QUEENSLAND POLICE SERVICE

COMMISSIONER'S OFFICE
200 ROMA STREET BRISBANE QLD 4000 AUSTRALIA
GPO BOX 1440 BRISBANE QLD 4001 AUSTRALIA

TELEPHONE: 07 3364 6488 FACSIMILE: 07 3364 4650

Our Ref:

Your Ref:

The Honourable Dean Wells MP
Acting Chair
Legal Affairs, Police, Corrective Services and Emergency Services Committee
Parliament House
George Street
Brisbane Qld 4000

Dear Mr Wells

I refer to the Legal Affairs, Police, Corrective Services and Emergency Services Committee's briefing paper on the application to the Police Powers and Responsibilities and Other Legislation Amendment Bill 2011 (the Bill) of the fundamental legislative principles as contained in the *Legislative Standards Act 1992*. I note the Committee considered the explanatory notes that accompany the Bill to contain the information required by section 23 of the *Legislative Standards Act* and raised four points of issues which required further clarification.

Please find attached information to assist the Committee in its final deliberations.

I would like to take this opportunity to thank the Committee for working with the Queensland Police Service in its examination of the Bill.

Please do not hesitate to contact Senior Sergeant Robert Utz of the Legislation Development Unit on or email for any further assistance.

I trust this information is of assistance.

Yours sincerely

R Barnett

per R ATKINSON
COMMISSIONER

Attachment to the response to Legal Affairs, Police, Community Safety and Emergency Services Committee – Scrutiny issues Police Powers and Responsibilities and Other Legislation Amendment Bill 2011

The Legal Affairs, Police Corrective Services and Emergency Services Committee seeks clarification on comments raised by the Aboriginal and Torres Strait Islander Women's Legal Advisory Service (ATSIWLAS) involving the questioning process of aboriginal persons. The specific comments requiring clarification are:

1. *the language of the relocated section 420A is 'patronising and paternalistic';*
2. *people should be able to self-identify as Aboriginal and Torres Strait Islander, rather than the police forming a 'reasonable suspicion';*
3. *suggests a process for asking if a person needs a support person or lawyer (are these points covered in general rules about questioning?); and*
4. *the question of whether a person being questioned can comprehend the questions should apply to anyone being questioned, not just ATSI people.*

1. ***The language of the relocated section 420A is 'patronising and paternalistic.***
The purpose of this clause is to relocate section 36 'Questioning of Aboriginal people and Torres Strait Islanders' of the *Police Responsibilities Code 2000* into the *Police Powers and Responsibilities Act 2000* (PPRA) as the new section 420A. The content of this provision has not changed.

   It is acknowledged that ATSIWALS felt that the use of the term 'Aborigine' is inappropriate. In this regard, the Deputy Commissioner has made an undertaking to replace the term 'Aborigine' with 'Aboriginal Person'.

   The purpose of section 420A is to recognise that some aboriginal persons are vulnerable due to cultural issues. Section 420A aims to ensure that all people have the same access to safeguards and protection under the law.

2. ***People should be able to self-identify as ATSI, rather than the Police forming a 'reasonable suspicion***
A central purpose of the PPRA is to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law. This is reflected in section 420A of the PPRA by placing obligations on police to ask certain questions of and provide specific information to aboriginal people and Torres Strait Islanders once the officer reasonably suspects that a person falls within that special needs group. Section 420A does not limit a person's capacity to self-identify.

   In July 2003, the Queensland Government implemented the Indigenous identifier program. The purpose of this program is to identify the interaction between the ATSI community and the criminal justice system. As a state criminal justice agency, the QPS is required by Government to ask and record answers to the standard Australian Bureau of Statistics (ABS) question for Indigenous self-identification (*Are you of Aboriginal or Torres Strait Islander origin?*). The information is used by Government to:

   (i) *identify gaps in service provision to the ATSI community;*
   (ii) *develop and fund alcohol management programs;*
   (iii) *report to the Commonwealth in relation to ATSI people and crime; and*
   (iv) *report to the Australian Bureau of Statistics.*

This simple questioning, as part of the identifier program, enables the QPS to gather accurate data and provides one indicator in relation to issues such as over-representation within that system.

