

POLICE POWERS AND RESPONSIBILITIES (FORENSIC PROCEDURES) AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

Prior to and since the introduction of the *Police Powers and Responsibilities Act 2000* (PPRA), Queensland has collected DNA samples from crime scenes and suspects. The PPRA significantly enhanced Queensland's ability to investigate crime by extending the circumstances when a DNA sample may be taken, including for the purpose of intelligence.

The primary purpose of this Bill is to facilitate the matching of Queensland's DNA profiles with other jurisdictions through the national DNA database administered by CrimTrac. CrimTrac is a major initiative of the Commonwealth Government, in co-operation with the States and Territories. The main objective of CrimTrac is to make Australia safer by reducing crime. Part of the CrimTrac initiative is the establishment of a National Criminal Investigation DNA Database (NCIDD). The NCIDD is commonly referred to as the national DNA database. The national DNA database is intended to operate as a co-operative scheme in which each jurisdiction's use of the database is regulated by its own laws.

Over several years the Standing Committee of Attorneys-General (SCAG) and the Model Criminal Code Officers Committee (MCCOC) developed the 2000 Model Forensic Procedures Bill (Model Bill). The Model Bill relates to the conducting of forensic procedures and includes provisions regarding the taking and use of DNA samples.

Several jurisdictions (model law jurisdictions), in particular the Commonwealth, have passed legislation based on the Model Bill, or legislation that is structurally similar to the Model Bill. However, Queensland followed the UK model and enacted legislation that has a high

intelligence focus in addition to an evidence focus. Consequently, Queensland's forensic procedure provisions, under the PPRA, do not mirror those of the model law jurisdictions. This is also the case with the Northern Territory's legislation.

Model law jurisdictions provide for the inter-jurisdictional sharing of DNA information. A pre-condition to the exchange of DNA information is recognition of Queensland's forensic procedure legislation as a 'corresponding law' and the entering into of a Ministerial arrangement between Queensland and those jurisdictions for the exchange of DNA information. The Commonwealth requires that Queensland's DNA legislation reflect a number of provisions common with other jurisdictions before they will progress the recognition of Queensland's legislation as a 'corresponding law'.

The four areas that have been identified by the Commonwealth, as requiring legislative amendment, before the PPRA would be recognised by the Commonwealth as a 'corresponding law' are —

- (a) a matching table relating to inter-jurisdictional DNA profile comparisons;
- (b) specific offences for the misuse of DNA information and material and for unlawful matching;
- (c) provisions to expressly permit the retention and use of DNA material or information obtained under the law of another Australian jurisdiction; and
- (d) the recognition of sampling orders by a magistrate of another jurisdiction.

The Bill is a consolidation of the various powers required to conduct a forensic procedure, related 'safeguard' provisions and additional provisions that have been identified by the Commonwealth or as a result of a review of the PPRA. The Bill contains new provisions including specific provisions relating to the national DNA database administered by CrimTrac, magistrate's orders for conducting a forensic procedure and the authority for a police officer to perform non-intimate forensic procedures.

Means of Achieving Policy Objectives

The Bill achieves the objectives by amending the PPRA. The Bill omits Chapter 8 of the PPRA and inserts new Chapters 8, 8A and 8B. Chapter 8 deals with searching of persons in custody. Chapter 8A (Forensic

Procedures) into the PPRA to facilitate Queensland's participation with all jurisdictions in the national DNA database administered by CrimTrac. Chapter 8A reflects nationally consistent terminology for conducting a forensic procedure. Under this scheme a forensic procedure is either an intimate or non-intimate forensic procedure, which is defined in the Bill. Chapter 8B contains provisions relating to Blood and urine testing of persons suspected of committing sexual or other serious assault offences.

Alternative Means of Achieving Policy Objectives

There are no alternative means of achieving the policy objectives other than by legislative reform.

Estimated Cost of Implementation for Government

There will be a financial impact as a result of the Bill. The major financial impact will be incurred in order for Queensland to participate in the national DNA database (NCIDD). Funding is required to cover the cost of:

- Database Security;
- Database Operation and Maintenance;
- Results Management Team;
- Case Management System; and
- Training.

