

Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013.

Policy objectives and the reasons for them

The policy objectives of the Bill are to combat the threat of criminal motorcycle gangs (CMCGs) to public safety and certain licensed industries and authorised activities, through enhanced information-sharing, licensing, interrogatory and correctional powers. These objectives align with the Queensland Government's commitment to address serious community concern about recent incidents of violent, intimidating and criminal behaviour of members of CMCGs, as well as the infiltration of criminal organisations within legitimate businesses and industries in the community.

Further policy objectives of the Bill are to:

- amend section 16(3A) of the *Bail Act 1980* to: expand the circumstances in which a defendant may be placed in a 'show cause' position in relation to bail; require the Crown to allege the defendant's participation in a criminal organisation rather than the current requirement of proof of that fact; and, to clarify that subsection (3A) applies to offences committed prior to 17 October 2013;
- enhance the ability of the Crime and Misconduct Commission (CMC) to effectively deal with criminal organisations by: complementing and clarifying the powers of the CMC to hold intelligence hearings about criminal organisations; expanding the definition of former participant in a criminal organisation to a person who was a participant in the preceding two years; providing for confidentiality of CMC operations and investigations; and including safeguards to ensure no unfairness is caused to a respondent who is a defendant in later criminal proceedings as a result of the use in a confiscation proceeding against the respondent under the *Criminal Proceeds Confiscation Act 2002* (CPCA) of any compelled self-incriminating evidence given by the respondent in a CMC hearing or investigation;
- enable a mechanism to allow for the management of both remand and sentenced prisoners who have been identified as a participant in a criminal organisation;
- further ensure that the confidentiality of criminal intelligence is maintained in any proceeding initiated under the *Tattoo Parlours Act 2013*;
- enhance community safety by providing that the chief executive of the Department of Transport and Main Roads (DTMR) can give to the head of an approved agency any or all information held in a database maintained by DTMR; and

- allow the Police Commissioner to disclose to an entity, the criminal history of a current or former participant in a criminal organisation where the Commissioner is satisfied it is in the public interest.

The Bill also amends the *Bail Act 1980*, the Criminal Code, the *Justices Act 1886* and the *Penalties and Sentences Act 1992* to enhance the ability of the courts to use video and audio links in criminal proceedings. As a result, the Bill includes technical amendments to the *Evidence Act 1977*, the *District Court of Queensland Act 1967* and the *Supreme Court of Queensland Act 1991*. The Bill further amends the *Bail Act 1980* to provide for the conduct of a bail proceeding by a Magistrates Court outside the district or division in which the bail proceeding would otherwise be required to be heard where a practice direction is made by the Chief Magistrate permitting this.

The Bill also includes an amendment to the *Crime and Misconduct Act 2001* unrelated to criminal organisations to facilitate the ongoing operations of the CMC by allowing acting part time commissioners to be appointed by the Governor in Council.

Achievement of policy objectives

Licensing Acts – amendments to prevent access to certain licences, permits and activities

The Bill achieves the principal policy objectives to prevent identified participants in criminal organisations (as defined in the Criminal Code) and where necessary criminal organisations, from obtaining or retaining a licence, permit or other authority, as administered by various government agencies, by amending the following Acts:

1. *Electrical Safety Act 2002*;
2. *Liquor Act 1992*;
3. *Queensland Building Services Authority Act 1991*;
4. *Racing Act 2002*;
5. *Second-hand Dealers and Pawnbrokers Act 2003*;
6. *Security Providers Act 1993*;
7. *Tow Truck Act 1973*;
8. *Weapons Act 1990*;
9. *Work Health and Safety Act 2011*.

This is the most effective way of excluding participants in criminal organisations and those criminal organisations from participating in particular industries and providing the community with assurance that people authorised to operate in those industries have been subject to rigorous identification and probity requirements. A critical role will be played by the Queensland Police Service in assessing the suitability of licence applicants and licensees to hold a licence.

The Acts listed above have been identified as regulating high risk industries or activities; for example, there is a known link between suspected participants of criminal organisations and criminal organisations applying for and being granted licences (including nightclub licences) or permits (including adult entertainment permits) under the *Liquor Act 1992*. Under these amendments the Commissioner of Police will be tasked with identifying participants in a criminal organisation, as defined in the *Criminal Code 1899* (an identified participant). A list of identified participants will be provided to agencies administering the Acts, listed above.

In-keeping with the Queensland Government's policy objective to restrict licensing, permit and authorised activity options of identified participants, the amendments, where necessary, will also:

- authorise the Police Commissioner to disclose a list of participants in criminal gangs to the administering departments or agencies;
- maintain the confidentiality of criminal intelligence, where the Commissioner of Police provides information to the chief executive of the administering department; and
- maintain the confidentiality of criminal intelligence in review processes through the Queensland Civil and Administrative Tribunal (QCAT) and provide that the *Judicial Review Act 1991* does not apply to the refusal to grant or the decision to cancel a licence, permit or authority in relation to criminal organisations or identified participants, except to the extent the decision is affected by jurisdictional error.

Even though the proposed amendments provide that the appellant will not be privy to any confidential criminal intelligence, QCAT or the Court will still be able to consider the merits of the decision.

Where an application is refused or a licence, permit or authority is cancelled, the individual will be informed of the decision to the extent that it does not disclose criminal intelligence. The applicant or licensee will also be provided with a QCAT information notice again without disclosing criminal intelligence however it will be sufficient for the chief executive to advise that reason for, or information about, the decision is 'confidential information'.

Weapons Act 1990 – amendments to prevent identified members and participants in criminal organisations from obtaining or possessing a weapons licence

The regulatory framework in the *Weapons Act 1990* is different from the other licensing, permit and authorising Acts. Currently, sections 10B and 10C of the *Weapons Act 1990* (WA) provide that authorised persons must consider various factors when determining whether an applicant is a 'fit and proper' person to hold a weapons licence. Certain factors automatically determine that an individual is not a 'fit and proper' person to hold or continue to hold a licence. These currently include:

- the person has been convicted of, or discharged from, custody on sentence after the person has been convicted of any offences relating to the misuse of drugs, using or threatened use of violence, the use, carriage, discharge or possession of a weapon; or
- the person has a domestic violence order, other than a temporary protection order, made against the person.

To support the policy objectives and to provide for consistency with the scheme being introduced for other licensing schemes, it is proposed that the WA be amended to include persons who are identified participants in criminal organisations, and bodies that are identified criminal organisations, as defined by the Criminal Code, as an additional group of persons to be considered not 'fit and proper' to possess a weapons licence.

Excluding members and participants of criminal organisations as persons suitable to possess a weapons licence will reduce the risk of criminal motor cycle gang infiltration into the licensed weapons industry and the possession of weapons generally.

Amendments to support the disclosure of information in possession of the Queensland Police Service (QPS)

The Police Commissioner will be authorised to disclose a list of participants in criminal gangs to departments administering the following Acts: *Electrical Safety Act 2002*; *Liquor Act 1992*; *Queensland Building Services Authority Act 1991*; *Racing Act 2002*; *Second-hand Dealers and Pawnbrokers Act 2003*; *Security Providers Act 1993*; *Tow Truck Act 1973*; *Weapons Act 1990*; and *Work Health and Safety Act 2011*.

Bail Act 1980 section 16(3A)

The *Bail Act 1980* was amended by the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* by the insertion of new section 16(3A) to provide that if a defendant is a participant in a criminal organisation, the court or police officer must refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified.

In the matter of an application for bail by Michael Kenneth Spence (Supreme Court of Queensland No. 10279 of 2013), Her Honour Justice Wilson held that the time at which an applicant must be a participant in a criminal organisation, if the show cause provision in section 16(3A) is to apply, is at the time of the bail application.

If an individual chooses to be part of a criminal organisation then it is reasonable for the legislature to deem that individual an on-going risk to the community in lieu of evidence to the contrary. The fact that an individual has ceased to be a member of the criminal organisation may be a relevant factor for the court to consider, when determining whether the defendant has shown cause as to why they should not be detained. An individual who purports to resign their membership from a criminal organisation or disassociate from the organisation, is best placed to prove that fact.

The Bill amends section 16(3A) to ensure that a defendant charged with any offence, must show cause as to why their detention in custody is not justified, where it is alleged the defendant is, or at any time has been, a participant in a criminal organisation. The amendment deems such individuals to be an on-going risk with regards to bail considerations. Requiring the Crown to allege the circumstance of participation rather than prove the circumstance as a fact is consistent with the evidentiary requirements of section 16(3).

Section 16(3A) commenced operation on 17 October 2013. It is a provision which regulates the grant of bail and as a procedural law appropriately operates retrospectively. However, given subsection (3A) has the effect of removing the presumption for bail the operation of the subsection will be clarified in the Bill as applying to offences committed before 17 October 2013.

Crime and Misconduct Act 2001 – amendments to clarify and further enhance the ability of the CMC to effectively deal with criminal organisations

The *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* amended the *Crime and Misconduct Act 2001* (CM Act) to enhance the ability of the CMC to effectively deal with criminal organisations. In particular, additional powers were given to the CMC to allow hearings to be conducted to gather intelligence and to investigate or hold hearings to respond to an immediate threat to public safety. Further a participant in a criminal organisation can no longer rely upon a threat to his or her personal safety or property to

refuse to answer a question or produce a document at a hearing that involves a criminal organisation. The punishment for contempt was also strengthened to provide for mandatory minimum terms of imprisonment for a second or third contempt.

Further amendments to the CM Act support the policy objectives of the Bill, and enhance the ability of the CMC to effectively deal with criminal organisations. A summary of the CMC related amendments included in the Bill are:

- amending section 331 of the CM Act to: clarify the CMC may continue to investigate into the affairs of a person, including requiring the person to provide answers when that person has been charged with a criminal offence; require the CMC must take certain action to prevent unfairness to an accused person in his or her criminal trial; and that, for the purposes of the section, a criminal proceeding commences from when the person is charged;
- providing that a ‘participant in a criminal organisation’ includes a person who was a participant in a criminal organisation at any time within the preceding two years;
- increasing the statutory penalties for non-compliance by witnesses at CMC hearings (such as, refusing to attend, take an oath, produce documents or give answers) in sections 82, 183, 185, 188, 190 and 192;
- amending sections 72, 74 and 75 of the CM Act to allow the CMC to issue a notice that may require the production of documents, information or statements (as may be required under the relevant section) for an intelligence operation approved under section 55A of the CM Act;
- maintaining confidentiality of material filed in support of, or opposing an application in the Supreme Court to determine if a person has a ‘reasonable excuse’ under section 195 of the CM Act to refuse to produce documents or answer questions at a CMC hearing;
- maintaining confidentiality of material filed in support of, or opposing an application in the Supreme Court to determine if a witness is in contempt under section 199; and
- providing safeguards in the CPCA to ensure no unfairness is caused to a respondent who is a defendant in later criminal proceedings as a result of the use in a confiscation proceeding against the respondent of any compelled self-incriminating evidence given by the respondent in a CMC hearing or investigation.

An amendment to the CM Act unrelated to criminal organisations will be made to facilitate the ongoing operations of the CMC by allowing acting part time commissioners to be appointed by the Governor in Council.

Corrective Services Act 2006 – amendments addressing criminal organisations and participants

The *Corrective Services Act 2006* will be amended to enable Queensland Corrective Services (QCS) to implement a restricted management regime for participants in criminal organisations in Queensland prisons.

The Bill will enable Queensland Corrective Services to:

- segregate a remand or sentenced prisoner and apply a restrictive management regime including limiting that prisoner’s entitlements if informed by the Commissioner of the Queensland Police Service that the prisoner is a participant in a criminal organisation;
- enable segregation and a restricted management regime remains in place until such time that the prisoner is no longer a participant in a criminal organisation;
- ensure all prisoners who are subject to the restricted management regime will receive high

or maximum classification;

- ensure regular medical checks of prisoners who are subject to the restricted management regime;
- enable the exchange of information and intelligence between QPS and QCS; and
- apply electronic monitoring, movement restrictions and drug testing requirements to offenders under supervision in the community who are members of a criminal organisation.

Justices Act 1886, Bail Act 1980, Penalties and Sentences Act 1992, Criminal Code – use of video link and audio link facilities in criminal proceedings; and bail applications outside of the relevant Magistrates Court district or division

The Bill contains the following amendments to enable an increase in the courts' use of video and audio links for the appearance of defendants, with the aim of enhancing the orderly and expeditious conduct of proceedings.

The Bill amends the *Justices Act 1886* to allow for 'audio link facilities' in addition to 'video link facilities' to be used to conduct criminal proceedings in the Magistrates Court.

The Bill amends the *Justices Act 1886*, the *Penalties and Sentences Act 1992* and the Criminal Code to remove the requirement that parties consent to the use of video or audio links in certain criminal proceedings. The discretion will lie with the court to order the use of such links where it is considered to be in the interests of justice to do so. Consequential amendments are made to the *Supreme Court of Queensland Act 1991* and the *District Court of Queensland Act 1967*.

The Bill amends the *Justices Act 1886* to allow for video link facilities and audio link facilities to be used across districts and divisions of the Magistrates Courts. The amendments will mean that cases can be dealt with more readily than would otherwise be the case.

The Bill also amends the *Bail Act 1980* to provide for the conduct of a bail proceeding by a Magistrates Court outside the district or division in which the bail proceeding would otherwise be required to be heard where a practice direction is made by the Chief Magistrate permitting this.

Transport Planning Co-ordination Act 1994 – amendments to allow the chief executive of DTMR to give to the head of an approved agency any or all information held in a database maintained by DTMR

DTMR currently holds information collected under a number of transport Acts. This includes, for example, details about vehicle registrations, the holders of driver licences and authorisations granted by the department to allow people to undertake certain activities (e.g. drive public passenger transport vehicles or conduct vehicle safety inspections).

