



QUEENSLAND POLICE SERVICE

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Our Ref:

Your Ref:

Hon Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Wells

Thank you for your letter dated 9 September 2011 seeking departmental assistance with the examination of the Police Powers and Responsibilities and Other legislation Amendment Bill 2011 (the Bill).

I assure you the Queensland Police Service is pleased to assist the Legal Affairs, Police, Corrective Services and Emergency Services Committee (the Committee) in its scrutiny of the Bill.

To assist the Committee on the purpose of, and the proposals in, the Bill, as requested, I have attached an overview background of the Bill. I also refer the Committee to the explanatory notes.

However, some of the requested material was considered by Cabinet, and therefore is unable to be released without prior approval of the Premier. Specifically, I am unable to provide the Committee with a copy of the *Police Powers and Responsibilities Act 2000* Review Committee 2009 Final Report, recommendations of the PPRA Review Committee that were not included in the Bill and the outcome of public consultation on the proposals in the Bill.

Deputy Commissioner (Specialist Operations) Ross Barnett will appear as the Queensland Police Service representative at the public hearing on Tuesday 4 October, 2011.

Please do not hesitate to contact Acting Inspector Robert Utz of the Legislation Development Unit on 30155983 or email Utz.RobertD@police.qld.gov.au for any further assistance.

Yours sincerely

R ATKINSON
COMMISSIONER

Attachment to the letter to Legal Affairs, Police, Community Safety and Emergency Services Committee

Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

Purpose of Bill

The purpose of the Police Powers and Responsibilities and Other Legislation Amendment Bill 2010 (the Bill) is to ensure that the Police Powers and Responsibilities Act 2000 (PPRA) continues to meet its purposes as described in section 5 'Purposes of the Act' of the PPRA being:

- consolidates and rationalises the powers and responsibilities police officers have for investigating offences and enforcing the law;
- provides powers necessary for effective modern policing and law enforcement;
- provides consistency in the nature and extent of the powers and responsibilities of police officers;
- standardises the way the powers and responsibilities of police officers are to be exercised;
- ensures fairness to, and protects the rights of, persons against whom police officers exercise powers under the PPRA;
- enables the public to better understand the nature and extent of the powers and responsibilities of police officers.

PPRA Review

Section 807(1) 'Review of Act' of the PPRA requires the Minister for Police to ensure the operation of the PPRA is regularly reviewed.

On the 5th of May 2007 the then Minister for Police and Corrective Services, the Honourable Judy Spence MP, announced the commencement of the PPRA review and that the review was to be undertaken in three stages.

Stage One

Stage One consisted of internal consultation within the Queensland Police Service, via a state-wide internal email to all members of the Service, seeking comment on areas within the PPRA that they considered required legislative reform.

The terms of reference for stage one were:

- assessing the adequacy of safeguards both in terms of ensuring the provisions of the PPRA are complied with and whether particular safeguards are over burdensome or in fact, necessary;
- consolidating and simplifying powers, e.g., the separate impoundment powers that relate to 'road hooners', motorbike noise, and traffic offences;
- assessing the benefit of dividing the PPRA into specific, purpose designed Parts or Acts, e.g. Police Powers and Responsibilities (Investigative Powers) Act, the Police Powers and Responsibilities (Watch-house Officers) Act, or the Police Powers and Responsibilities (Covert Surveillance) Act; and

- reviewing the need for additional powers for police officers.

Stage one was undertaken from 5 May 2007 to 7 December 2009 and resulted in the development of 77 proposals in preparation for deliberation during stage two.

Stage Two

Stage Two involved the creation of the PPRA Review Committee to examine the submissions from members of the Queensland Police Service and additional recommendations and proposals from committee members and their organisations.

The Minister for Police, Corrective Services and Emergency Services invited key government and non-government stakeholders to be represented on the Committee and was chaired by the Honourable Wayne Wendt MP. The Committee consisted of members from the following organisations:

- Queensland Law Society;
- Queensland Council for Civil Liberties;
- Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd;
- Legal Aid Queensland;
- Crime and Misconduct Commission;
- Office of the Director of Public Prosecutions;
- Public Interest Monitor;
- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;
- Department of Communities;
- Queensland Police Service;
- Queensland Police Union of Employees; and
- Queensland Police Commissioned Officers Union of Employees.

The terms of reference for the PPRA Review Committee were further aligned with the objectives of the PPRA, whilst remaining consistent with those relevant to stage one of the review. The terms of reference for the review committee were:

- assessing the current safeguards that ensure fairness to, and protect the rights of persons against whom police officers exercise powers under the PPRA;
- consolidate and rationalise provisions containing similar powers and responsibilities of police officers when investigating offences and enforcing the law;
- ensure the exercise of the powers and responsibilities of police officers are consistent and standardised;
- ensure police officers have all powers necessary for effective modern policing and law enforcement; and
- ensure the community understands the nature and extent of the powers and responsibilities of police officers as provided by the PPRA.

The PPRA Review Committee met on six occasions between 7 December 2009 and 17 June 2010 inclusive. Following the Committee's consideration of the QPS proposals, those proposals were separated into three categories.