Consistency with Fundamental Legislative Principles

While this Bill recognises the importance of ensuring a balance between the rights and liberties of individuals and the institution of Parliament, a number of proposals have been identified as having possible fundamental legislative principles issues under the *Legislative Standards Act 1992*. Possible fundamental legislative principle issues include:

- sampling orders by a magistrate on persons not in custody;
- new penalties for non compliance and misuse of information;
- performing forensic procedures on deceased persons;
- exclusion of the application of matching rules as reflected in a matching table;

- removal of the right of self incrimination for failure to do an act to facilitate the performance of a forensic procedure; and
- extending the taking of DNA samples from prisoners.

Sampling orders by a magistrate on persons not in custody

Currently the PPRA provides that an application may be made to a Magistrate for the conducting of a medical or dental procedure on a person in custody who is suspected of having committed an indictable offence, whether or not the person has been charged with the offence. In circumstances when a forensic procedure must be approved by a Magistrate or a Court, the person is generally given the opportunity to make submissions on the application to conduct the forensic procedure. This Bill removes the requirement that the person be in custody at the time of the application and provides that in limited circumstances, the person may not be given notice of an application to a court for a forensic procedure. For example, where evidence may be lost or destroyed or the person may abscond as a result of the giving of notice to the person. It is considered that this provision is sufficiently justified as a magistrate must be satisfied that there are genuine reasons for not giving the notice or that the person is not entitled to be given notice or heard on the application.

New penalties for non compliance and misuse of information

As a requirement of the Commonwealth, Queensland must provide new offences, consistent with the *Crimes Act (Cwth)*, regarding the misuse of DNA information and material. The Bill provides that a contravention will attract a penalty of 2 years imprisonment. This penalty is consistent with the *Crimes Act (Cwth)*. The Bill also creates a summary offence for failing to comply with a Court order under Chapter 8A (Forensic Procedures), with a maximum penalty of two years imprisonment. Currently, a person who contravenes a current order commits an indictable offence against s 205 of the Criminal Code that must be heard and determined in the District Court. It is considered that these penalties are necessary to comply with the Commonwealth's position that without these criminal sanctions the the prevention of misuse of sensitive information derived from the taking of a DNA sample may be seriously jeopardised.

Taking forensic procedures from deceased persons

Currently, the PPRA does not provide a specific power for police to obtain DNA samples or take fingerprints from deceased persons other than for a purpose relating to a coronial inquiry, pursuant to the *Coroners Act 1958*. The proposed Bill provides the authority for a Magistrate to authorise the conducting of a forensic procedure on a deceased person in the same circumstances as if the person was not deceased. The provision enables a DNA sample or identifying particular to be taken from a deceased person who was reasonably suspected of having committed an indictable offence. It is considered that the provision is justified, as it will enhance investigations to either eliminate the deceased person as a suspect or indicate that the deceased person was present at a crime scene.

Exclusion of the application of matching rules as reflected in a matching table

The Bill also provides that the comparison of results of DNA analysis that are stored in a Queensland DNA database index (QDNA index) may not be compared with other DNA analyses unless a matching table prescribed by regulation permits the comparison. The Commonwealth requires the creation of a matching table and indexes relevant to the table before they will recognise Queensland's DNA legislation. Recognition by the Commonwealth will permit the exchange of DNA information with the Australian Federal Police. The including of a matching table by regulation will also provide conformity with other jurisdictions that have followed the Model Bill and already recognise Queensland's DNA legislation as a 'corresponding law'.

The Bill provides that a regulation may exclude the application of matching rules as reflected in a matching table. This provision may be considered to be inconsistent with fundamental legislative principles. However, this position is required to permit the comparison of DNA profiles that may not fit in indexes prescribed by regulation that are similar to jurisdictions who have followed the Model Bill. For example, the Bali Bombing incident also high-lighted the need for Queensland to retain flexibility in DNA legislation, as the Commonwealth scheme at that time did not permit the effective identification of victims during this investigation. The Bill will permit Queensland to continue to facilitate the exchange of DNA information with all declared law enforcement agencies including the Northern Territory and additional overseas jurisdictions that

have not followed the Model Bill. The current limitations on the use of DNA samples obtained in Queensland have been generally maintained.