To further enhance community safety, the Bill will amend the *Transport Planning and Co-ordination Act 1994* to provide that the chief executive of DTMR can give any or all information kept under a transport Act to the head of an 'approved agency' for law enforcement purposes. An 'approved agency' must be an entity established under a law of the Commonwealth or a State and must be prescribed in a regulation. The Bill will amend the *Transport Planning and Co-ordination Regulation 2005* to prescribe the Australian Security

Intelligence Organisation (ASIO) as an ‘approved agency’.

ASIO has identified that its current limited ability to access this information is an intelligence gap, the significance of which has been highlighted in its preparations for the G20 Summit in Brisbane next year. Providing access to this information will assist ASIO not only in its preparations for the G20 Summit but also in its ongoing role of monitoring and protecting national security. A Memorandum of Understanding will be developed to put in place appropriate conditions under which this access will be granted.

Tattoo Parlours Act 2013

Amendments are included to further ensure that the confidentiality of criminal intelligence is maintained in any review proceeding initiated under the Act in certain circumstances.

It has been identified that the existing provisions, for example, might not cover circumstances where a Court identifies that criminal intelligence has been inadvertently used in proceedings. Although section 57 applies to QCAT in relation to maintaining criminal intelligence and the Supreme Court in some circumstances, not all provisions in section 57 apply broadly to review proceedings under certain circumstances.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the policy objectives other than legislation.

Estimated cost for government implementation

The Government has announced the allocation of up to an extra \$7 million to assist the CMC to target criminal gangs.

Otherwise, the amendments will be implemented within existing resources of the respective administering agencies.

Consistency with fundamental legislative principles

As discussed in further detail below, the Bill may be considered to contravene fundamental legislative principles (FLP) in a number of respects. However, the measures are considered justified as an appropriate and effective way of dealing with serious issues associated with the infiltration of criminal organisations, particularly CMCGs, within legitimate businesses and industries in the community, as well as address unacceptable violent, intimidating and anti-social behaviour the community has been subjected to in recent times by members of CMCGs.

Licensing, permit and Acts authorising certain activities

It is arguable that the Bill does not have sufficient regard to the rights and liberties of individuals, as required by section 4(2)(a) of the *Legislative Standards Act 1992*. The chief executives responsible for their specific licensing, permit and authorising Acts will use the information about identified participants, provided by the Commissioner of Police, to make

specified licensing decisions. Identified participants in criminal organisations will be effectively banned from working in the licensed occupations, have their permits and applications for permits cancelled or refused and be prevented from engaging in particular activities requiring government authorisation.

In addition, the chief executive must immediately cancel a licence, permit or authority if they become aware the licensee is an identified participant in a criminal organisation or, in some cases, a criminal organisation. When an immediate cancellation has occurred, the Bill does not provide a right to provide reasons not to cancel the licence, permit or authority. This raises a concern in relation to the fundamental legislative principle relating to administrative decisions under section 4(3)(a) of the *Legislative Standards Act 1992*.

However, aside from being justified due to the serious issues associated with the infiltration of criminal organisations, the licensing, permit and authorising Acts being amended include a full merits review process through QCAT. In addition, immediate cancellation is limited to specific circumstances and is considered necessary to prevent the operation of participants in criminal organisations.

Where an application for a licence, permit or authority is refused or existing licence, permit or authority immediately cancelled due to the person being an identified participant in a criminal organisation, the judicial review right is restricted, as Part 4 (Reasons for Decision) of the *Judicial Review Act 1991* does not apply to such a decision of the chief executive. This arguably breaches the natural justice principles of right to be heard, and procedural fairness under section 4(3)(b) of the *Legislative Standards Act 1992*.

While there will be review rights to QCAT in respect of licensing and permit decisions and decisions authorising particular activities under specified Acts, there are limitations on release of criminal intelligence information. As the relevant licensing decisions may rely on criminal intelligence information used by the Commissioner of Police in identifying a participant of a criminal organisation, the Bill provides for some reviews to take place without the applicant or licensee being provided with the criminal intelligence information and some hearings may be closed. This arguably breaches the natural justice principles of procedural fairness under section 4(3)(b) of the *Legislative Standards Act 1992*. However, these safeguards are procedurally necessary to ensure that an applicant for review does not inadvertently obtain confidential criminal intelligence. Natural justice is still afforded to an affected person as they are able to proceed with a full merit review.

Corrective Services Act 2006

The amendments to the *Corrective Services Act 2006* (CSA) provide for the segregation and a restricted management regime of prisoners identified as participants in a criminal organisation. It also establishes the power of the chief executive to restrict the movement of and monitor and require drug tests of, offenders in the community on community based orders and parole orders, who are also identified participants of a criminal organisation.

It is arguable the amendments to the CSA do not have sufficient regard to the rights and liberties of individuals as required by the *Legislative Standards Act 1992*. However, the proposed amendments only impact on prisoners and offenders who are identified as members of a criminal organisation. In general it has been noted and accepted by the former Scrutiny of Legislation Committee (the Committee) that while prisoners have rights, they are not entitled to the same rights and liberties as other people due to the constraints of the

correctional environment, the need to protect the safety and security of the correctional system and the people therein, together with the need to protect the wider community. Furthermore, it was acknowledged that incarceration should rightly include punitive and deterrent elements.

Specifically the amendments to the CSA depart from fundamental legislative principles as follows:

- The power of the chief executive to monitor the location of, restrict the movement of and request a test sample from offenders in the community who are identified as a participant in a criminal organisation.

The Bill amends the CSA by authorising that the chief executive may direct a corrective services officer to restrict the movements and monitor the location of offenders who have been identified as participants in a criminal organisation. An offender may be directed by a corrective services officer to restrict their movements; to wear a device and/or permit such a device to be installed in their home. (s.267A).

The Bill also allows the chief executive to require an offender in the community, who is identified as a participant in a criminal organisation to provide a sample for the purposes of testing for illegal substances. (s.41).

The legislation makes rights and liberties dependent on administrative power only if the power is sufficiently defined and subject to appropriate review. (Section 4(3)(a) *Legislative Standards Act 1992*).

The practice of placing an offender on a regime which monitors and or restricts their movements could be seen as impinging on the offender's ability to participate fully in life in the community. No provision has been made for an offender to seek review of the direction. These amendments are necessary to mitigate the additional risks that individuals who are participants in criminal organisations pose to the broader community through their association with criminal organisations and their increased potential for participation in unlawful activity through these associations.

Furthermore it is appropriate given that this information may not have been before the court at the time the offender was placed on the order and in light of government's commitment that there is a deterrent to ensure members of criminal organisations are not able to participate in illegal activity whilst under the supervision of the State.

While there is no mechanism for an offender to seek review of the direction to restrict an offender's movement, monitor an offender's location and/or for an offender to submit to a drug test, the amendments provide that where these powers are exercised the chief executive must, at regular intervals, request the Commissioner to confirm the offender is a member of a criminal organisation. If the Commissioner advises the chief executive an offender is no longer a member of a criminal organisation, any direction to monitor an offender's location or restrict an offender's movement no longer has effect.

Additionally, the Bill requires that the chief executive seek confirmation from the Commissioner as to whether an offender is still a participant of a criminal organisation if the chief executive has reasonable grounds to believe an offender is no longer a participant. This

provides the offender with an opportunity to put forward evidence to the chief executive that the offender is not a participant in a criminal organisation.

- Criminal Organisation Segregation Orders (COSO)

The CSA is to be amended so that prisoners who are identified as participants in a criminal organisation are subject to a criminal organisation segregation order.

An offender subject to a criminal organisation segregation order will be subject to a more restrictive management regime than other prisoners, including restrictions placed on interactions with other prisoners, contact visits, access to activities and privileges and mail, searched and censored. The purpose of a criminal organisation segregation order is to prevent members of criminal organisations from participating in illegal activity, including the recruitment of other prisoners, while in a correctional facility. Furthermore, prison must be viewed as deterrent for engaging in illegal activity. Accordingly it is considered that these amendments are justified to implement the Government's policy of disestablishing criminal organisations and maintaining the safety and security of correctional facilities, for staff, visitors and other prisoners.

- Except in the case of jurisdictional error, exempting the placement of a prisoner on a criminal organisation segregation order or order under section 267A(3) from review provisions under the *Judicial Review Act 1991*

The Bill specifically excludes the decision to place a prisoner on a criminal organisation segregation order or order under 267A(3) from review provisions under the *Judicial Review Act 1991*.

The effective management of both remand and sentenced prisoners within Queensland's correctional facilities and offenders in the community is required to support the disestablishment of illegal and unacceptable activities by participants of criminal organisations. This can only be achieved by creating an environment of zero tolerance, actively breaking associations through intensive monitoring; target hardening the prison environment and segregating these prisoners.

The introduction of a privative clause that excludes review provisions is seen as necessary to support these outcomes and ensure the safety and security of correctional facilities and the community.

Section 350A also specifically provides that for a review proceeding about the decision to make a COSO or order under 65A and 267A(3) in the Supreme Court, the court may review the criminal intelligence used to identify a participant without the parties to the proceeding and their representatives being present. This is considered justified as the court is considered an appropriate arbiter of the decision to proceed in the absence of the parties.

It noted that prisoners subject to a criminal organisation segregation order will still be able to access the official visitor program. Official visitors may attend to a range of matters, including reviewing maximum security orders and responding to prisoners complaints in relation to treatment and conditions, property and remuneration, rehabilitation programs and communications. The chief inspector will also continue to provide independent scrutiny

regarding the treatment of offenders, and the application of standards and operational practices within the State's correctional centres. In addition, the ombudsman will continue to provide independent scrutiny of decisions affecting prisoners.

A prisoner who is under a criminal organisation segregation order may be subjected to segregation from other prisoners and have restricted access to privileges. This may include limited interaction with other people, significant periods of time in their cells and limited access to physical activity. Such restrictions may impact on the health and well-being of prisoners. It is therefore important that a doctor regularly examine a prisoner who is subject to a criminal organisation segregation order.

A right to refuse medical treatment must be balanced against the department's duty of care owed to a person being held in custody and the need to ensure the person's immediate health requirements are being met.

- Not providing for the internal administrative review of a security classification or transfer decision of a prisoner subject to a COSO.

The removal of a prisoner's ability to have a transfer decision reviewed under section 71 of the *Corrective Services Act 2006* will arguably adversely affect the rights and liberties of prisoners. Decisions relating to the supervision, security and placement of prisoners are fundamental to the operation of a safe and secure correctional environment and therefore should not be open to challenge. This will mean that the correction system is not vulnerable to organised crime criminals, prison is an effective deterrent and other prisoners are not recruited into criminal organisations or undertake associated activities.

Bail Act 1980

Section 4(2)(a) of the *Legislative Standards Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals. Relevant considerations include whether the legislation: reverses the onus of proof in criminal proceedings; and adversely affects rights and liberties retrospectively.

The *Bail Act 1980* contains a presumption in favour of bail being granted but for certain defendants, that presumption is reversed and the defendant must show cause as to why their detention in custody is not justified. Section 16(3A) of the *Bail Act 1980* places a defendant in a show cause situation if they are a participant in a criminal organisation.

The Bill amends section 16(3A) to extend the subsection to apply to a defendant charged with an offence and where it is alleged the defendant has at any time been a participant in a criminal organisation. If an individual chooses to be part of a criminal organisation then it is reasonable for the legislature to deem that individual an on-going risk to the community in lieu of evidence to the contrary.

The Bill includes a transitional provision clarifying that section 16(3A) operates retrospectively in that it will apply to bail determinations regarding offences alleged to have been committed prior to the commencement of the subsection on 17 October 2013. This is appropriate given section 16(3A) is a provision which regulates the grant of bail and is procedural in nature.

Justices Act 1886, the Penalties and Sentences Act 1992 and the Criminal Code

Under the *Justices Act 1886* (part 6A), the *Penalties and Sentences Act 1992* (section 15A) and the Criminal Code (section 597C), a party may withhold consent to use of video or audio links in certain proceedings. The amendments remove the ability to withhold consent and thereby remove the right for a defendant to elect to appear in person in court. The amendments will, however, enhance the orderly and expeditious conduct of proceedings and the relevant proceedings may only be conducted using a link where the court considers it is in the interests of justice to do so.

Police Service Administration Act 1990

The amendments to the *Police Service Administration Act 1990* will allow the Commissioner of Police to disclose to an entity the criminal history of a current or former participant in a criminal organisation where the Commissioner is satisfied it is in the public interest.

Although there may be concerns that the amendment relating to the release of criminal histories will allow more personal information held by the QPS to be disclosed to another, these concerns are mitigated by limiting the information being release to criminal histories only and that the release must be in the public interest. Further, the Commissioner must exercise the discretion to release personally and cannot delegate to another officer.

Any breach of fundamental legislative principles is considered to be justified as the community is protected through restricting the operations of identified participants in criminal organisations and preventing these groups from running their criminal enterprises.

Transport Planning and Coordination Act 1994

Amendments to the *Transport Planning and Coordination Act 1994* and its associated regulation to allow ASIO to access information held by DTMR may raise fundamental legislative principles issues relating to privacy. A Memorandum of Understanding will be developed between ASIO and the chief executive of DTMR. That document will clearly define the types of information that can be accessed and the purposes for which that information can be provided.

Information released to ASIO may be used only for the purpose of ASIO's statutory functions. ASIO operates within a rigorous accountability and reporting regime which will apply to any investigations that utilise information obtained from the chief executive of DTMR. ASIO is accountable to the Commonwealth Attorney-General and to the Joint Parliamentary Committee on Intelligence and Security in the conduct of its functions. It provides annual reports to Parliament and to Commonwealth government ministers. It is subject to the scrutiny of the Inspector-General of Intelligence and Security and is audited annually by the Australian National Audit Office.