- **Supported proposals** were those which had unanimous support from the Committee;
- **Unresolved proposals** were those which failed to achieve unanimous support; or
- **Withdrawn proposals** which were those which the Queensland Police Service identified as not requiring legislative reform, having the ability to be resolved through alternative policy forums or should not be pursued due to insufficient supporting evidence.

Submissions made by committee members were considered, discussed and recommended for the consideration of the Minister for Police and Government.

Stage Three

Stage three involved public consultation. The community, including community organisations, were invited to provide submissions. This stage was conducted from the 5 April 2010 to the 17 May 2010. The public consultation paper was published in the Queensland Police Service website over this time. Hardcopies of the consultation paper were also available from any police station in Queensland. The Minister for Police also made a media release calling for submissions from the public on the review of the PPRA.

Both the public consultation paper and the Minister's media release identified the terms of reference for this stage of the review which were identical to the terms of reference for the PPRA Review Committee.

The public consultation paper did identify that the PPRA Review would not consider submissions relating to any matter which were under review by the Crime and Misconduct Commission. At that time, the Crime and Misconduct Commission was undertaking reviews of:

- move-on powers;
- off-road motorbike noise laws; and
- provisions relating to evading police officers.

46 public Submissions were received as a result of the public consultation stage. All public submissions received were placed before the PPRA Review Committee for discussion. Where issues were considered more suitable to other Government departments, those matters were referred to the other department for action. Where issues raised did not require legislative reform, those proposals were forwarded to relevant internal Queensland Police Service units for consideration.

The results of the committee deliberations and recommendations were subsequently reported to the Minister and the government.

Consultation Draft Bill

Upon completion of the Review, a Consultation Draft Bill was developed and released for further consultation with members of the PPRA Committee and for general public consultation. The Consultation Draft Bill was accompanied by a clause by clause summary to assist members of the community with their interpretation of the clauses. The Consultation Draft Bill was posted on the Queensland Police Service internet website inviting public comment. The Minister via a media release provided an overview of, and called for public submissions in relation to, the Consultation Draft Bill. Public consultation was undertaken for a six week period from 28 March 2011 to 6 May 2011.

Twenty public submissions were received as a result of this consultation process.

Consultation on current Bill

During the development of the Bill, intra-Government consultation was also conducted with the following departments:

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

Parts of the Bill

The Bill is divided into 6 parts. Part 2 creates new police powers and introduces appropriate safeguards for police officers to follow when exercising powers under the PPRA. Part 2 of the Bill also relocates sections of the *Police Powers and Responsibilities Regulation 2000*, including Schedule 10 'Responsibilities Code', into the PPRA. This consolidates police powers and established safeguards, facilitating greater understanding by both police officers and the Queensland community of the nature and extent of the powers and responsibilities police officers have for investigating offences and enforcing the law.

Part 3 reorganises the remaining sections of the Regulation, again with a view to creating more user friendly legislation.

Parts 4 and 5 make amendments to the *Evidence Act 1977* and the *State Penalties Enforcement Act 1999* respectively. The amendments in both parts are consequential and support the amendments contained in Part 2 of the Bill to ensure the policy is able to be achieved.

Part 6 of the Bill contains minor and consequential amendments. Those amendments do not create a policy shift but, for example, reflect current drafting practices.

Key amendments

Pat-down Search of persons detained under ss 50-52

Clause 6 inserts new section 52A 'Power to conduct pat-down search for ss 50-52' into the PPRA and provides power for a police officer to conduct a pat-down search of a person who is detained under sections:

- 50 'Dealing with breach of the peace';
- 51 'Prevention of riot'; and
- 52 'Prevention of offences-generally'

as well as search their personal property.

The pat-down search is limited to items that can ordinarily be used to cause harm to any person, including the detaining officers, or to effect escape. Clause 102 'Amendment of sch 6 (Dictionary)' inserts the definition for pat-down which means a search of the person conducted by quickly running the hands over the person's outer garments.

A police officer may take and retain anything while the person is detained and must return the thing upon release, unless the item may provide evidence of the commission of an offence.

Clause 88 'Amendment of s 629 (Removal of clothing for search)' explicitly excludes the application of section 629 to new section 52A thereby ensuring that a police officer is not authorised to require the person to remove clothing.

The general safeguards relating to searches of person contained in the PPRA would still apply, including:

- causing minimal embarrassment and taking reasonable care to protect the dignity of the person (s. 624);
- having a police officer provide name, rank and station to the person (s. 637); and
- entering the details of the search in the register of enforcement acts (s. 679).

Pat-down search of juveniles for liquor

Clause 8 inserts new sections 53C 'Power to conduct pat-down search of minor' and 53D 'Disposal of liquor under s 53 or 53(C)'.

New section 53C provides a police officer with the power to conduct a pat-down search of a minor and search of personal property in the possession of the minor, in circumstances where the police officer reasonably suspects the minor to be in possession of liquor in contravention of section 157(2) of the *Liquor Act 1992* (the Liquor Act).