Removal of the right of self incrimination for failure to do an act to facilitate the performance of a forensic procedure

While the legislative provisions regarding self-incrimination generally apply to a person's right to not verbally incriminate himself or herself. This right is removed from certain provision within this Bill relating to forensic procedures. The proposed Bill provides that a police officer may give any reasonable necessary direction to a suspect for ensuring a forensic procedure that has been ordered by a magistrate or a court is performed. The Bill expressly provides that when a person is required to do an act to facilitate the performance of a forensic procedure that it is not a reasonable excuse for the person to fail to comply on the grounds of self-incrimination. It is not intended that the inclusion of such provisions in the Bill should limit or otherwise affect the interpretation of other provisions of the PPRA. Removing the right against self incrimination is considered justifiable given the public interest in solving crime, by obtaining information about a suspect through the conducting of a forensic procedure.

Extending the taking of DNA samples from prisoners

Currently, the PPRA provides for the taking of a DNA sample from prisoners serving a term of imprisonment for an indictable offence. The Bill will provide for the taking of a DNA sample from prisoners who have not previously had a DNA sample taken and from prisoners who are transferred from inter-state. Queensland currently supervises approximately 250 prisoners who have been transferred from inter-state. Additionally, the Bill extends the taking of DNA samples from prisoners on post-prison community based release orders (PPCBRO) including parole and home detention. This amendment will capture approximately 825 prisoners subject to a PPCBRO who are serving terms of imprisonment for a range of offences including: murder; robbery; rape; grievous bodily harm; and indecent dealing. Is considered that the extension of the taking of DNA of these prisoners is justified given the public interest in solving crime, by obtaining information about a suspect through the conducting of a forensic procedure.

Consultation conducted in Development of the Bill

While no consultation was undertaken with non-government entities or the public significant consultation has occurred with the following Commonwealth Government Departments, Queensland Government Departments, Australian police services and within the Queensland Police Service:

Commonwealth Government

- Commonwealth Attorney Generals Department;
- Australian Government Solicitor for the CrimTrac agency;
- CrimTrac;

Queensland Government

- Department of the Premier and Cabinet;
- Department of Justice and Attorney-General;
- Department of Corrective Services;
- Department of Families;
- Disability Services;
- Queensland Health;
- Government Medical Officer;
- Commissioner for children and young people;
- Department of Aboriginal and Torres Strait Islander Policy;

Australian Police Services

- Victorian Police Service;
- New South Wales Police Service;
- South Australian Police Force;
- Western Australia Police Service;
- Northern Territory Police Force;
- Tasmanian Police Service; and
- Australian Federal Police.

As a consequence of responses received during the consultation process, consideration has been given to and where appropriate changes have been made to the Bill.

NOTES ON PROVISIONS

PART—PRELIMINARY

Short title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides that the Act will commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

Act amended in pt 2 and schedule

Clause 3 states that part 2 amends the Police Powers and Responsibilities Act 2000 (the PPRA).

Insertion of new s 3A

Clause 4 inserts new section 3A, which provides that a note in the text of the PPRA is part of the Act.

Amendment of s 19 (General power to enter to arrest or detain someone or enforce warrant)

Clause 5 amends section 19 of the PPRA to provide that a police officer may enter a place to enforce a forensic procedure order, corresponding forensic procedure order, court orders or other Magistrate orders under chapter 8A that permit the detention of a person to perform a forensic procedure.

Amendment of s 32 (Person may be required to state name and address)

Clause 6 amends section 32 to include that a person does not commit an offence against section 445 of the PPRA if the person was required by a police officer to state the person's name and address and the person is not proved to be the person named in the order.

Amendment of s 33 (Prescribed circumstances for requiring name and address)

Clause 7 amends section 33 to include that a police officer may require a person to state the person's name and address when a police officer is about to take identifying particulars under a notice, court or Magistrates order, is about to take a DNA sample under a notice, court or Magistrates order, or is attempting to enforce or serve a forensic procedure order or a registered corresponding forensic procedure order. A person may also be required to state the person's name and address when a qualified person is about to perform a forensic procedure on the person or an authorised examiner is about to perform a non-medical examination.

Renumbering and relocation of s 275 (Identification of suspects)

Clause 8 renumbers section 275 as section 377A and relocates the section to chapter 9, part 5 after section 377.

Replacement of ch 8, hdg and pt 1

Clause 9 omits chapter 8, heading and part 1 and inserts chapter 8.