Under the *ASIO Act 1979*, the Commonwealth Attorney-General has published guidelines in relation to the performance by ASIO of its functions of obtaining, correlating, evaluating and communicating intelligence relevant to security (including politically motivated violence). These guidelines require investigations to be conducted with as little intrusion into privacy as possible, consistent with the performance of ASIO's functions. The guidelines also include requirements for the destruction of records under disposal schedules agreed between ASIO and the National Archives of Australia. The guidelines also require that ASIO shall only collect, use, handle and disclose personal information for purposes connected with its

statutory functions.

To further safeguard against the misuse of any information provided to ASIO, a new offence will be created. That offence will apply if a member of an approved agency uses information given under the new arrangements for a purpose other than a law enforcement purpose or in contravention of a condition imposed by the chief executive or the terms of the Memorandum of Understanding. The maximum penalty for this offence is 100 penalty units.

Any potential breach of the fundamental legislative principles from these amendments is mitigated by these privacy safeguards and is considered to be justified by the security benefits that will result from ASIO being able to discharge its functions in a more efficient and effective manner.

Crime and Misconduct Act 2001

The amendments to the CM Act to expand the definition of ‘participant in a criminal organisation’ to include a person who was a participant within the preceding two years may impact on the rights and liberties of persons by: broadening the scope of persons who will not be able to rely upon fear of retribution as a reasonable excuse to refuse to answer a question or produce a stated document or thing; and widening the circumstances when the Crime Reference Committee may authorise a specific intelligence operation under section 55A or when the Chairperson may authorise the CMC’s immediate response function under section 55F. The CM Act amendments to extend the information gathering powers of the CMC to crime, intelligence and misconduct investigations relating to criminal organisations may also impact on the rights and liberties of persons.

However, any breach of fundamental legislative principles as a result of the abovementioned amendments is outweighed by the public interest benefit in ensuring the CMC has the required tools to effectively gather information to combat the insidious nature of the CMCG criminal activities.

The increase of the maximum penalties in the CM Act that relate to a person’s non-compliance at CMC hearings brings into line the current relatively low penalties in the CM Act with the penalties for comparable offences in the *Australian Crime Commission Act 2002*. In addition, the increase of penalties provides a viable alternative to the mandatory contempt punishment when the presiding officer at a CMC hearing forms a view that to proceed with contempt may be harsh or unfair in the circumstances.

Consultation

The Bill is part of an urgent package of reforms developed by the Queensland Government to deal with recent, unacceptable incidents of violent, anti-social and criminal behaviour of members of criminal motor cycle gangs. As a result, no community consultation has been undertaken on the Bill, apart from that outlined below.

The Chief Justice, Chief Judge, Chief Magistrate, Director of Public Prosecutions, Queensland Law Society, Bar Association Queensland and Legal Aid Queensland were consulted in the formulation of the amendments regarding the removal of the requirement for parties to consent to the use of video link facilities and audio link facilities in criminal proceedings.

The Chief Magistrate was consulted on the amendments to the *Justices Act 1886* to allow for audio link facilities in addition to video link facilities to be used to conduct criminal proceedings in the Magistrates Court; the amendments to the *Justices Act 1886* to allow for video link facilities and audio link facilities to be used across districts and divisions of the Magistrates Court; and the amendments to the *Bail Act 1980* to provide for the conduct of a bail proceeding by a Magistrates Court outside the district or division in which the bail proceeding would otherwise be required to be heard where a practice direction is made by the Chief Magistrate permitting this.

The Chief Justice has been consulted about the amendments to the *Crime and Misconduct Act 2001* that provide for the confidentiality of proceedings under sections 195 and 199 of that Act.

The Director of Public Prosecutions was consulted on the amendments to the *Bail Act 1980* relating to section 16(3A).

The Crime and Misconduct Commission was consulted on the amendments to the *Crime and Misconduct Act 2001* and the *Criminal Proceeds Confiscation Act 2002*.

Consistency with legislation of other jurisdictions

The licensing and regulatory framework established in the Bill is similar to the model adopted in New South Wales in recognising that participants in organised crime should not be allowed to apply for or hold a licence in certain regulated occupations. Amendments to NSW's *Motor Dealers Act 1974* through the Criminal Organisations Legislation Amendment Bill 2009 provide that a person is not a fit and proper person to hold a license in certain professions if there are reasonable grounds to suspect that person is a member or associate of a declared criminal organisation.

Notes on Provisions

Part 1 Preliminary

Clause 1 states the short title of the Act.

Clause 2 provides for commencement of parts and sections of the Act. Parts, other than, 2 to 7, 9 and 10, 12 and 13, 18, 21 and 22 will commence on a day to be fixed by proclamation.

However, amendments to the Liquor Act made by the Liquor (Red Tape Reduction) and Other Legislation Amendment Bill 2013, which change the approval process for adult entertainment controllers commence on 1 July 2014 and will impact on the effect of particular new provisions in the Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Bill 2013 relating to adult entertainment controllers (if those provisions do not commence before 1 July 2014, as intended). Consequently, a provision has been included to state that these particular provisions will lapse if they commence after the commencement of the relevant clause in the Liquor (Red Tape Reduction) and Other Legislation Amendment Bill 2013.

Part 2 Amendment of Bail Act 1980

Clause 3 provides that this part amends the *Bail Act 1980*.

Clause 4 amends section 6 to amend the definition of ‘court’ to insert a reference to a justice conducting a bail proceeding using video link facilities or audio link facilities under the *Justices Act 1886*. This amendment is made as proceedings, including bail proceedings, conducted using communications technology will be provided for by part 6A *Justices Act 1886*, as amended by the Bill.

Clause 5 amends section 8 to insert a Note under subsection (1). Section 8 provides for the powers of a court in relation to granting, enlarging, varying or revoking bail. The Note refers the reader to part 6A of the *Justices Act 1886* which enables proceedings, including bail proceedings, to be conducted using video link facilities or audio link facilities.

Clause 6 omits sections 15A and 15B and inserts a new section 15A. Existing section 15A enables a Magistrates Court to determine a bail application by remote communication device. Section 15B enables a Magistrates Court to determine a bail application under section 15A, but sitting in a district or division of the Magistrates Court other than the district or division in which the bail application would otherwise be required to be made. These sections are omitted as they are no longer required owing to amendments to the *Justices Act 1886* contained in the Bill.

As described below, the regime for use of video link facilities in the Magistrates Court, contained in part 6A of the *Justices Act 1886*, is expanded by the Bill to include audio link facilities, thereby rendering section 15A redundant. New section 23EC of the *Justices Act 1886*, inserted by the Bill, enables proceedings, including bail proceedings, to be conducted under part 6A of the *Justices Act 1886*, by a Magistrates Court sitting in a district or division of the Magistrates Court other than the district or division in which the proceeding would otherwise be required to be heard, thereby rendering section 15B redundant.

The clause inserts a new section 15A which provides for the conduct of a bail proceeding by a court outside of the district or division in which the bail proceeding would otherwise be required to be heard where a practice direction is made by the Chief Magistrate permitting this.

Clause 7 amends section 16, in particular by amending sections 16(3A), 16(3C) and 16(3D).

The amendment to section 16(3A) requires the Crown to allege the defendant is, or at any time has been, a participant in a criminal organisation, in order to engage the subsection. The amendment extends section 16(3A) as currently drafted, to the circumstance where the Crown allege the defendant has been, at any time, a participant in a criminal organisation. Further, section 16(3A) is amended to be consistent with section 16(3) which requires the making of an allegation rather than proof of a fact.

Section 16(3C) is amended, consequential to the amendment to subsection (3A), by the insertion of subsections (3C)(b) and (c); the effect of which is to put beyond doubt that it does not matter that the defendant was not a participant in a criminal organisation when the offence was committed or that there is no link between the defendant's alleged participation in the criminal organisation and the offence charged. Where the Crown allege the defendant is, or has at any time been, a participant in a criminal organisation, subsection (3A) will be engaged, irrespective of such circumstances.

Section 16(3D) is amended, consequential to the amendment to subsection (3A) to extend the show cause provision to where the Crown allege the defendant was a participant in a criminal organisation. The amendment to subsection (3D) requires the defendant to prove that, at the time of the defendant's alleged participation in the criminal organisation, the organisation did not engage or conspire to engage in criminal activity, in order for subsection (3A) to not apply.

Clause 8 amends section 27B which presently provides that a court may issue a warrant for the apprehension of a defendant who has been granted bail using the procedure in section 15A, but who leaves the presence of the police officer who was involved in the bail application. Section 27B is amended to reflect that section 15A is repealed by the Bill, and that bail may now be granted using the video link facilities or audio link facilities procedures under part 6A of the *Justices Act 1886*. Therefore a magistrate may issue a warrant for the apprehension of a defendant who has been granted bail under the part 6A procedure and who leaves the precincts of the place from which they are making the bail application.

The clause amends subsection (3) in section 27B to change the cross-references within the subsection consistent with the amendment described immediately above.

Section 27B is further amended to insert definitions of 'associated place', 'audio link facilities', 'precincts' and 'video link facilities'.

Clause 9 inserts new section 42, a transitional provision. New section 42 provides that section 16(3A) as amended will apply to a bail hearing on or after the commencement of section 42 and will not affect bail determinations previously made under section 16(3A). Section 42 also provides that section 16(3A) applies to bail determinations for offences committed prior to the commencement of the subsection on 17 October 2013.

The clause also provides a transitional provision for sections 6 and 15A as amended or inserted by the Bill. These sections as amended will apply to a bail proceeding heard on or after the commencement of section 42.

Part 3 Amendment of Corrective Services Act 2006

Clause 10 provides that this part amends the *Corrective Services Act 2006*.

Clause 11 amends section 12 (prisoner security classification) to insert the new subsection (1B) into section 12. The provision requires that a prisoner subject to a COSO must be classified into a security classification of high. Alternatively, if the chief executive decides, the prisoner may be classified into a security classification of maximum. When classifying a prisoner subject to a COSO with a maximum security classification, the chief executive must have regard to the factors listed in section 12(2) of the *Corrective Services Act 2006*.

Clause 12 amends section 13 (reviewing prisoner's security classification) to insert a new subsection (1B) into section 13. If a prisoner is subject to a COSO, the chief executive is not required to review the security classification of the prisoner.

If the chief executive increases a prisoner's security classification as a result of these amendments to the *Corrective Services Act 2006*, a prisoner may still seek a review of the decision according to section 16.

Clause 13 amends section 41 (who may be required to give test sample) to insert a new subsection (1)(c) into section 41. Under this subsection the chief executive may require an offender subject to a community based order who is an identified participant in a criminal organisation to provide a test sample. This extends the chief executive's powers as to who may be required to provide a test sample.

Clause 14 inserts a new chapter 2, part 2, division 6A (Criminal organisation segregation orders) and a new section 65A (making criminal organisation segregation order). This section requires the chief executive to make a COSO for a prisoner who is an identified participant in a criminal organisation. Identification is made by the Commissioner of Police. Provisions regarding the applicability the *Judicial Review Act 1991* to this section are noted (ss. 350A and 350B).

A COSO continues in duration for the period the prisoner is imprisoned.

The chief executive must cancel the COSO for a prisoner if the Commissioner of Police informs the chief executive that the prisoner is no longer an identified participant in a criminal organisation.

The clause also inserts section 65B (directions in COSOs). A COSO may include direction about the extent to which the prisoner is to be segregated from other prisoners, the prisoner is to receive privileges and the chief executive may restrict privileges. Privileges are defined in the *Corrective Services Regulation 2006*.

In addition the clause also inserts section 65C (medical examination). This section provides that a prisoner subject to a COSO must be examined by a doctor at certain intervals – as soon

as practicable after the COSO takes effect; subsequently (to the greatest extent practicable) at intervals of not more than 28 days; and as soon as practicable after a COSO is cancelled and ceases to have effect.

The clause inserts section 65D (record). This section requires the chief executive to keep a record, for each corrective services facility, of the details of each prisoner subject to a COSO. The record must include the prisoner's name, identification number and age; the date on which the COSO was made; the date the COSO was cancelled and the dates the prisoner was examined by a doctor under section 65C.

For each prisoner who is or was subject to a COSO the chief executive must also keep a copy of any advice from the Commissioner of Police that the prisoner is or is not an identified participant of a criminal organisation.

Clause 15 amends section 71 (reconsidering decision). Sub-section 71(5) is renumbered 71(6) and a new subsection 71(5) is inserted. A prisoner subject to a COSO is not eligible to apply to the chief executive for a reconsideration of a transfer decision.

Clause 16 inserts new section 267A (Directions to identified participant of criminal organisation) after section 267. This section applies to an offender who is an identified participant in a criminal organisation and who is subject to either a parole order or community based order. The section enables the movements of an offender in the community to be restricted and for the offender's location to be monitored.

The chief executive may order a corrective services officer to give directions to an offender to remain at a stated place for a stated period, to wear a device for monitoring the offender's location and/or permit the installation of a device or equipment at the place where the offender resides. Provisions regarding the applicability the *Judicial Review Act 1991* to this section are noted (ss. 350A and 350B).

A corrective services officer may give ancillary directions to an offender that are reasonable and necessary for the proper administration of directions regarding the monitoring and restriction of movement of the offender.

Any direction with restricting or monitoring an offender's movement may be given in writing or orally and may apply generally or be limited in its application. A direction must not be inconsistent with a requirement of the relevant order for the person.

If the Commissioner of Police informs the chief executive that the offender is no longer an identified participant in a criminal organisation, the chief executive must direct a corrective services officer to tell the offender that any direction given under the section is no longer in place.

