standard order'. The QLS description of an access order makes it appear as though a magistrate or judge would issue a blanket order to a police officer for a 'specified person' at a place and then police could apply the definition of a 'specified person' to require access from every person at the office by applying the definition as they see fit.

A magistrate or judge would never issue an order in those terms. As stated above, police in their search warrant application would provide information or evidence to support the reasonable suspicion that Mr A is involved in the downloading of child pornography while at work on a digital device which Mr A uses, access to which, may be protected by Mr A's password and user identification details.

A magistrate or judge could view the information in the application to satisfy themselves that Mr A meets the definition of 'specified person'. Mr A would meet the definition of 'specified person', that is '(a) a person reasonably suspected of having committed an offence for which the search warrant is or was issued, or the crime scene is or was established.'

Applying the test that an issuer must apply under section 151 to issue a search warrant, the magistrate or judge would then issue the order to apply to Mr A in relation to a digital device

in his possession, or to which he has access to at the place. The issuer would not have reasonable grounds to apply the terms of the order to every person who meets the definition of 'specified person' at the place. To suggest so is a misinterpretation of the legislation. Further, there is no suggestion this type of scenario has occurred under existing powers. On examination of the proposed amendments it is clear the Bill makes clarifying amendments only and does not expand police powers beyond what was originally intended.

Recommendation:

No change.

Duties under the standard order

The QLS submit that every person to whom the order applies is compelled to give a police officer:

(a) access to their device;
(b) the password and other log-in information to their device; and
(c) access to other information, not stored on the device, but accessible through the device, using the internet; including for example: bank accounts, medical records, tax returns, dating and match making services.

The QLS submit there is no requirement that a police officer's request for access to information have anything at all to do with the matter under investigation.

QPS response

As stated above an access information order is inextricably attached to a search warrant application. Police must specify the offence in the search warrant application, the offence they are investigating. For instance, if police suspect that child exploitation material (CEM) is contained on a person's computer or in a folder in their *Outlook.com* email account they would state this in their search warrant application.

Based on the information and evidence provided in the search warrant application there would be no justification to require access to a person's bank accounts as CEM cannot be stored in bank accounts. A magistrate or judge would not issue an order requiring a person to provide access to their bank accounts based on such a search warrant application. It must be remembered an access order is issued by a magistrate or judge under their terms in accordance with information supplied in a search warrant application. If, in this example, upon requiring and gaining access to a person's computer and *Outlook.com* email account, police suspect that more evidence of CEM is hidden in other password protected accounts, police would be required to seek a further order from a magistrate or judge to require access to those accounts as per section 154A(1)(b)(ii) of the PPRA, 'Order for access information after storage device has been seized'. That section permits police to make further application for an access order to a magistrate or judge where 'the search warrant contained an order made under section 154(1) or (2) but further access information is required for a police officer to gain access to information stored on the device that may be relevant evidence.'

Further, the amendments do no more than clarify access information provisions, so they operate as intended by amendments made in the *Serious and Organised Crime Legislation Amendment*

Act 2016 (SOCLAA). Amongst other things, the amendments in SOCLAA clarified that access to a device, includes information accessible through the device. In current section 150AA 'storage device' means a device on which information may be stored electronically, including a computer'. 'Stored', on a storage device, includes 'accessible through the device'.

The provisions have been operating since 2016 and there is no evidence to suggest that magistrates or judges have been issuing orders attached to search warrants that compel a person to provide access to bank accounts, medical records and other information that is beyond the scope of the offences specified in the search warrant application of police or commission officers of the Crime and Corruption Commission (CCC).

In the matter of *R v Gill* [2017] QDC 242 (*Gill*) police located CEM in the applicant's Hotmail accounts 'anonwhaterver14@hotmail.com' and 'sexysarahjade@hotmail.com'. The evidence of CEM was excluded because the scope of information police could access under an access order was unclear.

The Queensland Organised Crime Commission of Inquiry (QOCCI) cited numerous examples of child sex offenders using social media applications and email accounts to commit child sex offences. For example, they cited the matter of *R v Brauer* (Unreported, District Court of Queensland, Wall DCJ, 17 September 2014) where the 35-year old defendant admitted to police he had used an email account to send and receive emails containing child exploitation material; in total, the defendant had distributed 180 child exploitation material images and 1 movie file; used Skype to communicate with a 14-year-old girl who lived in Sydney; they met on an online social networking site aimed at teenagers, called 'Habbo'; and they used Skype and the webcam to talk, during which the defendant pressured the child into exposing her breasts and vagina on the webcam. The defendant also exposed his penis to her. This is one of many case study examples cited in the QOCCI report of offenders using email and social media accounts to offend.

As stated above the proposed amendments are a proactive step to avoid a reoccurrence of cases like *Gill* in the access information provisions as amended by the SOCLAA. Although the decision in *Gill* was based on search warrant/access order provisions before the SOCLAA amendments, the QPS has obtained three sets of legal advice that indicates the current provisions are ambiguous due to the lack of a definition for 'stored information' and the meaning of the word 'stored' as it applies to information.