CHAPTER 8—SEARCH POWERS FOR PERSONS IN CUSTODY

Section 269 (Application of ch 8)

Clause 9 inserts a new s 269. The section provides that chapter 8 applies to a person who is lawfully arrested or is in lawful custody for an offence that has not been decided, is in custody under a specified sentence or a detention order for a child or is otherwise lawfully detained under another Act. The section is similar to the existing s 269(1) of the PPRA.

Section 270 (Police officer may search person in custody)

Clause 9 inserts s 270. Section 270 subsection (1) allows a police officer to search and re-search a person to whom the section applies. The subsection is designed to allow regular searches of persons in custody to make certain that the person is not in possession of something they are not permitted to possess.

Subsection (2) allows a police officer to seize anything from the person that the police officer reasonably suspects may provide evidence of the commission of an offence.

Subsection (3) allows a police officer to retain anything that a person may use to endanger anyone's safety, including their own or may be used in an escape, or anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

The section is similar to the existing s 269 of the PPRA.

Section 271 (Powers relating to thing taken from person taken to place of safety)

Clause 9 inserts s 271. Section 271 provides that a police officer may give property taken from a person who is taken to a place of safety under section 210—

- a. to an adult family member at the person's home; or
- b. to a friend or relative at the friend or relative's home; or
- c. to the person in possession or in charge of a place of safety.

The section further requires a person who takes possession of the property to give a police officer a receipt for the property. The section is similar to the existing s 269 of the PPRA.

Replacement of ch 8, pts 2-4 and pt 5, hdg

Clause 10 omits chapter 8 parts 2 to 4 and chapter 8 part 5 heading and chapter 8A and 8B are inserted.

CHAPTER 8A—FORENSIC PROCEDURES

PART 1—QUALIFIED PERSONS AND AUTHORISING FORENSIC PROCEDURES

Section 272 (Who are qualified persons)

Clause 10 inserts s 272. Section 272 identifies which classes of persons are qualified persons for performing nominated forensic procedures. The section authorises a qualified person for the taking of identifying particulars to also photograph the identifying particulars.

Section 273 (Limitation on forensic procedures that dentist may perform)

Clause 10 inserts s 273. Section 273 limits the forensic procedure a dentist may perform to the extent necessary to examine a person's mouth, take a sample of saliva, take a dental impression and the examination of a bite mark on a person. The section is similar effect to the existing s 287 of the PPRA.

Section 274 (When forensic procedures are authorised)

Clause 10 inserts s 274. Section 274 indicates the circumstances in which a forensic procedure may be performed on a person under this chapter. The section further provides that in this chapter this person may be referred to as a "relevant person".

PART 2—OBTAINING CONSENT FOR FORENSIC PROCEDURE

Section 275 (What pt 2 provides)

Clause 10 inserts s 275. Section 275 provides that part 2 states the general rules for obtaining forensic procedure consent from suspects, to authorise a qualified person to perform a forensic procedure. The general rules for obtaining forensic procedure consent also apply in relation only to the taking of a DNA sample for specified purposes including the conducting of ‘mass screenings’ where members of the community may be asked to provide a DNA sample to identify whether or not their sample matches to a sample located at a crime scene. Additionally the rules apply, for the purposes of locating a missing person, identifying a deceased person, and assisting in disaster victim identification as a result of a disaster or accident.

Where a forensic procedure may be conducted under the authority of chapter 8A there is no requirement for a police officer or other person to seek the consent of a person prior to the forensic procedure being conducted. Furthermore this part does not require a police officer to obtain forensic procedure consent to perform a non-intimate forensic procedure if the procedure does not involve touching the person or the taking of a DNA sample. For example, during a video recorded interview a suspect for an offence may be asked to show an injury or other identifying feature to a police officer. The police officer is not required to follow the rules.

Additionally, subject to subsection (1)(b), this part is not intended to limit a person who is not a suspect from otherwise consenting to the performance of a forensic procedure.