Clause 17 inserts a new section 344AA (Commissioner may provide information about particular offender's participation in criminal organisation) in Chapter 6, part 13. This section provides that the chief executive may ask the Commissioner of Police for information about whether an offender is a participant in a criminal organisation. The Commissioner of Police must give this information to the chief executive.

If the Commissioner of Police provides information to the chief executive that an offender is a participant in a criminal organisation, the chief executive may only use the information

provided by the Commissioner of Police for the purposes of managing the offender in a corrective services facility or supervising the offender in the community. For example:

- if the offender is subject to a community based order or a parole order the chief executive may direct a corrective services officer to give the offender a direction under section 267A or require the offender to give a test sample under section 41; and
- inform the chief executive's recommendation to a parole board in relation to a prisoner's parole application.

The chief executive is required to ask the Commissioner of Police for information about whether the offender is still a participant in a criminal organisation if the chief executive reasonably believes the offender may no longer be a participant in a criminal organisation. For example, the chief executive may reasonably believe the offender is no longer a participant in a criminal organisation after the offender gives the chief executive evidence that the offender is not a participant in a criminal organisation.

The chief executive must also ask the Commissioner of Police for information about whether the offender is still a participant in a criminal organisation at intervals of not more than six months after the Commissioner of Police first gives information to the chief executive about an offender.

The Commissioner of Police is required to give the chief executive the information.

Clause 18 inserts section 350A (Confidentiality of criminal intelligence in proceedings). The new section maintains the confidentiality of criminal intelligence in an application to the Supreme Court where the chief executive has made a COSO for a prisoner or an order under 267A(3) on the basis that the Commissioner of Police has identified that person as a participant in a criminal organisation. The new section provides that the Commissioner of Police is to be a party to any proceedings,

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation. Furthermore, the Supreme Court may review the identification by the Commissioner of the Police of the person as an identified participant in a criminal organisation.

As it is considered appropriate to protect the confidentiality of criminal intelligence, the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. The Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the Supreme Court. The term criminal intelligence is defined within the section and includes, information held by the Commissioner of Police relevant to whether the person is an identified participant in a criminal organisation.

Finally, the clause inserts section 350B (Application of Judicial Review Act 1991). The new

section applies to a decision of the chief executive to make a COSO for a prisoner or an order under section 267A(3) on the basis that the Commissioner of Police has identified that person as a participant in a criminal organisation. In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and cannot be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 19 amends Schedule 4 (Dictionary) by inserting new words and definitions. The acronym COSO is defined in section 65A. Criminal organisation is defined as a criminal organisation under section 1 of the Criminal Code. The definition of criminal organisation segregation order is defined in section 65A. The term ‘identified participant’ in a criminal organisation means a person who is a participant in the organisation within the meaning of the Criminal Code, section 60A(3) as identified by the Commissioner of Police.

Part 4 Amendment of Crime and Misconduct Act 2001

Clause 20 provides that this part amends the *Crime and Misconduct Act 2001*.

Clause 21 amends section 8 by including an additional responsibility of the Crime Reference Committee to authorise the commission to undertake specific intelligence operations.

Clause 22 amends section 53 to make a minor drafting alteration so that the functions set out in section 53 will be known as the commission’s ‘intelligence functions’.

Clause 23 amends the heading of Subdivision 1 in Chapter 3, Part 1, Division 1.

Clause 24 amends section 72 to allow the commission to give a notice requiring information or documents in relation to a specific intelligence operation (crime) and to also provide that the notice must include certain information.

Clause 25 amends the heading of Subdivision 1 in Chapter 3, Part 1, Division 2.

Clause 26 amends section 74 to allow the commission to give a notice to produce a stated document or thing in relation to a specific intelligence operation (crime). The clause also establishes the criteria for when the commission may issue a notice requiring immediate production of a document or thing for a specific intelligence operation (crime).

This clause also provides that a person who is a participant of a criminal organisation may not rely upon a fear of retribution as a reasonable excuse to fail to comply with a notice to produce in relation to a specific intelligence operation (crime) or crime investigation about a criminal organisation or a participant of a criminal organisation.

Clause 27 amends the heading of Subdivision 2 in Chapter 3, Part 1, Division 2.

Clause 28 amends section 75 to allow the commission to give a notice to discover

information in relation to a specific intelligence operation (misconduct) and to provide for the information that is to be stated in the notice.

Clause 29 amends the heading of Subdivision 1 in Chapter 3, Part 1, Division 3.

Clause 30 amends the heading of Subdivision 2 in Chapter 3, Part 1, Division 3

Clause 31 amends section 82 to increase the maximum penalty under subsection (5) to 200 penalty units or 5 years imprisonment.

Clause 32 amends section 183 to increase the maximum penalty to 200 penalty units or 5 years imprisonment.

Clause 33 amends section 185 to increase the maximum penalty under subsections (1) and (6) to 200 penalty units or 5 years imprisonment. This clause also makes a minor drafting correction to subsections (1) and (3A).

Clause 34 amends section 188 to increase the maximum penalty under subsection (2) to 200 penalty units or 5 years imprisonment. This clause also makes a minor drafting correction to subsection (1)(c).

Clause 35 amends section 190 to increase the maximum penalty under subsections (1) and (3) to 200 penalty units or 5 years imprisonment.

Clause 36 amends section 192 to increase the maximum penalty under subsections (1) and (3) to 200 penalty units or 5 years imprisonment.

Clause 37 amends section 195 to insert a note to subsection (9) that refers to section 200A. Section 200A contains related information about confidentiality of proceedings under this section. This clause also provides that the court may, in the interests of justice, permit a person to be present during the hearing.

Clause 38 amends section 197(3)(c) to clarify that the answer, document, thing or statement that may be used in a confiscation proceeding under the *Criminal Proceeds Confiscation Act 2002* (other than a proceeding for an offence under that Act) is admissible subject to section 265 of the *Criminal Proceeds Confiscation Act 2002* (as amended by this Bill).

Clause 39 amends section 198(4)(b) to make a minor drafting correction.

Clause 40 amends section 199 to make a minor drafting correction in subsection (8A)(a)(ii). The clause also amends section 199 to provide that a hearing under this section is closed, but the court may, in the interests of justice, permit a person to be present during the hearing.

Clause 41 inserts a new section 200A to provide for the confidentiality of proceedings under sections 195 and 199 and any appeal from a decision made in a proceeding under either sections 195 and 199. Under this new section, the proceeding or hearing is not to be published on any court list, such as the daily law list. A party to a proceeding must also file a notice to the Registrar when filing an application or supporting material that confirms the application or supporting material is filed for a proceeding under sections 195 and 199 (or an appeal from a decision made in proceedings under either sections 195 or 199) and that the

proceedings are subject to certain confidentiality requirements. The section also provides for restrictions on who may: have access to the record of proceedings (which is defined in this section); or search information on a court file. New section 200A also confirms that the section does not prevent the publication of reasons for a decision in the proceedings provided that such publication meets certain requirements intended to prevent prejudice to the work or functions of the Commission.

Clause 42 inserts a new section 237A to provide for the appointment by the Governor in Council of an acting part time commissioner during a vacancy in that office or during any period when a part time commissioner is absent from duty, or from the State, or for another reason can not perform the duties of the office.

Clause 43 amends section 277(3)(a) to make a minor drafting correction.

Clause 44 amends section 331 to clarify that the commission may continue to investigate the affairs of a person, including by requiring the person to attend a hearing and provide answers to questions about a matter that may relate to an offence or offences for which the person has been charged. The clause also clarifies that for the purposes of this section, a criminal proceeding commences from when the person is charged. The clause also amends subsection (2) to require the Commission to take certain action (as provided for in the section) to prevent any unfairness to an accused's right to a fair trial. The clause also omits subsection (3) which previously limited the scope of operation of subsection (2).

Clause 45 inserts a new Part 10 into Chapter 8 that includes a new section 395. Section 395 clarifies the circumstances when the evidence referred to in section 197(3)(c) may be used in a confiscation proceeding as provided for in section 197(3)(c) and section 265 of the *Criminal Proceeds Confiscation Act 2002* (as amended by this Bill). Evidence referred to in section 197(3)(c) that is obtained on or after 17 October 2013 may be admitted as evidence under section 265 (as amended by this Bill) only if the said proceeding was commenced on or after 17 October 2013.

Clause 46 amends the Schedule 2 (Dictionary) to include new definitions for: intelligence functions; section 75B requirement; specific intelligence operation (crime); and specific intelligence operation (misconduct). The clause also amends the definitions for: notice to produce; and 'participant' in a criminal organisation. The definition of a 'participant' in a criminal organisation is extended to include any person who was a participant (as currently defined in paragraphs (a) to (e)) at any time within the preceding two years.

Part 5 Amendment of Criminal Code

Clause 47 states that this part amends the Criminal Code.

Clause 48 amends section 1, definition of 'criminal organisation' to rectify a drafting error.

Clause 49 amends section 597C(4) which permits anything that must or may be done in relation to the arraignment of an accused person to take place over an audiovisual link or audio link if the prosecutor and accused person agree to this. The clause removes the requirement for agreement from the parties. The amendment provides that a link may be used where the court considers its use to be in the interests of justice.

The clause inserts new subsection (4A) which provides that the court may not allow the use of an audiovisual link or audio link where facilities mentioned in new subsection (5A)(a) are not available. These are facilities for private communication between the accused person and their representative.

The clause inserts new subsection (4B) which provides that in deciding whether use of an audiovisual link or audio link is in the interests of justice, the court is to have regard to the desirability of the arraignment being conducted over audiovisual link rather than audio link if an audiovisual link is available.

The clause inserts new subsection (5A) which provides that where an accused person's arraignment is conducted over an audiovisual link or audio link and the person's representative is present at the court, then the court and the place where the person is, must make available facilities for private communication between the person and their representative. The private communications are confidential and inadmissible as if they had taken place while the person and the representative were in each other's presence.

The clause inserts new subsection (5B) which provides that the protection of the communication mentioned in new subsection (5A) does not limit any other protections applying to the communication.

Clause 50 inserts new chapter 92, containing section 731 which is a transitional provision.

Part 6 Amendment of Criminal Proceeds Confiscation Act 2002

Clause 51 provides that this part amends the *Criminal Proceeds Confiscation Act 2002* (Confiscation Act).

Clause 52 changes the section number for the current section 265 to section 266.

Clause 53 inserts a new section 265 that provides for the circumstances when the court may give leave to admit evidence that is referred to in section 197(1)(c) of the *Crime and Misconduct Act 2001* (as amended by this Bill) in a confiscation proceeding (other than a proceeding for an offence) under the Confiscation Act.

Part 7 Amendment of District Court of Queensland Act 1967

Clause 54 provides that this part amends the *District Court of Queensland Act 1967*.

Clause 55 amends section 110C which provides for the use of audiovisual links and audio links in the District Court. The amendment clarifies that section 110C does not apply where the proceeding is a sentencing proceeding, as section 15A of the *Penalties and Sentences Act 1992*, as amended by the Bill, applies.

The clause renumbers sections 110C(1)(ba) and (c) as sections 110C(1)(c) and (d).

Part 8 Amendment of Electrical Safety Act 2002

Clause 56 provides that this amends the *Electrical Safety Act 2002*.

Clause 57 amends section 59 to allow the regulator to refuse to issue an electrical licence if the person is a prohibited person. This section operates to prevent prohibited persons who are identified participants in criminal organisations, a body corporate which is known as a criminal organisation or a body corporate that has an officer who is an identified participant in a criminal organisation from being licensed to perform electrical work, or to work as an electrical contractor.

Clause 58 amends section 60 to allow the regulator to refuse to renew an electrical licence if the licence holder is a prohibited person, to prevent persons who are identified participants in criminal organisations, bodies corporate known as criminal organisations or bodies corporate that have an officer who is an identified participant in a criminal organisation from being licensed to perform electrical work, or to work as an electrical contractor.

Clause 59 amends section 61 to allow the regulator to refuse to reinstate an electrical licence if the person is a prohibited person, to prevent persons who are identified participants in criminal organisations, bodies corporate known as criminal organisations or bodies corporate that have an officer who is an identified participant in a criminal organisation from being licensed to perform electrical work, or to work as an electrical contractor.

Clause 60 inserts a new section 63A that establishes the procedure for refusing to issue, renew or reinstate an electrical licence of a body corporate or partnership that has an officer who is an identified participant in a criminal organisation. Applicants of this type will be afforded natural justice before their licence application is refused. The regulator will be required to notify the body corporate that an officer has been identified as a participant in a criminal organisation, and that the licence application will be refused unless the officer is removed from all positions of authority within the body corporate. The licence holder may then make representations to the regulator within a stated period of not more than 28 days of receiving the notice to demonstrate that the identified participant has been removed from the body corporate. If the licence holder does not remove the identified participant from the body corporate within the time specified, the regulator must then refuse the licence application.

Clause 61 amends section 64 to provide that an information notice provided on refusal of a licence application does not need to set out the findings on material questions of fact or refer to the evidence on which those findings were based, to the extent to which the decision relies on advice given by the Commissioner to the regulator. This is to ensure the security of police information and sources

Clause 62 inserts a new Part 4, division 3A that sets out that a prohibited person is an individual who is an identified participant in a criminal organisation, a body corporate which is known as a criminal organisation, or a body corporate or partnership that has an officer who is an identified participant in a criminal organisation.

The new section 65B provides that the regulator may ask the Commissioner of Police if an applicant or licensee is an identified participant in a criminal organisation or a criminal

organisation for the purposes of determining if a person is a prohibited person. The Commissioner of Police must give the information to the regulator. The regulator may use the information only for the purposes for which the information is permitted to be used under this Act.