The QPS has a clear policy to guide police where a person self-identifies as an aboriginal person. Section 6.3.6 'Aboriginal and Torres Strait Islander people' of the Operational Procedures Manual provides:

Procedure
All persons having contact with the Service and who claim to be an Aboriginal person or a Torres Strait Islander should be treated as such until the contrary is shown.

3. ***Suggests a process for asking if a person needs a support person or lawyer (are these points covered in general rules about questioning?)***
Section 420 'Questioning of Aboriginal people and Torres Strait Islanders' of the PPRA provides that a police officer must not question a relevant person who is an aboriginal person unless a support person is present. This right to have a support person present may be waived by the aboriginal person. Service policy has been developed to provide guidance to police officers in relation to this matter.

This section is further supported by sections 418 and 419 of the PPRA which place a legislative requirement upon a police officer to inform a relevant person that he or she may telephone or speak to a friend or relative to inform the person of their whereabouts and to ask the person to be present during questioning before a police officer starts to question a person. Such legislative requirements have been in place since the commencement of the *Police Powers and Responsibilities Act 1997.*

4. ***The question of whether a person being questioned can comprehend the questions should apply to anyone being questioned, not just ATSI people.***
QPS policy has been developed to ensure that persons are questioned by police officer fairly. Police officer's are required by QPS policy to first establish if a special need exists. Officers are to evaluate the ability of the person to be interviewed to look after or manage their own interests by determining if the person is:

(i) capable of understanding the questions posed;
(ii) capable of effectively communicating answers;
(iii) capable of understanding what is happening to him/her;
(iv) fully aware of the reasons why the questions are being asked;
(v) fully aware of the consequences which may result from questioning; and
(vi) capable of understanding his or her rights at law.

The QPS has recognised that it is not possible to exhaustively list those persons who have a 'special need'. However, the following circumstances should be considered as creating a special need until the contrary becomes apparent:

(i) immaturity, either in terms of age or development;
(ii) any infirmity, including early dementia or disease;
(iii) mental illness;
(iv) intellectual disability;

(v) illiteracy or limited education which may impair the person's capacity to understand the questions being put to them;
(vi) inability or limited ability to speak or understand the English language;
(vii) chronic alcoholism;
(viii) physical disabilities including deafness or loss of sight;
(ix) drug dependence;
(x) cultural, ethnic or religious factors including those relating to gender attitudes;
(xi) intoxication, if at the time of contact the person is under the influence of alcohol or a drug to such an extent as to make them unable to look after or manage their own needs;
(xii) aboriginal people and Torres Strait Islanders;
(xiii) children; and
(xiv) persons with impaired capacity.

If a police officer is to interview a person with a special need, it is QPS policy that the officer should take whatever action is necessary to compensate for the special need or to comply with legislative requirements. The action taken will vary with each individual case but should:

(i) avoid any situation or circumstance which may give rise to a suggestion of oppression, unfairness, fear or dominance by a police officer, or to any other injustice to the person being interviewed;
(ii) avoid any situation or circumstance whereby the person being interviewed may be overborne, oppressed or otherwise unfairly or unjustly treated;
(iii) ensure that the person being interviewed is provided with sufficient assistance to enable them to exercise their legal rights; and
(iv) consider any cultural or religious factors which might cause the person being interviewed to be reluctant to provide information, e.g., devout Muslim women may be reluctant to speak in the presence of men and aboriginal men may be reluctant to discuss certain issues in the presence of women.

Safeguards in questioning are utilised by police when interviewing any person. While police ask a number of questions to establish whether a special need exists, it is also common place to ask the following questions with regard to personal particulars:

(i) What level of schooling did you achieve?
(ii) Do you have any trouble reading or writing the English language? (If the answer is yes, attempt to nullify by asking questions such as "can you read the newspaper?"

These questions are provided in the QPS 'First Response Handbook'. The 'First Response Handbook' is available to all police officers and is an invaluable tool to operational police.

POLICE POWERS AND RESPONSIBILITIES AND OTHER LEGISLATION AMENDMENT BILL 2011

Date introduced: 25 August 2011

Responsible minister: Hon N S Roberts MP

Portfolio responsibility: Minister for Police, Corrective Services and Emergency Services

BACKGROUND

The Bill aims to ensure the *Police Powers and Responsibilities Act 2000* (PPRA) continues to meet its purposes as described in section 5 'Purposes of the Act'. That is, the Bill aims to ensure the PPRA:

- 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.