Section 276 (General rules about asking for consent)

Clause 10 inserts s 276. Section 276 provides that a police officer may ask a person, or another person who may act for that person to consent to a forensic procedure if the police officer is satisfied that the person giving consent is not affected by alcohol or drugs to an extent that the person cannot make an informed consent. A police officer may only ask a suspect or another person who may act for that person to consent to the performance of an intimate forensic procedure if the police officer suspects the person may have committed an indictable offence. It is irrelevant

whether or not the person asked to consent has been proceeded against for an offence for which the results of performing the forensic procedure may be relevant.

Provisions relating to performing medical and dental procedures with consent are currently found in chapter 8 part 3 division 1 of the PPRA. Further provisions relating to the taking of DNA samples with consent are currently found in chapter 8 part 4 division 3. Many of the current provisions are similar to those proposed in the Bill.

Section 277 (Special requirement for child of at least 14)

Clause 10 inserts s 277. The section provides that a police officer may ask a child to consent to a forensic procedure if the police officer reasonably suspects that the child is at least 14 years. A support person must be present when the explanation of the requirements for giving informed consent is given to the child and when the child indicates his or her consent for the performance of the forensic procedure. The provision provides that if a police officer intends to obtain a forensic procedure consent from a child, the police officer must ensure the child is given a reasonable opportunity to speak with a support person and, if reasonably practicable, in circumstances where the conversation cannot be overheard. Additionally, a support person must be present during the performance of a non-intimate forensic procedure if the child requests the person to be present.

Section 278 (Special requirement for child under 14)

Clause 10 inserts s 278. The section provides that a parent, guardian or for an Aboriginal or Torres Strait Islander, a person who under their tradition or custom is regarded as a parent, may consent on behalf of a child, who the police officer reasonably suspects is under 14 years, to the performance of certain forensic procedures. If the consent is to authorise the performance of a forensic procedure for the purpose of obtaining a sample for DNA analysis then a relevant sample of the child's hair or a mouth swab may be used to obtain the child's DNA sample. The section excludes the taking of a child's blood for the purpose of obtaining a DNA sample when other means are available for this purpose. Additionally, a support person must be present during the performing of a non-intimate forensic procedure if the child requests the person to be present.

Section 279 (Special requirement for person with impaired capacity)

Clause 10 inserts s 279. The section provides that if a police officer intends to obtain a forensic procedure consent from a person who is reasonably suspected of being a person with impaired capacity, the police officer must ensure the person is given a reasonable opportunity to speak with a support person and, if reasonably practicable, in circumstances where the conversation cannot be overheard. The police officer must also ensure that the support person is present when the explanation of the requirements for giving informed consent is given to the person and any subsequent consent provided. A police officer may ask the person's parent, guardian or for an Aboriginal or Torres Strait Islander a person who under their tradition or custom is regarded as a parent, to authorise a forensic procedure consent if the person does not have the capacity to give consent.

Section 280 (Consent must be informed consent)

Clause 10 inserts s 280. The section provides that if a police officer asks a person to consent to the performance of a forensic procedure, the police officer must explain the requirements for giving informed consent and allow the person a reasonable opportunity to comprehend the explanation. The section further requires that a police officer must give information and explain the information to the extent that is reasonably practical to a child under 14 or person with impaired capacity where the person's parent is asked to consent for that person and the person was not present when the police officer explained the requirements under section 281 to the parent. This requirement is not intended to affect the lawfulness of the informed consent given by the parent but will help to ensure that the child or impaired person also understands the information about the forensic procedure.

Section 281 (General requirements for giving informed forensic procedure consent)

Clause 10 inserts s 281. The section provides in detail the explanation a police officer must give to a person to enable a person to give an informed consent. If appropriate this explanation may be given to the person in a statement in the approved form. It would not be appropriate to give the explanation by using an approved form if the person did not have a capacity or willingness to read the form. If the purpose for asking for the consent is to take a sample for DNA analysis the person must be informed that they

may limit the use of the sample to the purpose for which the sample was sought. If the sample is to be taken from a child under 14, it must be a DNA sample taken for DNA analysis and the sample can only be used for the limited purpose.

Section 282 (Recording consent)

Clause 10 inserts s 282. The section provides how an explanation and any consent may be recorded. The giving of the consent may be given orally or in writing, however, the actual indication by the relevant person that they consent to the performance of the forensic procedure must be either electronically recorded or made in writing and signed by the person giving consent. Where applicable and when the indication of consent is given in writing a police officer must also obtain the signature of the support person. Written consent may be given by the person signing an approved form.