Clause 63 amends section 88 to exclude decisions made by the regulator to refuse to issue, renew or reinstate an electrical licence, refuse to issue, renew or reinstate an electrical licence of a body corporate or partnership, or to cancel a licence from being reviewed by the Electrical Licensing Committee. As the decision of the regulator will be based on criminal intelligence provided by the police commissioner, it is not appropriate for an internal review by the Electrical Licensing Committee to consider the merits of the decision, and a full merit review will be available through the QCAT.

Clause 64 amends section 107 to correct a drafting error that occurred in a previous amendment of the Act

Clause 65 inserts a new section 107A to clarify that being a prohibited person is not a ground for the Electrical Licensing Committee to take disciplinary action under part 9 of the Act. This prevents the processes for a disciplinary hearing from applying to a decision to cancel a licence

Clause 66 inserts a new Part 9A that requires the regulator to immediately cancel an electrical licence and to cancel the application of the external licence recognition provision to an external licence if the regulator becomes aware that the licence holder is a prohibited person. It also provides the processes for doing so, including that the licence holder must be given a written notice of the decision.

Section 121C further provides that a where the licence holder is a body corporate and an officer is found to be a prohibited person, the body corporate will be afforded natural justice before their licence is cancelled. It requires the regulator to notify the body corporate that an officer has been identified as a participant in a criminal organisation, and that the licence will be cancelled unless the officer is removed from all positions of authority within the body corporate. The licence holder may then make representations to the regulator within a stated period of not more than 28 days of receiving the notice to demonstrate that the identified participant has been removed from the body corporate. If the licence holder does not remove the identified participant from the body corporate within the time specified, the regulator must then cancel the licence.

Clause 67 amends section 168 to exclude the application of the Act's internal review provisions in Part 12, Division 2 to decisions of the regulator to refuse to issue, renew or reinstate an electrical licence, refuse to issue, renew or reinstate an electrical licence of a body corporate or partnership, or to cancel a licence. As the decision of the regulator will be based on criminal intelligence provided by the police commissioner, it is not appropriate for an internal review to consider the merits of the decision.

Clause 68 inserts a new section 173 and section 174. The new section 173 maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled on the basis that the person is a prohibited person as they have been identified as a participant in a criminal organisation. The new section provides that the Commissioner of Police is to be a

party to any proceedings,

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the QCAT or the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the Commissioner of the Police of the person as an identified participant in a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or the Supreme Court.

The new section 174 applies to a decision of the regulator. In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 69 amends section 184 to provide that a certificate of the regulator stating that action has been taken by the regulator against the licence holder is evidence of the action being taken.

Clause 70 inserts a new Part 21 which provides for transitional provisions for the Bill which provides that if an applicant or licensee had applied for a licence, renewal or reinstatement of a licence the regulator must not grant the licence if the applicant or licensee is an identified participant in a criminal organisation.

Clause 71 amends Schedule 2 (Dictionary) to insert definitions relevant to these amendments. The amendments adopt the definitions of criminal organisation and identified participant used in the *Criminal Code*, and provide definitions for criminal intelligence and Commissioner.

Part 9 Amendment of Evidence Act 1977

Clause 72 provides that this part amends the *Evidence Act 1977*.

Clause 73 amends section 39B to correct an incorrect cross-reference to a section of the

Criminal Code, and to include cross-references to video and audio link provisions of other Acts that are missing.

Clause 74 amends section 39C to correct an incorrect cross-reference to a section of the Criminal Code.

Part 10 Amendment of Justices Act 1886

Clause 75 provides that this part amends the *Justices Act 1886*.

Clause 76 amends section 4 to insert definitions of ‘audio link facilities’, ‘correctional institution’, ‘court cell’ and ‘video link facilities’.

Clause 77 replaces section 23EC. New section 23EC allows a proceeding to be conducted by video link facilities or audio link facilities by a Magistrates Court at a location prescribed under a practice direction by the Chief Magistrate which is outside the relevant court district or division. This section confers on that Magistrates Court the jurisdiction to constitute a Magistrates Court for the proceeding and to conduct the proceeding by video link facilities or audio link facilities.

Existing section 23EC relates to applications for bail heard under existing section 15A as applied under section 15B of the *Bail Act 1980* (for bail applications outside the district or division in which the application would otherwise be required to be made), and ensured that a magistrate additionally had adjournment powers for the bail hearing. Existing section 23EC is omitted as no longer required since the new section 23EC and part 6A of the Act, as amended by the Bill, enable a magistrate in acting under those provisions, to exercise all their powers for a proceeding.

Clause 78 amends section 139 to insert the words ‘or electronically’ into subsection (2F). This will enable the clerk of a court which adjourns a proceeding under section 139 to a court at another place, to transmit the file for the proceeding electronically or by post.

Clause 79 amends the heading to part 6A to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

Clause 80 amends section 178A to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

Clause 81 amends section 178B to insert a definition of ‘correctional institution’ to clarify what is meant by that term.

The clause also inserts a reference to audio link facilities in to the definition of ‘associated place’ to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

Clause 82 amends the heading to section 178C to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

The clause amends section 178C(1)(b) to clarify that for sentencing proceedings section 15A

of the *Penalties and Sentences Act 1992* provides for the use of audiovisual link or audio links. The clause also inserts a Note directing the reader to section 15A.

The clause amends section 178C(1)(c) to insert references to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

The clause amends section 178C(2) to provide that subsection (2) only applies where the correctional institution is a corrective services facility.

The clause replaces section 178C(3). New subsection (3) provides that for a proceeding other than a proceeding to which subsection (2) applies, then the court may, in the interests of justice, order that the proceeding be conducted using video link or audio link facilities. The clause thereby removes the present requirement for agreement from the parties to the use of such facilities.

The clause inserts new subsection (3A) which provides that the court may not make an order under subsection (3) if the facilities for private communication between the defendant and their representative, as referred to in section 178F(1), are not available at the court or the associated place.

The clause amends section 178C(4) to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

The clause renumbers subsections (3A) and (4) as (4) and (5).

Clause 83 amends section 178D to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

Clause 84 amends the heading to section 178E to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

The clause inserts new subsection (1A) into section 178E to provide for how audio link facilities must be operated.

The clause also amends section 178E(2) to insert a reference to audio link facilities to reflect that part 6A will enable the use of such facilities, in addition to video link facilities.

Clause 85 inserts new part 11, division 6 containing section 280 which is a transitional provision.

Part 11 Amendment of Liquor Act 1992

Division 1 Preliminary

Clause 86 states that this part amends the *Liquor Act 1992* (Liquor Act).

Division 2 Amendments not affected by Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013

Clause 87 amends section 4 to provide clarity and give effect to the legislative amendments in the Bill. The clause inserts definitions for terms used in the Liquor Act such as ‘criminal organisation’ and ‘identified participant’, as well amending existing definitions of terms such as ‘disqualified person’.

Clause 88 inserts a new section 11B to ensure that a criminal organisation, an identified person in a criminal organisation, or a corporation, partnership or unincorporated association where an executive officer, partner or person who is concerned with management of the entity cannot sell liquor under exemptions in Part 1, Division 4.

Clause 89 amends the heading of Part 2 to incorporate provisions relating to the *Judicial Review Act 1991*.

Clause 90 amends section 21 to enable the Queensland Civil and Administrative Tribunal (QCAT) to review particular decisions of the Commissioner for Liquor and Gaming (Commissioner) in relation to approvals under sections 109B, 139B, 139D or 153 and urgent suspensions of permits.

Clause 91 inserts a new Division 3 in Part 2, that enables QCAT or the Supreme Court to hear appeals in relation to decisions made by the Commissioner for Liquor and Gaming because a person is a criminal organisation, an identified person in a criminal organisation, or for corporations, partnerships and unincorporated associations, an executive officer, partner or a person who is concerned with the management of an entity, is a participant in a criminal organisation. It sets out that QCAT must take steps to maintain the confidentiality of criminal intelligence where a person seeks a review of the decision because their application for a licence, permit or approval was refused or existing licence, permit or approval was cancelled based on criminal intelligence provided by the Commissioner of Police. In relation to the review of the decision, the Commissioner of Police is to be a party to any proceedings. QCAT is not prevented from reviewing either the decision of the Commissioner for Liquor and Gaming or the Commissioner of Police. The clause further provides that a decision of the Commissioner for Liquor and Gaming is final and conclusive. The decision can not be reviewed under the *Judicial Review Act 1991* other than for jurisdictional error.

Clause 92 inserts new section 47B to provide for the Commissioner to seek information in relation to criminal organisations and their participants from the Commissioner of Police, and for the Commissioner of Police to provide the relevant information to the Commissioner. The clause also inserts new section 47C to provide that section 27B of the *Acts Interpretation Act 1954* does not apply to a notice given to a person about a section 228B decision made by the Commissioner. Section 27B of the *Acts Interpretation Act 1954* provides that if an Act requires a tribunal, authority, body or person making a decision to give written reasons for the decision, the instrument giving the reasons must also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.

Clause 93 amends the heading of Part 5 to increase its clarity as to matters included in the Part, as a consequence of amendments in this Bill.

Clause 94 amends section 107(2) to align with other sections of the Liquor Act by prescribing that an executive officer of a corporation or a person associated with the management of an unincorporated association that is applying for a licence or permit can be investigated as a fit and proper person as if they were the applicant. This will ensure that a corporation or association who has a person in a management position or position of influence who is identified by the Commissioner of Police as a participant in a criminal organisation will not be granted a licence or permit.

Clause 95 amends section 107E to provide that a criminal organisation or a person who is identified by the Commissioner of Police as a participant in a criminal organisation, or a corporation, partnership, or unincorporated association where an executive officer or partner is identified by the Commissioner of Police as a participant in a criminal organisation is disqualified from being granted or holding an adult entertainment permit.

Clause 96 amends section 109B to provide that an identified participant in a criminal organisation is disqualified from being granted or holding an approval to be an adult entertainment controller, the role of which is to supervise adult entertainment on authorised premises and ensure that it is conducted in accordance with the appropriate legislation.

Clause 97 amends section 129 so that if a licence is suspended because an executive officer, partner or person concerned with the management of the licensee is an identified participant in a criminal organisation, the owner or mortgagee of the licensed premises, or the owner of a financial interest in the trading of the licensed premises, may apply to the Commissioner to conduct the business of the licensee on the licensed premise.

Clause 98 makes a minor amendment to section 131A to clarify that a person approved under this section is subject to the same provisions of the Act as a person approved for a licence under section 107.

Clause 99 amends section 134 to provide that if a person holds a permit on behalf of an unincorporated association that is a criminal organisation, the permit is automatically cancelled.

Clause 100 amends section 134A to allow the Commissioner to take disciplinary action against a corporation, partnership or unincorporated entity that holds a permit, if the Commissioner reasonably believes an executive officer, partner or person concerned with the management of the association is an identified person in a criminal organisation.

Clause 101 amends section 134B to allow the Commissioner to give a notice to a corporation, partnership or unincorporated association that holds a permit, if the Commissioner reasonably believes an executive officer, partner or person concerned with the management of the association is an identified person in a criminal organisation, regarding actions to be taken against the permit holder and allow the permit holder to show why such an action should not be taken. The relevant action stated in the notice must include cancellation of the permit.

Clause 102 amends section 134C to allow the Commissioner to make a decision on a permit held by a corporation, partnership or unincorporated association where the Commissioner reasonably believes an executive officer, partner or person concerned with the management of the association is an identified person in a criminal organisation, following a show cause process outlined in section 134B.

Clause 103 insert a new section 134D to allow for immediate suspension of a permit held by a corporation, partnership or unincorporated association if the Commissioner reasonably believes an executive officer, partner or person concerned with the management of the association is an identified person in a criminal organisation.

Clause 104 amends section 135 to clarify when any action taken against a permit comes into effect.

Clause 105 provides for disciplinary action to be undertaken against a corporation, partnership or unincorporated association that holds a licence, if an executive officer, partner or person concerned with the management of the association is identified by the Commissioner of Police as a participant in a criminal organisation. The clause links consideration under section 136(1)(e) as to whether the licensee is not a fit and proper person to conduct business under authority of the licence to consideration under section 107 of the Liquor Act.

Clause 106 amends section 137 so that if the Commissioner knows, or suspects, on reasonable grounds that a licensee that is a corporation, partnership or unincorporated association has an executive officer or partner who is identified by the Commissioner of Police as a participant in a criminal organisation, the Commissioner is able to give a notice to the executive officer, partner or person concerned with the management of the association regarding actions to be taken and allow the licensee to show why such an action should not be taken. The proposed actions stated in the notice must include either cancellation or disqualification of the licence. If the licence is to be disqualified, the notice must state that the licence is suspended until it can be transferred to another person, or another person is authorised to conduct business on the licensed premises under the Liquor Act.

Clause 107 amends section 137A to provide that the Commissioner must take the proposed action if the disciplinary action is proposed on the ground that an executive officer of the corporation or association, or member of the partnership is a disqualified person mentioned in section 228B(1).

Clause 108 amends section 137C to allow for immediate suspension of a corporation, partnership or unincorporated associations' licence if the Commissioner reasonably believes an executive officer, partner or person concerned with the management of the association is an identified person in a criminal organisation.

Clause 109 inserts a new section 137CA to allow for the immediate cancellation of a licence if the licensee is a disqualified person under section 228B, because they are a criminal organisation or an identified participant in a criminal organisation.

Clause 110 inserts new Part 5, Division 3A to ensure that a person cannot continue to operate under a leasing, subleasing, franchise or management agreement with a licensee for all or part of licensed premises under section 153, if they or, if a corporation or partnership or unincorporated association, an executive officer or partner, is a identified participant in a criminal organisation.

The clause inserts section 139E to allow for the withdrawal of Commissioner approval of an agreement if a person entering into the agreement is a criminal organisation or an identified participant in a criminal organisation.