ISSUES ARISING FROM EXAMINATION OF BILL

Clauses	6,8, 48, 62, 86.
FLP issue	**Rights and liberties of individuals** - Section 4(2)(a) *Legislative Standards Act* Does the bill have sufficient regard to the rights and liberties of individuals?
Comment	**Clause 6** inserts a new s.52A that allows a police officer (an officer) to conduct, without a warrant, a pat-down search of a person detained under s.50-52 of the *Police Powers and Responsibilities Act 2000* (the PPRA) and to search any personal property in the person's possession. The officer may seize items found during that search that the officer reasonably suspects could provide evidence of the commission of an offence. An officer is also allowed, to take from a detainee, any items that could ordinarily be used by a detainee to endanger the safety of, or cause harm to, themselves or others, or that could be used to effect an escape (ss52A(4)). If a thing is taken from a person under ss.52A(4) the thing must be returned to that person on his/her release from police detention. **Clause 8** affords a new search power to police. It inserts s.53C and s.53D into the PPRA to allow an officer to stop, detain and search, without a warrant, a minor for liquor, where such is, or is likely to, contribute to the commission of an offence by the minor. The search power is limited to a pat-down search of outer clothing and of

	personal property in the minor's possession, for such liquor. The officer may seize such liquor found during the search. Under s.53D the officer can dispose of that liquor in a way that is reasonably necessary to prevent the commission, continuation or repetition of an offence (eg. by emptying out an opened can of beer). Per s.53D(3) the seized thing (eg. bottle/can of liquor) is deemed to have been forfeited to the State immediately after the officer seizes it. **Clause 48** amends s.443 of the PPRA regarding searches of persons in custody. It will allow an officer to search and re-search anything in the possession of a person in custody. The existing search/seizure powers allow for the search for, and seizure of, any items from (the body of) or person that might provide evidence of the commission of an offence. Clause 48 omits the words 'from the person' thus enabling officers to search for and seize items that may be evidence of an offence from *either or both* the person or their personal property that has been brought into custody with them. Whilst this expansion of search/seizure powers could be viewed as a potential breach of the detained person's rights and liberties, it must be remembered that they are detained in custody under arrest and that the existing provisions already allow for a search of their person for such items, which would generally be considered to be a greater potential rights' infringement than a search of possessions. The new provisions will allow search/re-search for the purposes of cataloguing personal property brought by a person into watch-house custody and to ensure that property taken from the person upon their arrest is duly itemised and can be accounted for when returned on their departure. It will also enable handbags, backpacks and other personal property etc to be searched for any items that might endanger anyone's safety, anything that may be used for an escape, or anything that the officer reasonably considers should be kept in safe custody while the person is detained. The power to re-search the property would be to ensure that, for example, the contents of a handbag as itemised in a watch-house property register, could be re-searched in view of the bag's owner to assure them that their possessions have all been duly returned. **Clause 62** inserts a new ch17 part5, div3A into the PPRA to allow the taking of DNA samples from children to investigate or prosecute particular sexual offences committed against the children (such as rape, incest, and carnal knowledge of a minor). It will allow a police officer (an officer) to 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 taking a DNA sample (by mouth swab or hair) for DNA analysis and the DNA sample must be destroyed upon finalisation of the charge to which the sample relates. An officer is only permitted to make application to a magistrate when forensic procedure consent cannot be obtained. The issue of a DNA sample order is restricted to a child DNA sampling offence and, in considering the application, the court must have primary regard to the child's wellbeing. Upon issue of the DNA sample order, an officer may enter a place the officer reasonably suspects the child is located, without warrant, to search the place for the child. Prior to entering the place the officer must give the occupier a copy of the order, advise the occupier that the officer is entitled to enter and search the place for the child, and give the person the opportunity to co-operate and allow police entry. When removing the child to a place to have the DNA sample taken, the officer may only use minimal force, described as 'carrying the child if it is an infant' or 'holding the child's hand unless the child resists'. The child may be accompanied by a support person.