Section 283 (Qualified person may perform forensic procedure)

Clause 10 inserts s 283. The section applies where forensic procedure consent has been given. The section provides that a person may perform a forensic procedure for which they are qualified.

PART 3—FORENSIC PROCEDURE ORDERS

Section 284 (Application of pt 3)

Clause 10 inserts s 284. The section provides that this part applies if a police officer is satisfied that the performance of a forensic procedure on a person suspected of committing an indictable offence may provide evidence of the commission of the offence. This part applies to a deceased person and person who is not in custody. A police officer may not apply for a forensic procedure order under this part in relation to a child, to take a DNA sample or a child's fingerprints including in circumstances where it is practicable to obtain another specified court order and the other court order is likely to be able to be enforced. It would not be practicable to obtain the

other court order in circumstances including where the relevant child's location is not sufficiently known or the child is located in another State.

Section 285 (Application for forensic procedure order)

Clause 10 inserts s 285. The section provides that a police officer may apply to a magistrate for a 'forensic procedure order' authorising the performance of a forensic procedure on a person whether or not the person consents to the performing of the forensic procedure. If the person is a child the application must be made to a Children's Court magistrate. The application must be made in the approved form, sworn and state the grounds on which it is made. A magistrate may refuse to consider the application until a police officer provides additional information required by the magistrate about the application in the way the magistrate requires.

Section 286 (Notice of application must ordinarily be given)

Clause 10 inserts s 286. The section requires that a person who is the subject of a forensic procedure order application must be notified in the approved form at least 7 days prior to the application being heard.

The section further provides that if the person attends the application for the forensic procedure order such person does have an entitlement to make submissions. If the person does not attend, the application may be decided in the person's absence. The section also provides the mechanism for persons, who are known to be in custody in another State, to make submissions on the application without the person's attendance at the hearing. Such persons may not be capable of being released from custody in the other state.

Section 287 (When notice of application need not be given etc.)

Clause 10 inserts s 287. The section provides the circumstances when a person is not entitled to be given notice or be heard on the application for a forensic procedure order.

Section 288 (Making forensic procedure order)

Clause 10 inserts s 288. The section outlines when a magistrate may make a forensic procedure order. Additionally, the section identifies the matters that may be considered by a Magistrate when balancing the rights

and liberties of the suspect and the public interest when deciding whether the forensic procedure is justified.

Section 289 (What forensic procedure order must state)

Clause 10 inserts s 289. The section identifies the information that must be stated in a forensic procedure order. The order must identify the relevant person, state that a police officer may exercise powers in section 291, state the forensic procedure may be performed by a qualified person, and that an intimate or non-intimate forensic procedure or both is authorised. The order does not identify the specific types of procedures, as contained within the definitions of intimate forensic procedure or non-intimate forensic procedure, which may be conducted by a qualified person under the forensic procedures order.

Section 290 (When forensic procedure order ends)

Clause 10 inserts s 290. The section provides that the forensic procedure order remains active until the forensic procedures authorised under the order are conducted. Additionally, when the order authorises an intimate forensic procedure and a doctor may perform a non-intimate forensic procedure as a result, the order extends to both the intimate and non-intimate procedures and has effect until both the procedures are completed.

Section 291 (Powers for enforcing forensic procedure order)

Clause 10 inserts s 291. The section provides the powers a police officer has for enforcing a forensic procedure order. These powers include a power of detention whether or not the relevant person is given a direction to attend and remain at a place to enable the procedure to be performed. Additionally, the section provides a power to direct the relevant person to attend a place and remain there for a reasonable time to enable the ordered forensic procedure to be performed.

Section 292 (Order must be given before forensic procedure is performed)

Clause 10 inserts s 292. The section provides that before a forensic procedure is performed upon a person under a forensic procedure order, a

police office must give a copy of the order to the person unless the person is unconscious or deceased.

Section 293 (Qualified person may perform forensic procedure)

Clause 10 inserts s 293. The section applies when a forensic procedure order has been made. This section provides that a person may perform a forensic procedure for which they are qualified.