For corporations, partnerships or unincorporated associations, the clause inserts new sections so that, if the Commissioner reasonably suspects an executive officer, partner or person concerned in the management of the association is an identified participant in a criminal organisation, the Commissioner will undertake a show cause process, to allow the corporation, partnership or association to make representations regarding why the approval should not be removed. The Commissioner can withdraw approval if, after considering representations by relevant persons, the Commissioner still believes that an executive officer, partner or person concerned with the management of the association is an identified participant in a criminal organisation. The clause also inserts a new section to allow the Commissioner the option to immediately suspend an approval until a decision is made as to whether an executive officer, partner or person concerned in the management of a corporation, partnership or association (that has entered into leasing, subleasing, franchise or management agreement with a licensee for all or part of the licensed premises under section 153) is an identified participant in a criminal organisation.

Clause 111 amends section 142R to provide that an individual who is identified by the Commissioner of Police as a participant in a criminal organisation cannot be approved as an approved manager.

Clause 112 inserts new section 142ZAA to allow for the immediate cancellation of an approved manager's approval if they are identified by the Commissioner of Police as a participant in a criminal organisation.

Clause 113 provides that the Commissioner cannot approve an agreement between a licensee and another person under section 153 if the person is either a criminal organisation or an identified participant in a criminal organisation or, if a corporation, partnership or unincorporated association, an executive officer, partner or person concerned with the management or authority, is an identified participant in a criminal organisation. The clause also ensures that the same probity undertaken under section 107 on new licence applications is undertaken on persons entering into agreements under section 153.

Clause 114 inserts new section 228B which provides that an individual who is identified by the Commissioner of Police as a participant in a criminal organisation, is disqualified from holding a licence, permit or approval under the Liquor Act. It also provides that a corporation and unincorporated association is disqualified from holding a licence or permit if prescribed as a criminal organisation under the Criminal Code. This section, in conjunction with other amendments made in this Bill, ensures that criminal organisations and those identified as participating in a criminal organisation cannot hold licences, permits or approvals under the Liquor Act.

Clause 115 inserts a transitional provision which ensures that current applications for licences, permits and approved managers on commencement of the sections in this Bill will be subject to the Liquor Act as amended by this Bill.

Division 3 Amendments subject to commencement of Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013

Clause 116 amends section 21 to ensure that a Commissioner decision to immediately cancel an approval to be an approved manager can be reviewed by QCAT. The clause further amends section 21 to omit a provision relating to review of decisions of the Commissioner regarding adult entertainment controllers that is made redundant as of 1 July 2014, as a consequence of the commencement of amendments made to the Liquor Act by the *Liquor (Red Tape Reduction) and Other Legislation Amendment Act 2013*.

Clause 117 amends section 142ZK, to ensure that the Commissioner may only grant approval for a person to be an adult entertainment controller if they are not disqualified under section 228B (because they are identified by the Commissioner of Police as a participant in a criminal organisation).

Clause 118 inserts a new section 142ZQA in Part 5 to provide that the Commissioner must immediately cancel an adult entertainment controller approval of a person if they are identified by the Commissioner of Police as a participant in a criminal organisation.

Part 12 Amendment of Penalties and Sentences Act 1992

Clause 119 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 120 amends section 15A which permits anything that must or may be done in relation to the sentencing of an offender to take place over an audiovisual link or audio link if the prosecutor and the offender agree to this. The clause removes the requirement for agreement from the parties. The amendment provides that a link may be used where the court considers its use to be in the interests of justice.

The clause inserts new subsection (1A) which provides that the court may not allow the use of an audiovisual link or audio link where facilities mentioned in new subsection (5)(a) (inserted as (2A)(a)) are not available. These are facilities for private communication between the offender and their representative.

The clause inserts new subsection (1B) which provides that in deciding whether use of an audiovisual link or audio link is in the interests of justice, the court is to have regard to the desirability of the sentencing being conducted over audiovisual link rather than audio link if an audiovisual link is available.

The clause inserts new subsection (2A) which provides that where an offender's sentencing is conducted over an audiovisual link or audio link and the offender's representative is present at the court, then the court and the place where the offender is, must make available facilities for private communication between the offender and their representative. The private communications are confidential and inadmissible as if they had taken place while the offender and the representative were in each other's presence.

The clause inserts new subsection (2B) which provides that the protection of the communication mentioned in new subsection (5)(b) (inserted as subsection (2A)(b)) does not limit any other protections applying to the communication.

The clause renumbers section 15A(1A) to (3) as section 15A(2) to (7).

Clause 121 inserts new part 14, division 8 containing section 233 which is a transitional provision.

Part 13 Amendment of Police Service Administration Act 1990

Clause 122 provides that the *Police Service Administration Act 1990* is amended by this Part.

Clause 123 inserts a new Part 10, division 1, subdivision 1A for the disclosure of criminal histories relating to criminal organisations.

The clause inserts new definitions of criminal history, criminal organisation and to the term current or former participant in a criminal organisation.

This clause also inserts a new section 10.2AAB (Disclosure of criminal history of current or former participants of criminal organisations) which provides the Police Commissioner with the authority to disclose to an entity the criminal history of a current or former participant in a criminal organisation where the Commissioner is satisfied it is in the public interest. This disclosure is authorised notwithstanding any other law that may otherwise prevent or restrict the disclosure.

A new section 10.2AAC (Authorisation to publish or further disclose a criminal history) will allow an entity receiving a criminal history from the Commissioner to publish or otherwise disclose the criminal history to another entity, where it is in the public interest to do so and the Commissioner has provided written authority to do so.

The new section 10.2AAD provides that the ability of the Commissioner to disclose a criminal history under the new s 10.2AAB is not delegable and must be exercised personally.

Clause 124 inserts a new heading Part 10, division 1, subdivision 2 for the disclosure of criminal histories relating to criminal organisations.

Clause 125 amends section 10.2E (Relationship to the laws) for drafting purposes.

Clause 126 amends the definition of *criminal history* in s 10.2G (Definitions for div 1A) of the Act to reflect the renaming of the former *Juvenile Justice Act 1992* to the *Youth Justice Act 1992*.

Part 14 Amendment of Queensland Building Services Authority Act 1991

Clause 127 provides that this part amends the *Queensland Building Services Authority Act 1991* (the QBSA Act).

Clause 128 amends section 31 to provide that a person is not a fit and proper person to hold a contractor's licence, or to exercise control or influence over a company that holds a

contractor's licence, if the person is an identified participant in a criminal organisation.

Clause 129 amends section 31A to provide that a person is not entitled to a contractor's licence if the person carries on, or intends to carry on, business under the licence in partnership with another person who is an identified participant in a criminal organisation, and to correct a drafting error in the original text.

Clause 130 amends section 32 to provide that a person is not a fit and proper person to hold a nominee supervisor's licence if the person is an identified participant in a criminal organisation.

Clause 131 amends section 32AA to provide that a person is not a fit and proper person to hold a site supervisor's licence if the person is an identified participant in a criminal organisation.

Clause 132 amends section 32AB to provide that a person is not a fit and proper person to hold a fire protection occupational licence if the person is an identified participant in a criminal organisation.

Clause 133 inserts a new section 49AA which provides that the authority must immediately cancel a licensee's licence if the authority is advised by the police commissioner that the licensee, a business partner of the licensee, or a director, secretary or influential person for the licensee, is an identified participant in a criminal organisation, and that the authority must give an information notice for the decision to cancel the licence, and that *Acts Interpretation Act 1954*, section 27B does not apply to the information notice.

Clause 134 inserts new section 56AA which provides that if a person applies for the issue or renewal of a licence, the authority must seek advice from the police commissioner, and that the police commissioner must provide advice to the authority, and that the authority may only use the information for certain purposes.

Clause 135 inserts a new part 7, division 3A, comprising sections 87A and 87B.

The new section 87A provides for the maintenance of the confidentiality of criminal intelligence in a proceeding relating to an application for review in QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled because a person is an identified participant in a criminal organisation.

Section 87A also provides that the police commissioner is a party to the proceeding, and must give QCAT or the Supreme Court a statement of reasons about the identification of the identified participant.

Section 87A also provides that QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives, and may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If QCAT or Supreme Court considers information has been incorrectly categorised by the police commissioner as criminal intelligence, the police commissioner may withdraw the information from consideration by QCAT or the court. Information that has been withdrawn

must not be disclosed to any person or taken into consideration by QCAT or the Supreme Court.

The new section 87B provides that the *Judicial Review Act 1991*, part 4 does not apply to a decision of the authority to refuse to issue or renew a licence, or to cancel a licence, because a person is an identified participant in a criminal organisation. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity), and the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision to the extent it is affected by jurisdictional error.

Clause 136 inserts a new Schedule 1, section 52 which is a transitional provision that ensures that current applications for licences or renewal of licences will be subject to the QBSA Act as amended by this Bill, upon commencement of the section.

Clause 137 amends the dictionary in Schedule 2 to define *business partner*, *criminal organisation*, *identified participant* and *police commissioner*.

Part 15 Amendment of Racing Act 2002

Clause 138 states that this part amends the *Racing Act 2002*.

Clause 139 amends section 203(2) to insert a note that also section 211(2) which provides that an application for an eligibility certificate if the applicant, or a business associate or executive associate of the applicant, is an identified participant in a criminal organisation.

Clause 140 amends section 211 inserting section 211(2) which provides that an application is not a suitable person to hold an eligibility certificate if the person is an identified participant in a criminal organisation or a business associate or executive associate of the applicant is an identified participant in a criminal organisation or, if a corporation, a criminal organisation, or the application is a corporation that is an unsuitable corporation.

Clause 141 inserts a new section 212A that provides that the gaming executive may ask the Commissioner of Police service if an applicant or licensee, or an associate of an applicant or licensee, is an identified participant in a criminal organisation or has a business associate or executive associate of the applicant is an identified participant in a criminal organisation or, if a corporation, a criminal organisation. Further, gaming executive may ask the Commissioner of Police service that, if the certificate holder, business or associate is a corporation, whether it is an unsuitable corporation. The Commissioner of Police must give the information to the gaming executive. The gaming executive may use the information only for the purposes for which the information is permitted to be used under this Act.

Clause 142 amends section 217 to insert new subsection (3) to exclude the operation of section 27B of the *Acts Interpretation Act 1954* in order to ensure that information that was given by the police commissioner would not be able to be sought under the information notice provisions

Clause 143 amends section 224(2) insert new subsection (3). The new subsection (3) allows the gaming executive, at any time, to ask the Commissioner of Police whether a certificate holder is an identified participant in a criminal organisation or has a business associate or executive associate of the applicant is an identified participant in a criminal organisation or, if a corporation, a criminal organisation. Further, gaming executive may ask the Commissioner of Police service that, if the certificate holder, business or associate is a corporation, whether it is an unsuitable corporation. The Commissioner of Police must give the information to the gaming executive. The gaming executive may use the information only for the purposes for which the information is permitted to be used under this Act.

Clause 144 amends section 225(2) omitting all the words after ‘However’ and inserting ‘subject to subsection (3)’ and inserting a new subsection (3) providing that the gaming executive may ask the Commissioner of Police service if an applicant or licensee, or an associate of an applicant or licensee, is an identified participant in a criminal organisation or has a business associate or executive associate of the applicant is an identified participant in a criminal organisation or, if a corporation, a criminal organisation. Further, gaming executive may ask the Commissioner of Police service that, if the certificate holder, business or associate is a corporation, whether it is an unsuitable corporation. The Commissioner of Police must give the information to the gaming executive. The gaming executive may use the information only for the purposes for which the information is permitted to be used under this Act.

Clause 145 amends section 230(1) to insert subsections (f), (g) and (h) to provide that grounds for an eligibility certificate to be cancelled if the certificate holder is an identified participant in a criminal organisation or has a business associate or executive associate of the applicant is an identified participant in a criminal organisation or, if a corporation, a criminal organisation. Further, gaming executive may cancel the eligibility certificate if the certificate holder is an unsuitable corporation.

Clause 146 inserts a new section 230A after section 230 that the gaming executive must immediately cancel a certificate, if the gaming executive is advised by the Commissioner of Police that a certificate holder is an identified participant in a criminal organisation or an unsuitable corporation. Immediately after cancelling the certificate, the gaming executive must give the certificate holder a QCAT information notice for the decision to cancel the certificate. The information notice must include a direction to return the eligibility certificate within 14 days and a warning that failure to do so, without reasonable excuse, is an offence. The new subsection (6) excludes the operation of section 27B of the *Acts Interpretation Act 1954* in order to ensure that information that was given by the police commissioner would not be able to be sought under the information notice provisions.

Clause 147 amends section 231 by renumbering section 231(3) and (4) to section 231(4) and (5) and inserting a new subsection (3) to exclude the operation of section 27B of the *Acts Interpretation Act 1954* in order to ensure that information that was given by the police commissioner would not be able to be sought under the information notice provisions

Clause 148 amends section 235 by renumbering section 235(3) and (4) and inserting a new subsection (3) which provides that this section does not apply if the ground that exists to cancel the certificate is because the certificate holder is no longer a suitable person because the holder has a business associate or executive associate who is an identified participant in a

criminal organisation or, if the associate is a corporation, a criminal organisation.

Clause 149 amends section 236(3) and (4) by renumbering as section 236(4) and (5) and inserting a new section 236(3) which provides that the gaming executive must cancel a certificate if a certificate holder is a corporation and a show cause notice was given because an executive associate or a business associate of the corporation is an identified participant in a criminal organisation and either there was no accepted representations for the show cause notice or an accepted representation was made and the gaming executive still considers that cancelling the eligibility certificate is necessary. The new subsection (6) excludes the operation of section 27B of the *Acts Interpretation Act 1954* in order to ensure that information that was given by the police commissioner would not be able to be sought under the information notice provisions.