	As the child to be DNA tested is a potential victim, or prodigy of an alleged victim, there is no offence created for the child's failure or refusal to comply with the order. An offence is however created for a person who prevents or tries (without reasonable excuse) to prevent an officer from enforcing the order. This is to ensure that a person who has committed offences against the child, or who has an interest in ensuring the child's DNA sample is not provided (eg. because DNA testing of the child will prove incest), may not interfere with the enforcement of the order. The order will also allow an officer to photograph the child, to assist in verifying the identity of the child from whom the DNA sample was taken. **Clause 86** amends s.609 of the PPRA in respect of an occupier's rights upon entry by police under that head of power. Section 609 allows police to enter a property where they reasonably suspect an imminent risk of personal injury or damage to property at that place, or they reasonably suspect domestic violence may or has recently occurred there. Officers may stay at the place, and detain anyone there, for the time reasonably necessary to establish whether the reason for the entry exists, to ensure that an imminent risk of injury, damage or domestic violence does not exist at the place and to give or arrange for reasonable help to any person there. If the officer is reasonably satisfied a reason for the entry does exist, the officer may detain and search a person, and/or detain a person to prevent violence or property damage and search them for anything that did/could facilitate such injury, damage or violence. The officer may also search the place for anyone who may be at risk of being injured or subjected to domestic violence, and can search for and seize anything that could be used to cause personal injury, property damage or acts of domestic violence. Before searching the place under s.609 the officer must (currently) inform the occupier (if present) that the occupier may accompany the police office while the place is being searched. Clause 86 will amend s.609 to remove the entitlement of the occupier to accompany police during a search of the place conducted under the authority of s.609. The ability to exclude the occupier from accompanying the search is limited to when an officer reasonably suspects that allowing the occupier to accompany the officer will result in an injury being caused to a person. Prior to searching the place, the occupier must be warned that he/she will be excluded from accompanying the police while the search takes place. The explanatory notes (p 8) justify this exclusion of the occupier on the grounds that it is necessary to support the safety of police officers and affected persons and noting the limited nature of the search powers under ss.609(4) (search for persons at risk of injury/domestic violence or for anything that has been/could be used to cause such personal injury, property damage or domestic violence). Whilst not canvassed in the explanatory notes, these amendments will also secure the safety of emergency services personnel who may have been called to the property and would allow police to find a victim of domestic violence and speak to them alone without the intimidating presence of an alleged perpetrator accompanying the search. The potential downsides of such an unaccompanied search is that it will invariably make police vulnerable to allegations that they have 'planted' evidence or cajoled victims/witnesses during their time alone at the property. If made, such allegations would have the potential to taint (and perhaps render inadmissible) evidence obtained during a search under s.609.

Clause	49, 54, 66-72, 91-92, 102, 109-110
FLP issue	**Delegation of administrative power** – Section 4(3)(c) *Legislative Standards Act* Does the Bill allow the delegation of administrative power only in appropriate cases and to appropriate persons?
Comment	**Clauses 49, 54 and 66-72** each amend various PPRA provisions to allow '*forensic nurse examiners*' (as well as the existing role for doctors and/or dentists) to perform DNA sampling tasks. **Clause 102** defines a forensic nurse examiner by reference to qualification requirements prescribed under regulation. The explanatory notes (p 9) advise that, *'the use of forensic nurse examiners will address the reported shortage of doctors, in regional Queensland, who are willing to be appointed by Queensland Health to undertake these procedures, and [will] alleviate the current resource strain in the collection of samples from victims, suspects and offenders.'* Given that the DNA sampling techniques authorised under the PPRA involve mouth swabbing, hair removal or (rarely) the taking of a blood sample, the use of forensic nurse examiners seems an appropriate delegation that would be of practical assistance to the reported high demand for forensic sampling. **Clauses 91 and 92** broaden the power of a watch-house officer to allow a watch-house officer to transport prisoners between a watch-house and a relevant place (such as court cells or correctional facilities) or to another watch-house (as for example might occur if the first watch-house became overcrowded due to multiple arrests at a particular event). The explanatory notes (p 8) state that "*This expansion is considered necessary to relieve police officers of administrative tasks and ensure police officers are available for operational roles. The delegation of power to a watch-house officer is considered appropriate as section 5.18 [Appointment of watch-house officers] of the* Police Service Administration Act 1990 *limits any such appointment to where the Commissioner of Police is satisfied the person has the appropriate qualifications and experience for performing the functions of a watch-house officer.'* Given the above safeguards on appointment, and the broader public interest in having police officers free to undertake operational duties, this delegation seems appropriate. **Clauses 109 and 110** allow for the appointment of a DNA analyst where the Commissioner of Police has entered into an arrangement with a forensic laboratory or the chief executive (health). Upon being appointed a DNA analyst, the analyst may issue a DNA evidentiary certificate under the *Evidence Act 1977*. The explanatory notes advise (p 9) –'*This delegation of power is necessary to support the utilization of non-government laboratories in the analysis of DNA samples. All laboratories, regardless of ownership, will be required to ensure those who are involved with the analysis of DNA samples are appropriately qualified.'*