PART 4—IDENTIFYING PARTICULARS

Division 1—Particular provisions about taking identifying particulars

Section 294 (Taking identifying particulars of person in custody)

Clause 10 inserts s 294. The section permits a police officer to take identifying particulars from a person who is in custody for an identifying particulars offence before a court has determined a finding of guilt. If the person is due to be released after arrest, the person may be detained for the taking of the person's identifying particulars. If a person is arrested in specified circumstances including where the person was involved in a demonstration or a disturbance that involves a number of persons acting alone or together, the person may be photographed at the scene of the arrest for identification purposes. Additionally, the person's identifying particulars, including another photograph, may be taken later while the person is arrested or otherwise released after arrest. The purpose of subsection 294(3) is to allow for identification of an offender and the arresting officer in cases of multiple arrests.

The section is similar to the current s 270 of the PPRA.

Section 295 (Taking identifying particulars—proceeding started by notice to appear or complaint and summons)

Clause 10 inserts s 295. The section provides that a person, other than a child, may be detained within a reasonable time before or after the service

of a notice to appear or summons for an identifying particulars offence to allow a police officer to take the person's identifying particulars.

The section is similar to the current s 271 of the PPRA.

Division 2—Taking identifying particulars under identifying particulars notice

Section 296 (Application of div 2)

Clause 10 inserts s 296. The section states the division applies to a person other than a child whom a police officer decides to start or continues proceedings against by notice to appear or complaint and summons and the police officer decides that it is not necessary to take the person's identifying particulars immediately.

The section is similar to the current s 272(1) of the PPRA.

Section 297 (Identifying particulars notice may be given)

Clause 10 inserts s 297. The section provides that a police officer may require by issuing the person with an identifying particulars notice, to report to a police officer at a stated police station or establishment within 7 days of the issue of the notice and stay at the police station for the time reasonably necessary to allow for the taking of the person's identifying particulars. The section further provides that the identifying particulars notice must state that the person commits an offence if the person fails to comply with the notice, and that prior to the taking of any identifying particulars the person must produce satisfactory identification. This section requires if the proceedings are being commenced by notice to appear or complaint and summons, that a police officer must give the identifying particulars notice to the person when the person is served with the notice to appear or summons. It is also a requirement of the section that the identifying particulars notice must be signed by the police officer giving the notice.

The section is similar to the current s 272 of the PPRA.

Division 3—Taking identifying particulars under court order

Section 298 (Court may order taking of identifying particulars)

Clause 10 inserts s 298. The section allows a court before which a person, other than a child, appears to order the person into custody to take the person's identifying particulars or to attend to another place to obtain the person's identifying particulars. The court may also order that if the person fails to attend the required place that the person may be detained by a police officer to enable the procedure to be performed. The section also provides that unless a person has a reasonable excuse the person commits an offence if the person contravenes the order. The section permits the detention of the person to perform the procedure on the person whether a proceeding is commenced or not for contravening the order.

The section is similar to the current s 273 of the PPR. Currently, a person who contravenes an order may commit an offence against s 205 of the Criminal Code.

Section 299 (Detention for taking identifying particulars)

Clause 10 inserts s 299. The section provides that a police officer may detain the person to whom the court order relates for a specified time period to give effect to an order for the taking of the person's identifying particulars. If the person is remanded in custody for the offence, or otherwise in custody, the identifying particulars may be taken from the person any time while the person is in custody.

Section 300 (Who may take identifying particulars)

Clause 10 inserts s 300. The section provides that any police officer may take all or any of a relevant person's identifying particulars.

Division 4—Destruction of identifying particulars

Section 301 (Destruction of identifying particulars)

Clause 10 inserts s 301. The section provides that if a person is found not guilty of an identifying particulars offence or is not proceeded against, identifying particulars are to be destroyed within a reasonable time in the

presence of a justice of the peace unless one of the specified circumstances apply including that the person's identifying particulars are required for the investigation of another identifying particulars offence.

The section is similar to the current s 274 of the PPRA.

PART 5—DNA PROCEDURES

Division 1—Preliminary provisions about DNA sampling and DNA analysis

Section 302 (Taking DNA sample by doctor or nurse)

Clause 10 inserts s 302. The section provides that under this chapter a DNA sampler who is a doctor or a nurse may only upon the request of a police officer take a DNA sample from a person for DNA analysis.