Pursuant to section 157(3) of the Liquor Act, a minor does not commit an offence under subsection (2) in circumstances where the minor consumes or possess liquor in a public place, which has been declared by local government as a designated area where the public may consume liquor, and the minor is under the supervision of a responsible adult.

By its definition (clause 102), a pat-down search is limited to a police officer quickly running the officer's hands over the person's outer garments.

Clause 88 'Amendment of s 629 (Removal of clothing for search) explicitly excludes the application of section 629 to new section 53C thereby ensuring that a police officer is not authorised to require the minor to remove clothing.

The general safeguards relating to searches of person contained in the PPRA would still apply including:

- causing minimal embarrassment and taking reasonable care to protect the dignity of the person (s. 624);
- detaining the person for search to be no longer than is reasonably necessary (s 626);
- having a police officer provide name, rank and station to the person (s. 637); and
- entering the details of the search in the register of enforcement acts (s. 679).

Removal of rights under a security interest

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

Enter place to assist animals

Clause 18 'Amendment of s 147 (Powers to provide relief to animal)' qualifies the requirement under subsection (3) for the leaving of a notice when a police officer enters a place to assist an animal. The amendment removes the necessity for the police officer to leave a notice where, in all the circumstances, it is not reasonably practicable to do so.

Ancillary conduct by civilian participants

Clauses 20-26 amends the PPRA to enable a limited role for the utilisation of a civilian participant in controlled activities. However, that participation is limited to ancillary conduct and does not allow for the civilian participant to actually undertake criminal activities. Only a police officer of or above the rank of chief superintendent can authorise a civilian participant to engage in ancillary conduct.

The ancillary conduct includes only acts that would enable an authorised police officer to commit an offence authorised under a controlled activity authorisation.

Expansion of what surveillance device warrant authorises

Clause 29 'Amendment of s 332 (What a surveillance device warrant authorises)' expands the powers of what a surveillance device warrant authorises.

Clause 29(2) allows for the entry of premises, for which a surveillance device warrant has been issued, for the purposes of the preparation for installation of the authorised surveillance device. The entry to the place is still governed by a warrant issued by a Supreme Court judge and subject to the current safeguards of the chapter. Furthermore, the Public Interest Monitor (PIM) will continue to have involvement in the application process and a report to the issuer, or PIM, regarding the warrant will still be required.

Clause 29(4) allows for the temporary removal of a vehicle for the purposes of installing, maintaining or retrieving a surveillance device or enhancement equipment. This amendment also allows for the entry of premises for the purposes of removal or return of the vehicle.

Search and research of person's possession whilst in custody

Clause 48 'Amendment of s 443 (Police officer may search person in custody)' provides a police officer with the power to search and re-search anything in the possession of a person to whom Chapter 16 'Search powers for persons in custody' of the PPRA applies. The power to search and re-search is limited to reasons of cataloguing and accountability, and to determine the presence of anything that may be taken and retained under the existing subsections 3(a) to (c).

Child DNA sampling

Clause 62 'Insertion of new ch 17, pt 5, div 3A' creates a scheme whereby a police officer may apply to a magistrate for an order to perform a forensic procedure on a child who is not being investigated as a suspect for an offence, but where the police officer reasonably suspects the test results will assist the investigation by identifying the offender or establish whether a child DNA sampling offence has been committed. The forensic procedure is limited to the taking of a DNA sample for DNA analysis.

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

The DNA sample order provides a power for a police officer to enter a place the police officer reasonably suspects the child is located, without warrant, to search the place for the child. However, prior to entering the place, the police officer must give the occupier a copy of the order, tell the person that the police officer is entitled to enter and search the place for the child, and give the person the opportunity to allow the police officer to enter the place, unless immediate entry is required to the place.

Noise abatement

Clauses 81-84 enhance the ability of police to respond to complaints of excessive noise. Firstly, the amendments provide that a police officer may receive and act upon a complaint of excessive noise from an anonymous complainant. This does not remove the requirement for a complaint to be made prior to a police officer investigating the complaint. It is then, upon the police officer being reasonably satisfied that the noise is of the type for which a noise abatement direction may be given and is excessive in the circumstances, that the police officer may direct a person to abate the excessive noise.

Secondly, the amendments enable police officers, upon determination that an extended noise abatement direction is required, to give an extended noise abatement direction for up to 96 hours. The amendments provide police officers with the same powers to deal with an extended noise abatement direction as they have with the existing 12 hour direction.

Expansion of controlled operations

Clause 101 'Amendment of sch 5 (Additional controlled activity offences)' expands Schedule 5 of the PPRA to include additional offences of section 77A 'Prostitute providing sexual intercourse or oral sex without a prophylactic' of the *Prostitution Act 1999*. The additional offences included in the schedule are limited to the offer, and acceptance of an offer, to provide prostitution involving sexual intercourse or oral sex without a prophylactic being used. The inclusion of these offences will provide immunity for a police officer authorised to engage in a controlled activity to the extent of the authorisation.

Fundamental legislative principles

Throughout the development of the Bill, due consideration was given to the fundamental legislative principles as contained in the *Legislative Standards Act 1992*. Potential breaches of fundamental legislative principles are addressed in pages 2 to 9 of the Explanatory Note for the Bill.