The legal advice confirmed that information accessible on applications such as *Facebook* and *Instagram* is not 'stored' information in the requisite sense and therefore incapable of being validly accessed under section 154 of the PPRA. As access information definitions across Queensland legislation are similar, the lack of a definition of 'stored information' or 'information stored' exposes the same deficiencies to access information powers under the relevant legislation.

If proactive steps are not taken and the provisions are not clarified to operate as intended, child sex offenders and other criminals will find incentive in concealing offences on private email accounts and social media applications.

The amendments in the Bill address this ambiguity by replacing reference to 'stored information' with 'device information', 'storage device' with 'digital device' and by making

amendments to other definitions. Other minor changes are made only for the purpose of establishing consistency in access information order provisions across the suite of relevant Queensland legislation consisting of the PPRA, the CCA, the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, the *Public Safety Preservation Act 1986* and the Criminal Code.

In summary, police and commission officers already have the ability to access information via a person's device, albeit it in the terms under which the judicial order is issued under the PPRA and CCA, and within the terms of safeguards under other access order legislation. The use of the existing powers has not resulted in the scenario of unfettered access that QLS have suggested and simply clarifying the provisions will not have that affect.

Disconnection from place

The QLS submit the PPRA was designed in contemplation of searches of places and was limited to places where evidence is suspected to be. The QLS say the proposed power is, in effect a judicial order to give up the keys to their digital life. The QLS submit the powers bear little relationship to the place to be searched; so little that the artificial result has already seen a search warrant being issued for a police station at which a person or their device happens to be.

QPS response

The PPRA may well have originally not contemplated access powers related to cloud services. However, rapidly changing technology has necessitated that police powers be updated so serious crime can be effectively detected, investigated and prosecuted.

The use of digital devices such as mobile phones, smart-watches, tablets and lap-top computers is common place in our modern society. These devices have the capacity to store large amounts of information within or via the device in cloud services. This technology also presents an opportunity for criminal elements to conceal evidence of offences on or through their devices and protect those devices from police access by password or encryption code.

Section 154 was inserted into the PPRA in 2006. The Explanatory Notes stated the 'additional powers were to enable police to demand the passwords or encryption codes from a suspect where evidence of an offence was stored on a suspect's computer or other storage device which was password protected and/or where the files were encrypted.' Amendments via the *Serious and Organised Crime Legislation Amendment Act 2016* (SOCLAA) clarified that police can gain access to information accessible through a storage device (for example, information in cloud services) and enabled police to apply for an access order after a storage device has been seized and taken from the place where a warrant was executed.

As stated numerous times, these are existing powers that require clarification to remove ambiguity, so to classify them as 'proposed powers' is incorrect, as is the QLS contention that the powers will broadly effect every person and every device.

In relation to the comment about a search warrant on a police station, police have lawfully seized digital devices from persons when exercising powers to search a vehicle or person without warrant. Police have no powers in these circumstances to obtain an access order, even

though they have lawfully seized a digital device under a reasonable suspicion it contains evidence of the commission of offences, for example, fraud, drug trafficking, CEM and so on. In an attempt to gain access to the digital devices police have in the past applied for a search warrant on the police station where the lawfully seized digital device has been stored, in order to obtain an access order for the device. QPS understands that magistrates generally refuse to issue a search warrant and access order in these circumstances. This is provided as an explanation to the QLS comments. There are no changes in the Bill that make access orders in the PPRA applicable to lawfully seized digital devices beyond the scope of search warrants or crime scene warrants.

Recommendation:

No change.

Introduction and conclusion

In their introductory and concluding comments QLS claim the proposed powers provide unfettered access to digital information, have no threshold test and permit a JP to make a 'standard order'. Further, QLS submit police should only be permitted to require access to devices and on-line accounts, which are reasonably suspected to contain evidence of an offence.

QPS response

The Bill does not expand access information powers but simply clarifies the provisions to ensure they operate as intended.

Under current search and crime scene warrant access order provisions police are required to provide information or evidence to support a reasonable suspicion of the commission of an offence or a crime scene threshold offence respectively. The issuer (that is, a magistrate or judge) can issue the warrant and related access order under section 154 to provide access to devices or accounts for which information or evidence has been provided and the issuer believes there are reasonable grounds for. Where a device is lawfully seized in a search warrant, but no access order has been granted or further access is required beyond the terms of the initial warrant and access order, section 154A allows for a subsequent access order. As the subsequent order is not tied to the initial warrant application, section 154A(5) stipulates that a magistrate or judge may make a subsequent order only if satisfied there are reasonable grounds for suspecting that information stored on the device may be relevant evidence.

The assertions that a JP can issue an access order, that there are 'standard orders' that provide blanket or unfettered access to any person and any digital device, and that no threshold test is applicable to the provisions is incorrect, both in the current provisions and the proposed amendments to the Bill.

Recommendation:

No change.