Clause	18, 29, 62, 83
FLP issue	**Power to enter premises** – Section 4(3)(e) *Legislative Standards Act* Does the Bill confer power to enter premises and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer?

Comment	**Clause 18** amends s.147 of the PPRA. Section 147 allows an officer to enter an unoccupied place (that is not a residence or part of a residence) to provide assistance to a suffering animal and at present requires the officer to leave a conspicuous notice advising of the action taken on the property and the officer's contact details. The amendment in clause 18 tempers this requirement so that the officer has to leave such a notice only where reasonably practicable. This is to cover situations (particularly in rural settings) where assistance might be provided to give food, water or to untether a tangled animal in a yard or a paddock that is located some considerable distance from the residence attached to the property, or where it might not be readily apparent which property/owner agisted animals in a rural setting belong to. Although this provision was mentioned in the explanatory notes as a potential breach of an FLP, the search powers (where FLP breaches might be contained) are already contained in the PPRA as it currently stands. The amendment in clause 18 does not extend those powers, it merely tempers notice requirements to relieve officers from the obligation to leave a notice where to do so is impracticable. **Clause 29** will allow for the entry to premises for which a surveillance device warrant has been issued, to enable preparation for the installation of that surveillance device. It will allow the taking of digital footage in the place prior to the device's installation so that the technical support team installing the device (often in very limited time when the unwitting target temporarily leaves the property) have a better idea of the property's layout for the installation. The entry to the place will still be governed by a warrant issued by a Supreme Court judge and the Public Interest Monitor will have a role in the application process. Various reporting requirements advising oversight bodies of compliance with such warrants will also apply as presently occurs with surveillance device warrants. **Clause 62** will, as noted above, allow an officer issued with a DNA sample order to enter a place the officer reasonably suspects to find the child who is the subject of the order, *without warrant*, to search the place for the child (proposed s488I). Prior to entering the place the officer must give the occupier a copy of the order, advise the occupier that the officer is entitled to enter and search the place for the child, and give the person the opportunity to co-operate and allow police entry (ss.488J(2)). Although such entry is allowed without a warrant, it is done in the execution of a court order in the circumstances outlined above under 'rights and liberties'. Further, the officer need not comply with the 'notice' requirements in ss.488J(2) if the officer reasonably believes that immediate entry to the place is required to ensure the effective exercise of powers under the DNA sample order is not frustrated (ss.488J(3)). **Clause 83** inserts a new s.581A into the PPRA allowing police officers to give extended noise abatement directions to deal with excessive noise. Proposed subsection 581A(3) will allow an officer to enter a place without a warrant to give a person responsible for the noise an extended noise abatement direction. Entry without warrant is arguably justified as it will enable police to take action to deal with excessive noise situations (especially those occurring in the evening) where to delay to obtain a warrant would only extend the time that excessive noise might continue to disturb surrounding properties. Also, the entry without warrant is only authorised for the limited purpose of issuing an excessive noise abatement direction.