Clause 150 amends section 237(1) omitting 'section 236(4)(b) and inserting 'section 230A(4)(a) or 236(5)(b)'. The clause provides that the information notice must include a direction to return the eligibility certificate within 14 days and a warning that failure to do so, without reasonable excuse, is an offence

Clause 151 amends section 238(1) by omitting 'section 236' and inserting 'section 230A or 236'. The clause provides that there is an automatic cancellation of all licences granted to racing bookmakers if an eligibility certificate is cancelled under section 230A or 236.

Clause 152 amends section 239 insert 230A. The clause provides that the gaming executive must give notice to the control body should an eligibility certificate be cancelled under section 230A.

Clause 153 inserts new section 242A and 242B. The new section 242A maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled on the basis that the person is not a suitable person as they have been identified as a participant in a criminal organisation. The new section provides that the Commissioner of Police is to be a party to any proceedings,

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the QCAT or the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the Commissioner of the Police of the person as an identified participant in a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or

the Supreme Court.

The new section 242B applies to a decision of the chief executive. In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 154 amends section 310 to insert subsection (c) to the definition of *confidential information* to include whether the person is an identified participant in a criminal organisation.

Clause 155 amends section 311 to provide that it is not a reasonable excuse to disclose confidential information if it relates to whether the person is an identified participant in a criminal organisation or is an unsuitable corporation.

Clause 156 inserts a new chapter 10, part 8 after section 462 which provides for transitional provisions for the Bill which allows that if an applicant or licensee had applied for an eligibility certificate, renewal or restoration of a certificate the gaming executive must not grant the certificate if the applicant or certificate holder is an identified participant in a criminal organisation.

Clause 157 amends the Dictionary to provide a definition for *criminal organisation*, *identified participant* and *unsuitable corporation*.

Part 16 Amendment of Second-Hand Dealers and Pawnbrokers Act 2003

Clause 158 provides that this part amends the *Second-hand Dealers and Pawnbrokers Act 2003*.

Clause 159 amends section 7(1) to provide that a person is not a suitable person to hold a licence if the person, or an associate of the person is an identified participant in a criminal organisation.

Clause 160 amends section 8 to provide that the chief executive may ask the Commissioner of Police if an applicant or licensee, or an associate of an applicant or licensee, is an identified participant in a criminal organisation. The Commissioner of Police must give the advice to the chief executive. The chief executive may use the advice only for deciding whether a person is an identified participant in a criminal organisation.

Clause 161 replaces the existing section 9 to provide that a public service employee must not, directly or indirectly, disclose to anyone else the advice given to the chief executive under section 8. However, the person does not contravene the non-disclosure requirement if

disclosure of the advice to someone else is authorised by the chief executive to the extent necessary to perform a function under this Act or the disclosure is otherwise required or permitted by law. The chief executive must destroy a written report about a person's criminal history as soon as practicable after considering the applicant or licensee's suitability to hold a licence.

Clause 162 amends section 12 to provide that the Acts *Interpretation Act 1954*, section 27B, does not apply to the QCAT information notice to the extent to which the decision is based on advice given by the Commissioner of Police to the chief executive in relation to the chief executive asking the Commissioner of Police whether any of the persons is an identified participant in a criminal organisation or the requirement that the Commissioner of Police give the advice to the chief executive.

Clause 163 inserts a new subsection (5) to section 12 and a new subsection (5) to section 15 which provide that the Acts *Interpretation Act 1954*, section 27B, does not apply to the QCAT information notice to the extent to which the decision is based on advice given by the Commissioner of Police to the chief executive in relation to the chief executive asking the Commissioner of Police whether any of the persons is an identified participant in a criminal organisation or the requirement that the Commissioner of Police give the advice to the chief executive.

Clause 164 amends section 19 which clarifies that the chief executive must immediately cancel a licence if a licensee is an identified participant in a criminal organisation. The chief executive must also refuse to renew or restore a licence.

Clause 165 inserts a new section 20A. This section requires the chief executive to immediately cancel a licensee's licence if, after the licence is granted, the chief executive becomes aware that the licensee is an identified participant in a criminal organisation. Immediately after cancelling the licence, the chief executive must give the licensee a QCAT information notice for the decision to cancel the licence. The decision takes effect on the day on which the notice is given to the licensee. If a person's licence is cancelled the licensee must, within 14 days of the QCAT information notice being given to the licensee, return the licence to the chief executive. The maximum penalty for non-compliance is 100 penalty units.

Clause 166 amends the heading of section 21 to *Return of licence not immediately suspended or cancelled*.

Clause 167 inserts new sections 107A and 107B. The new section 107A maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled on the basis that the person is not a suitable person as they have been identified as a participant in a criminal organisation. The new section provides that the Commissioner of Police is to be a party to any proceedings,

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the QCAT or the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the Commissioner of the Police of the

person as an identified participant in a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or the Supreme Court.

The new section 107B applies to a decision of the chief executive mentioned in the new section 107A(1). In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 168 inserts new Part 9 which provides for transitional provisions for the Bill which allows that if an applicant or licensee had applied for a licence, renewal or restoration of a licence the chief executive must not grant the licence if the applicant or licensee is an identified participant in a criminal organisation.

Clause 169 amends the Dictionary of Schedule 3 to provide a definition for *criminal intelligence* and *identified participant*.

Part 17 Amendment of Security Providers Act 1993

Clause 170 provides that this part amends the *Security Providers Act 1993*.

Clause 171 amends section 11 of the Act to provide that a person is entitled to a licence if the chief executive is satisfied that the person is not an appropriate person to hold a licence if the person is an identified participant in a criminal organisation. Section 11(6) is renumbered as 11(7) and section 11(3) is also amended so that in deciding whether a person is an appropriate person to hold a licence the chief executive. In addition to the existing limitation, is also limited to whether a person is not an appropriate person to hold a licence if the person is an identified participant in a criminal organisation.

Clause 172 amends section 12 of the Act to insert a new subsection to provide that in relation to inquiries about person's appropriateness to hold licence, the chief executive must ask the Commissioner of Police for information about whether the person is an identified participant in a criminal organisation. The new subsection also provides that for the purposes of deciding

whether the person continues to be an appropriate person, the chief executive may ask the Commissioner whether the person is an identified participant in a criminal organisation. In addition subsections (1A) to (5) are renumbered. Also a reference to the new subsection (2) is inserted into section 12(4), formerly section 12(3), to require that the Commissioner of Police must comply with the chief executive's request for information.

Clause 173 amends section 12AA of the Act to more specifically reference section 12(3), formerly section 12(2), rather than section 12.

Clause 174 amends section 12C to provide that information about whether the person is an identified participant in a criminal organisation, may be used by the chief executive only for deciding whether the person is, or continues to be, an appropriate person for a licence. It also amends section 12C(7) to add that the chief executive is not required to destroy information under section 12, where the information is about whether the person is an identified participant in a criminal organisation.

Clause 175 amends section 13(5) with a reference to the new section 11(6).

Clause 176 amends section 14 to insert a new subsection to provide that the *Acts Interpretation Act 1954*, section 27B, does not apply to the QCAT information to the decision to refuse to grant a licence to the extent to which the decision is the result of advice given by the Commissioner of Police to the chief executive under section 12(2).

Clause 177 amends section 21 to provide for reasons which are not grounds for cancellation of a licence under section 22. First, if the chief executive is advised by the Commissioner that the licensee, or another person who would have been required to be an appropriate person for the grant of the licence, is an identified participant in a criminal organisation; or second, if the licensee, or another person who would have been required to be an appropriate person for the grant of the licence, is convicted of a disqualifying offence.

Clause 178 amends section 22 to provide that the show cause process does not apply to a decision to cancel or refuse to renew a licence because a licensee, or another person required to be an appropriate person for the licence, is an identified participant in a criminal organisation. Section 22(3) is amended to provide that the licensee must be informed by written notice of the decision to cancel, suspend or refuse to renew the licence or of decision not to take action. The clause also inserts a new subsection to provide that the *Acts Interpretation Act 1954*, section 27B, does not apply to the QCAT the extent to which the decision is based on the result of advice given by the Commissioner to the chief executive under section 12(2).

Clause 179 inserts section 23A which requires that the chief executive must immediately cancel a licensee's licence if, after the licence is granted, the chief executive becomes aware that the licensee is an identified participant in a criminal organisation. The clause also inserts a new subsection to provide that the *Acts Interpretation Act 1954*, section 27B, does not apply to the QCAT information notice.

The chief executive must give the licensee a QCAT information notice for the decision to cancel the licence. The decision takes effect on the day on which the notice is given to the licensee. If a licensee's licence is cancelled under subsection (1), the licensee must return the licence to the chief executive within 14 days of the QCAT information notice being given to

the license. The maximum penalty for contravening the requirement of subsection (4) is 20 penalty units.

Clause 180 inserts new sections 26A and 26B. The new section 26B maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled as the Commissioner of Police has advised that the person, or another person, is an identified participant in a criminal organisation. The new section provides that the Commissioner of Police is to be a party to any proceedings,

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the QCAT or the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the Commissioner of the Police of the person as an identified participant in a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument about the information in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of the information or criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or the Supreme Court.

The new section 26B applies to a decision of the chief executive mentioned in the new section 26A(1). In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 181 inserts a transitional provision applies if, immediately before the commencement, the chief executive had not finally decided an application for a licence or the renewal of a licence. The chief executive must make a decision on the application under this Act as amended by the *Criminal Law (Criminal Organisations Disruption) and Other Legislation Amendment Act 2013*.

Clause 182 amends the Dictionary of Schedule 2 to provide a definition for *criminal intelligence*, *criminal organisation* and *identified participant*.

Part 18 Amendment of Supreme Court of Queensland Act 1991

Clause 183 provides that this part amends the *Supreme Court of Queensland Act 1991*.

Clause 184 amends section 80 which provides for the use of audiovisual links and audio links in the Supreme Court. The amendment clarifies that section 110C does not apply where the proceeding is a sentencing proceeding, as section 15A of the *Penalties and Sentences Act 1992*, as amended by the Bill, applies.

The clause renumbers section 80(1)(ba) and (c) as section 80(1)(c) and (d).

Part 19 Amendment of Tattoo Parlours Act 2013

Clause 185 states that this part amends the *Tattoo Parlours Act 2013*.

Clause 186 replaces section 57 in order to clarify the section previously in its place. The replacement section 57 maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence was refused or licence was cancelled on the ground of an adverse security determination made by the Commissioner of Police. The new section provides that the Commissioner of Police is to be a party to any proceedings.

The new section provides that in any proceedings relating to a review of a decision about an identified participant, the QCAT or the Supreme Court must be given a copy of the report of the adverse security determination. Furthermore, QCAT or the Supreme Court may review the making of the adverse security determination by the commissioner.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument about the information in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it see appropriate, may take evidence consisting of the information or criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as a criminal intelligence report or other criminal intelligence mentioned in section 20(3), the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or the Supreme Court.

Clause 187 amends section 58 in order to clarify the operation of the section.

Part 20 Amendment of Tow Truck Act 1973

Clause 188 states that this part amends the *Tow Truck Act 1973*.

Clause 189 amends section 4C of the Act to provide that a person is not an appropriate person to hold or continue to hold a licence or certificate under the Act if:

- (a) the person is an identified participant in a criminal organisation;
- (b) the person is a criminal organisation; or
- (c) if the person is a corporation, an executive officer of the corporation is an identified participant in a criminal organisation.

Definitions of 'identified participant' and 'criminal organisation' will be inserted into the Dictionary of the Act by a subsequent amendment.

Clause 190 amends section 6 by adopting the new defined term 'police commissioner'.

Clause 191 amends section 9 by adopting the new defined term 'police commissioner'.

Clause 192 amends section 19H to adopt the new term 'police commissioner'.

Clause 193 amends the heading to part 4, division 2 to include a reference to the amendment and surrender of authorities.

Clause 194 inserts a new part 4, division 2, subdivision 1 and a new heading to subdivision 2. New subdivision 1 will insert section 21AA that provides that the chief executive must cancel an existing authority holder's authority if the chief executive is advised by the police commissioner that the holder is either a criminal organisation or an identified participant in a criminal organisation. The chief executive must give the holder a QCAT information notice for the decision. A definition of 'QCAT information notice' will be inserted into the Dictionary of the Act by a subsequent amendment. The cancellation of the authority will take effect on the day the notice is given to the authority holder. The process set out in subdivision 2 for the amendment, cancellation or suspension of authorities will not apply to a cancellation under section 21AA.

Clause 195 amends section 21A to provide that it is a ground to cancel or suspend an authority holder's authority under section 21D if the authority holder is a corporation and the police commissioner has advised the chief executive that an executive officer of the corporation is an identified participant in a criminal organisation.

Clause 196 amends section 21B to provide that the chief executive is able to immediately suspend a tow truck authority held by a corporation where an executive officer of the corporation is an identified participant in a criminal organisation and the chief executive believes that public safety has been, or is likely to be, endangered or it is otherwise in the public interest.

The clause also amends section 21B(3)(a) to correct a cross-reference to section 21D.

Section 21B(4)(c) is amended to provide that the prescribed review information for the decision must be included in a written notice given by the chief executive under subsection (6) except where the decision involved a corporation and was due to an executive officer of the corporation being an identified participant in a criminal organisation.

Clause 197 amends section 21D(7)(b) to provide that the prescribed review information for the decision must be included in the notice of immediate suspension except where the decision involved a corporation and was due to an executive officer of the corporation being an identified participant in a criminal organisation.

Clause 198 creates a new part 4 division 2 subdivision 3 and inserts a new heading for this subdivision.