Clause	61
FLP issue	**Retrospectivity** – Section 4(3)(g) *Legislative Standards Act* The Bill does not adversely affect rights and liberties, or impose obligations, retrospectively?
Comment	**Clause 61** inserts a new s.487A into the PPRA to allow a DNA sample to be taken for analysis from a person who is subject to an interstate parole order and who has been transferred into the custody of Queensland authorities from another State/Territory under the *Prisoners (Interstate Transfer) Act 1982.* The explanatory notes advise (p 5) *'The taking of the DNA sample is limited to those persons who committed an offence for which a DNA sample may have been taken in the originating jurisdiction, is transferred into the custody of Queensland authorities, and the results of the DNA analysis of the person's DNA sample are not recorded on CrimTrac. Where the committed offence is not an offence for which DNA may have been taken in the originating jurisdiction, the person's DNA may not be taken under this power.'* In respect of the need for this provision to operate retrospectively, the explanatory notes advise the following (p 5): *'This amendment is intended to include people who have already been transferred to Queensland. Retrospectivity is necessary as there are currently 52 prisoners who are subject to an interstate parole order in Queensland. Of those 52, there are 4 prisoners who do not have the results of a DNA analysis of a DNA sample recorded on CrimTrac. The offences committed by these 4 prisoners include rape and stealing. This clause is justified given the link between DNA and solving crime, and the public interest in ensuring that offenders are brought to justice. Furthermore, the power to take a DNA sample without a court order accords with the current accepted practice when taking a DNA sample for DNA analysis from a transferred prisoner who is detained in a corrective services facility.'*

Clause	20-24
FLP issue	**Immunity from proceedings** – Section 4(3)(h) *Legislative Standards Act* Does the Bill confer immunity from proceeding or prosecution without adequate justification?
Comment	**Clauses 20-24** relate to amendments to chapter 10 of the PPRA. **Clause 20** will insert a new s.220A into the PPRA to provide a definition for *'ancillary conduct'* for controlled activities. *'Ancillary conduct'* is defined to mean conduct that amounts to aiding or enabling a police officer to commit a controlled activity offence or conspiring with an officer for the officer to commit such an offence. It does not include conduct that is actually doing an act or making an omission that constitutes a controlled activity offence. **Clauses 21-23** amend sections 223 and 224 of the PPRA and insert a new s.224A. The effect of the sections will allow senior officers of specified rank to authorise civilian (non QPS) participants to engage in ancillary conduct for a controlled activity for the police service (QPS); will make it lawful for a person acting under a controlled activity authorisation to engage in ancillary conduct for a controlled activity; and specify the requirements for such conduct. **Clause 24** amends s.225 of the PPRA to extend the pool of people granted protection

	from liability (immunity) in respect of controlled activities to persons involved in the provision of ancillary conduct for that controlled activity. It provides that a person who authorised ancillary conduct for a controlled activity under s.224 or a person who is/was authorised to engage in ancillary conduct for a controlled activity (both being deemed a *'relevant person'*) will not incur civil liability for an act done, or omission made, in the honest belief that it was done or omitted to be done under the authority of chapter 10. Any civil liability that would have attached to the person will instead attach to the State (ss.225(3)). Those relevant persons will not incur criminal liability for an act done or an omission made under an authority given for a controlled activity and in accordance with applicable policies/procedures applying to that controlled activity. Further, criminal liability will not attach to a person for an act done or omission made that, because of the controlled activity, was reasonably necessary for protecting the safety of any person; although police officers will still be liable for acts/omissions that result in personal injury or death of a person or serious loss of, or damage to, property. The explanatory notes acknowledge the 'very limited role' for civilian participants in controlled activities (p 4). They note that the use of a civilian participant in a controlled activity must be authorised by an officer of at least the rank of chief superintendent, is limited to ancillary conduct, requires the civilian to be under the instruction of a police officer, and cannot extend beyond 7 days. The notes state that '*The power to utilise a civilian participant is necessary in the detection and investigation of controlled activity offences.*' Whilst the explanatory notes offer some discussion of the need for using civilian participants in controlled activities, the only apparent justification for granting (qualified) civil and criminal immunity to civilian participants is that –'*The existing safeguards applicable to a police officer participating in a controlled activity will be extended to the participation of a civilian participant.*' Whether granting potentially extensive immunities to civilian participants is justified is a policy consideration and outside the scope of this briefing. It should be noted that all that is required for a civilian participant to be exempt from civil liability is an 'honest belief' that their action/omission was authorised under the Act. This omits any requirement that such 'honest belief' be reasonably held or that the action/omission occurred without negligence. Police officers involved in ancillary conduct for controlled activities are also given the same broad exemption from civil liability as the civilian participants where they honestly believe their act/omission was authorised under the Act, although it is to be hoped that their greater training will mean less likelihood of their committing an action for which they could otherwise have incurred civil liability.