Clause 199 amends section 21G to provide that the timeframe for returning to the chief executive any document evidencing a cancelled or suspended authority may be stated in a QCAT information notice or in a written notice of cancellation or suspension.

Clause 200 replaces the heading for part 6 and creates a new part 6 division 1.

Clause 201 inserts a new section 27A which deals with the situation where a decision mentioned in schedule 1 of the Act is made because a person is a criminal organisation or an identified participant in such an organisation or the person is a corporation with an executive officer who is an identified participant in a criminal organisation. New section 27A(1) requires the chief executive to give the person a QCAT information notice.

Section 27A(2) provides that section 27B of the *Acts Interpretation Act 1954* does not apply to the QCAT information notice. This means the notice does not need to set out findings on material questions of fact or refer to evidence or other material on which any such findings were based. Decisions may be based on criminal intelligence which is not appropriate to be disclosed.

Clause 202 amends section 28(1) to specify the circumstances in which a decision mentioned in schedule 1 may be subject to internal review. This will not include a person whose interests are affected by a decision made because the person is a criminal organisation or an identified participant in a criminal organisation or, if the person is a corporation, an executive officer of the corporation is an identified participant in a criminal organisation.

Section 28(3) is amended to provide that, if the decision made on internal review is not the decision the person sought, then the person must be given a QCAT information notice.

Clause 203 replaces section 29 to provide that a person who has been given a QCAT information notice for a decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision. New section 29(3) provides that QCAT can not stay the operation of decisions that involve criminal organisations or identified participants in criminal organisations. This clause also inserts a new part 6, division 2 which contains sections 30 and 31.

The new section 30 maintains the confidentiality of criminal intelligence in an application for review in the QCAT or the Supreme Court where an application for a licence or certificate was refused, or a licence was cancelled, on the basis that a person is a criminal organisation, is an identified participant in a criminal organisation or, for a corporate authority holder, an executive officer is an identified participant. The new section provides that the Commissioner of Police is to be a party to any proceedings,

The new section provides that in any such review proceedings, the QCAT or the Supreme Court must be given a statement of reasons by the Commissioner of Police about the identification of the person by the Commissioner of Police as an identified participant in a criminal organisation or as a criminal organisation. Furthermore, QCAT or the Supreme Court may review the identification by the Commissioner of the Police of the person as an

identified participant in a criminal organisation or as a criminal organisation.

As it considers appropriate to protect the confidentiality of criminal intelligence, the QCAT or the Supreme Court may receive evidence and hear argument in the absence of parties to the proceeding and their representatives. QCAT or the Supreme Court, as it considers appropriate, may take evidence consisting of criminal intelligence by way of an affidavit of a police officer of or above the rank of superintendent.

If the QCAT or Supreme Court considers information has been incorrectly categorised by the Commissioner of Police as criminal intelligence the Commissioner of Police may withdraw the information from consideration by the QCAT or the court. Information that has been withdrawn must not be disclosed to any person or taken into consideration by the QCAT or the Supreme Court.

The new section 31 applies to a decision of the chief executive mentioned in section 30(1). In this case, the *Judicial Review Act 1991*, part 4 does not apply to the decision. Unless the Supreme Court decides that the decision is affected by jurisdictional error, the decision is final and conclusive and can not be challenged, appealed against, reviewed, quashed, set aside or called in question in any other way, under the *Judicial Review Act 1991* or otherwise (whether by the Supreme Court, or another court, a tribunal or another entity). Also, except for jurisdictional error, the decision is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground. The *Judicial Review Act 1991*, part 5 applies to the decision mentioned in subsection (2) to the extent it is affected by jurisdictional error.

Clause 204 amends section 36 by adopting the new defined term ‘police commissioner’.

Clause 205 amends section 36A by adopting the new defined term ‘police commissioner’.

Clause 206 inserts a new section 36AA which provides that the chief executive may ask the police commissioner whether a person is a criminal organisation or an identified participant in a criminal organisation. The police commissioner must give the information to the chief executive. The chief executive may use the information only for the purposes for which the information is permitted to be used under this Act.

Clause 207 amends section 36B to adopt the new defined term ‘police commissioner’ and to provide that the information to which the section applies includes advice given by the police commissioner under section 36AA.

Clause 208 creates a new part 8, division 1 and inserts a heading for this division.

Clause 209 inserts a new part 8, division 2 that contains a transitional provision. The effect of the provision is that any applications for the grant or renewal of a tow truck licence or certificate that have been made before the commencement of the section but not finally decided at the commencement must be decided under the amended provisions.

Clause 210 amends the heading to schedule 1 to reflect the additional sections now relevant to reviewable decisions.

Clause 211 amends schedule 2 to insert new definitions for ‘criminal intelligence’, ‘criminal organisation’, ‘identified participant’, ‘police commissioner’ and ‘QCAT information notice’ and amend the definition of ‘approved form’.

Part 21 Amendment of Transport Planning and Co-ordination Act 1994

Clause 212 states that this part amends the *Transport Planning and Coordination Act 1994*.

Clause 213 amends section 3 by inserting definitions of ‘approved agency’, ‘law enforcement purpose’, ‘member’, ‘MoU’, ‘transport information database’ and ‘use’.

Clause 214 inserts new sections 36I to 36M.

Section 36I will authorise the chief executive to give the chief executive officer of an approved agency all or any information in a transport information database. A ‘transport information database’ will be defined in section 3 of the Act to mean any register or record kept or obtained under a transport Act. The information can be given to enable the approved agency to use it for a law enforcement purpose. The giving of the information is to be done in accordance with an MoU between the chief executive and the chief executive officer of the approved agency. It is envisaged that the MoU will specify the types of information to be given to approved agencies and the conditions on which it is given.

Under new section 36I(2), the information may be given to the approved agency by allowing an authorised member of the agency to have direct access to the transport information database. An authorised member is a member, or a member of a class of members (for example, a person who holds a specific job title in the agency), of the approved agency who the chief executive has authorised in writing to have this direct access.

Section 36I(3) provides that the chief executive may give the information on conditions the chief executive considers appropriate.

Section 36I(4) provides that the section applies despite any other Act.

Section 36J confirms that the information given under section 36I may be used by the approved agency for a law enforcement purpose, despite any other Act.

Section 36K creates an offence where a member of an approved agency uses information given under section 36I other than for a law enforcement purpose or uses it in contravention of any condition imposed by the chief executive or the terms of the MoU. The maximum penalty for the offence is 100 penalty units.

Section 36L confirms that a person commits an offence against section 36K(2) even if the person uses the information outside the State in a way that would be an offence against section 36K(2) if it were used by the person within the State. This will ensure appropriate protections are in place where an approved agency that is receiving information under section 36I operates in jurisdictions outside Queensland.

Section 36M provides protection from liability for a person who honestly and without

negligence gives information under section 36I. The person is not liable civilly, criminally, or under an administrative process for giving the information. Also, the person cannot be held to have breached any code of professional etiquette or ethics or departed from accepted standards of professional conduct by giving the information. Under section 36M(3), any civil liability that is prevented by this clause will instead attach to the State

Part 22 Amendment of Transport Planning and Coordination Regulation 2005

Clause 215 states that this part amends the *Transport Planning and Coordination Regulation 2005*.

Clause 216 inserts a new part 5. Part 5 includes new section 10 which prescribes the Australian Security Intelligence Organisation as an approved agency for section 36I of the Act.

Part 23 Amendment of Weapons Act 1990

Clause 217 provides that this part amends the *Weapons Act 1990*.

Clause 218 inserts a new subsection 10(3)(a)(iii) and (iv) and new a subsection 10(3)(b)(iii) and (iv). These subsections provide that a licence may be issued to a body only if the body is not a criminal organisation and each executive officer or other influential person for the body is not an identified participant in a criminal organisation.

Clause 219 inserts a new subsection 10B(2A) to provide that for the issue, renewal or revocation of a licence, a person is not a fit and proper person to hold a licence if the person is an identified participant in a criminal organisation.

Clause 220 inserts a new subsection 10C(2A) to provide that a person is not a fit and proper person to be an associate of a licensed dealer if the person is an identified participant in a criminal organisation.

Clause 221 inserts a new subsection 14(1A) to provide that without limiting subsection (1), before deciding the application, an authorised officer must ask the commissioner whether the applicant or an associate of the applicant is an identified participant in a criminal organisation or, if the applicant is a body, the body is a criminal organisation or an executive officer or other influential person for the body is an identified participant in a criminal organisation.

The clause also inserts a subsection 14(3A) requiring the commissioner must comply with the request mentioned in subsection (1A).

Additionally, clause 220 inserts a new subsection 14(9A) providing that the authorised officer may use advice given by the commissioner under subsection (3A) only for deciding the application.

Clause 222 inserts a new subsection 18(4A) to provide that before deciding the application, an authorised officer must ask the commissioner whether the applicant for renewal of a

licence or an associate of the person is an identified participant in a criminal organisation or, if the applicant is a body, the body is a criminal organisation or an executive officer or other influential person for the body is an identified participant in a criminal organisation.

The clause also inserts a subsection 18(4B) requiring the commissioner must comply with the request under subsection (4A).

Additionally, clause 221 inserts a new subsection 18(4C) providing that the authorised officer may use advice given by the commissioner under subsection (4B) only for deciding the application.

Clause 223 amends section 19(2) by excluding advice given by the commissioner to the authorised officer under sections 14(3A) or 18(4B) from being criminal intelligence that would only require the stated reason as ‘confidential information’ on the approved form stating the specific reasons for rejection. Where the decision to reject the application is based on section 14(3A) or 18(4B) the amended section 142AA(3) (Notices must be QCAT information notices) restricts the reasons to be provided.

Clause 224 amends section 30(1A) by excluding advice given by the commissioner to the authorised officer under sections 18(4B) or (1C) from being criminal intelligence that would only require the stated reason as ‘confidential information’ on the approved form stating the specific reasons for suspension or revocation. Where the decision to suspend or revoke the licence is based on section 18(4B) or (1C), the amended section 142AA(3) (Notices must be QCAT information notices) restricts the reasons to be provided.

The clause also inserts a new subsection 30(1B) that provides for the purposes of deciding whether to revoke a licence, the authorising officer must ask the commissioner whether a licensee is an identified participant in a criminal organisation, or a criminal organisation. Also, the authorised officer must ask the commissioner whether an associate of the licensee is an identified participant in a criminal organisation, or an executive officer or other influential person for the licensee is an identified participant in a criminal organisation.

The clause also inserts a subsection 30(1C) requiring the commissioner must comply with the request under subsection (1B).

Additionally, clause 223 inserts a new subsection 30(1D) providing that the authorised officer may use advice given by the commissioner under subsection (1C) only for deciding whether to revoke the licensee’s licence.

Clause 225 amends section 142(1) by inserting a new subsection 142(1)(aa) to clarify that a decision refusing an application for a licence also includes a decision refusing an application to renewal a licence.

Clause 226 inserts a new subsection 142AA to exclude section 27B of the *Acts Interpretation Act* from the QCAT information notice to the extent to which the decision relies on advice given by the commissioner to an authorised officer under sections 14(3A), 18(4B) or 30(1C). This will provide that the QCAT information notice in relation to decisions relying on advice given by the commissioner under sections 14(3A), 18(4B) or 30(1C) does not have to comply with the content of the statement of reasons requirement under section 27B of the *Acts Interpretation Act*.

Clause 227 inserts a new section 143 (Additional confidentiality requirements for particular criminal intelligence in proceedings) that provides the police commissioner is to be a party to the proceedings for an application for review of a decision in the QCAT or the Supreme Court.

Additionally, the clause requires the police commissioner to provide a statement of reasons to QCAT or the Supreme Court about why the commissioner decided the person is an identified participant in a criminal organisation or for a body, a criminal organisation, or an executive officer or other influential person for the body as an identified participant in a criminal organisation. The clause also maintains confidentiality of criminal intelligence in the review process.

The clause also inserts a new section 144 (Application of Judicial Review Act 1991) to provide that the *Judicial Review Act 1991*, part 4 does not apply to a decision of an authorised officer to which section 143(1) applies. Additionally, subject to section 143, the decisions made are final and conclusive and are not reviewable under the *Judicial Review Act 1991* other than on the grounds of jurisdictional error.

Clause 228 amends section 145. Section 145 entitles a person who applies for the review of the refusal to renew, or revocation of, a dealer's licence, armourer's licence or theatrical ordinance supplier's licence, to carry on business until the review is decided, as if the licence had been renewed or had not been revoked.

This clause will amend section 145 to provide a new subsection (2) providing that a person cannot rely on the entitlement to carry on business when the decision to refuse to renew, or to revoke the licence was made because the commissioner advised an authorised officer under section 14(3A), 18(4B) or 30(1C) that the licensee, or associate of the licensee, or an executive officer or other influential person for the licensee is an identified participant in a criminal organisation or is a criminal organisation.

Clause 229 inserts transitional provisions. The new section 191 (Existing applications) provides that for applications for a licence, or renewal of a licence, made before commencement of section 191 and not finally decided, must be decided under the Act as amended by the Bill.

Clause 230 amends schedule 2 (Dictionary) to the Act to define relevant terms in the Bill.

Part 24 Amendment of Work Health and Safety Act 2011

Clause 231 provides that this part amends the *Work Health and Safety Act 2011*.

Clause 232 amends section 271 to provide that a regulation may prescribe the circumstances in which the disclosure or use of criminal intelligence is permitted.

Clause 233 amends Schedule 3 to provide grounds on which the Governor in Council may make regulations. These include the ability to regulate circumstances in which persons are not eligible to be authorised to perform work, the circumstances in which the regulator may seek information about the eligibility of a person to be authorised, provide restrictions on the

review of certain decisions and to prescribe the procedures of a court or the QCAT when reviewing a decision.