Clauses	6, 8, 12
FLP issue	**Compulsory acquisition of property** – Section 4(3)(i) *Legislative Standards Act* Does the Bill provide for the compulsory acquisition of property only with fair compensation?
Comment	**Clause 6** allows a police officer (an officer) to conduct a pat-down search of a person detained under s.50-52 of the *Police Powers and Responsibilities Act 2000* (PPRA). It also allows the officer to seize items located during that search that could ordinarily be used by a detainee to harm themselves or others, or that could be used to effect an escape. The officer may also seize items the officer reasonably suspects could provide evidence of the commission of an offence. The seized item is deemed forfeited to the State upon seizure. No provision is made to compensate the owner for the item. **Clause 8** inserts a new s.53C which gives power to conduct a pat-down search of a minor for liquor and to seize liquor found during that search. Under new ss.53D(3) the seized thing (eg. bottle/can of liquor) is deemed to have been forfeited to the State

	immediately after the officer seizes it, and the officer may (per s.53D) dispose of the liquor in a way that is reasonably necessary to prevent the commission, continuation or repetition of an offence (eg. by emptying out an opened can of beer). Reflecting public policy and societal expectations, no provision is made to compensate the minor for the seizure and disposal of the liquor. **Clause 12** extinguishes the right of a person to enforce a charge or other registered security interest against a motor vehicle, by enabling the sale of a motor vehicle that is not recovered from the police impound lot. Such sales are by public auction. This clause will protect the rights (at law) of 'bona fide third party purchasers' of vehicles from such an auction/sale by ensuring that the vehicle purchased is unencumbered by any registered charge/security interest and thus is not subject to possible repossession by a security holder enforcing a charge. In such circumstances the security provider may receive some payment through the prioritized disbursement of the proceeds of sale of the vehicle, however any shortfall between the sale proceeds received and the amount outstanding under the security, would remain a (contractual) debt due from the vehicle's previous owner to the security holder. Whether such debt could be recovered is another issue (less likely if the vehicle's owner is incarcerated). In practical terms it is arguable that the price received at public auction reflects fair market value (the bona fides of the sale is assumed) and, as such, the security provider would likely not have received a higher sale price for the vehicle if the provider had repossessed and sold it themselves (unless they had intended to restore/modify/enhance the vehicle to achieve a greater sale price). The order for the disbursement of the proceeds of a sale at auction are set out in s.121 PPRA. Any expenses of sale/auction costs and any costs incurred in removing or storing an impounded vehicle are met first (in that order) from the proceeds of sale and then the remainder is used to pay out (as far as is possible from the remaining amount) any debt owed to a holder of a registered security interest. Thus, it is possible that the holder of a registered security over a vehicle may receive less than full compensation for the extinguishment of their interest in the vehicle depending on the sale price received.

Clause	**40, 62**
FLP issue	**Aboriginal tradition and Island custom** – Section 4(3)(j) *Legislative Standards Act* Does the Bill have sufficient regard to Aboriginal tradition and Island custom?
Comment	**Clause 40** inserts a new s.420A into the PPRA that requires a police officer who is about to question a person the officer reasonably suspects to be an adult Aborigine or Torres Strait Islander, to, unless the officer already knows the person, first ask questions necessary to establish the person's level of education and understanding. **Clause 62** of the Bill has regard to Aboriginal tradition and Island custom in the definition of who is a parent of a child for the purposes of Chapter 17, Part 5, Division 3A – *Taking DNA samples from children to investigate or prosecute particular sexual offences.* See Div 3A, new s.488C, 'Meaning of Parent', subsections (3) and (4).

OPERATION OF CERTAIN STATUTORY PROVISIONS

Explanatory notes

Part 4 of the *Legislative Standards Act* relates to explanatory notes. Subsection 22(1) states that when introducing a bill in the Legislative Assembly, a member must circulate to members an explanatory note for the bill. Section 23 requires an explanatory note for a bill to be in clear and precise language and to include the bill's short title and a brief statement providing certain information.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by s.23 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

Prepared by the
Scrutiny of Legislation Secretariat