Section 303 (Commissioner may authorise police officers to take DNA samples)

Clause 10 inserts s 303. The section provides that the commissioner may only authorise a police officer to take DNA samples if the commissioner is satisfied that the police officer has the necessary experience or expertise or has completed a relevant course approved by the commissioner.

The section is similar to the current s 297(3) & (4) of the PPRA.

Section 304 (Where DNA sample may be taken)

Clause 10 inserts s 304. The section provides that samples may be taken from a person at a police station, police establishment, hospital, prison, detention centre or another place considered appropriate in the circumstances.

The section is similar to the current s 298 of the PPRA.

Section 305 (How DNA samples may be taken)

Clause 10 inserts s 305. The section provides that a DNA sampler may only take a DNA sample from a person by having the person use a mouth swab to swab their mouth or by collecting hair. The collection of hair includes the taking of the hair roots.

The section is similar to the current s 299 of the PPRA.

Division 2—Taking DNA sample from particular persons with consent

Section 306 (Use of DNA analysis of DNA sample taken from child under 14)

Clause 10 inserts s 306. The section requires that a DNA analysis of a DNA sample taken by consent from a child under 14 years may only be used for the purpose for which the consent was given (limited purpose).

Section 307 (Taking DNA sample from person with impaired capacity)

Clause 10 inserts s 307. The section requires, if reasonably practicable, a police officer is to ensure a support person is present when a DNA sample is taken from a person with impaired capacity under a forensic procedure consent.

Division 3—Taking DNA samples after proceedings commenced and from certain prisoners

Section 308 (Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.)

Clause 10 inserts s 308. The section applies if a police officer commences or continues a proceeding against an adult for an indictable offence by arrest, notice to appear or complaint and summons.

A police officer with the approval of a senior officer, who is a more senior police officer of at least the rank of senior sergeant, may detain the person for as long as is reasonably necessary to take a DNA sample for DNA analysis and may take the person to a police station, police

establishment, hospital or another place the police officer considers is appropriate in the circumstances. The senior officer in determining the approval of the detention of the person must have regard to the rights and liberties of the persons and the public interest.

Subsection (2) provides that a police officer may detain the person for a reasonable time, but no longer than 1 hour, to obtain approval from a senior officer to take the DNA sample. This power of detention is additional to, and is not to limit, other detention powers under this chapter. The maximum period of 1 hour allowed for obtaining approval from a senior officer commences when the person is detained for this purpose.

The section is similar to the current s 307 of the PPRA.

Section 309 (DNA sample notice)

Clause 10 inserts s 309. The section applies if a police officer commences or continues a proceeding against an adult for an indictable offence by arrest and intends to release the person under section 209(2)(b), or by notice to appear or complaint and summons. If a police officer considers it is not necessary to immediately take a DNA sample from the person, the police officer with the approval of a senior officer may issue the person with a DNA sample notice requiring the person to attend at a police station or police establishment to enable a DNA sampler to take a DNA sample for DNA analysis.

The section is similar to the current s 308 of the PPRA.

Section 310 (Requirements for DNA sample notice)

Clause 10 inserts s 310. The section provides that a DNA sample notice must require the person to report to a police officer at a stated police station or establishment on or within stated days and times within 7 days of the issue of the notice and stay at the police station for the time reasonably necessary to allow for the taking of the person's DNA sample. The section further provides that a DNA sample notice must state that the person commits an offence if the person fails to comply with the notice and that prior to the taking of the DNA sample the person must produce satisfactory identification. This section also requires that a police officer must give a signed DNA sample notice to the person with the notice to appear or summons.

Matters that must be addressed by a DNA sample notice are identified under the current s 308 of the PPRA.

Section 311 (Taking DNA sample from adult before court)

Clause 10 inserts s 311. The section provides authority for a court, during proceedings for an indictable offence, to order a DNA sample to be taken for DNA analysis from an adult person if satisfied that the taking of the DNA sample is reasonably necessary, having regard to the rights and liberties of the person and the public interest. The section also provides authority for the court to order the detention of the person or require that the person report to a police officer at a stated police station or establishment for the DNA sample to be taken. The court may also order that if the person fails to attend the required place that the person may be detained by a police officer to enable the procedure to be performed. The section makes it an offence for the person to contravene the order to attend a police station or police establishment and provide their DNA sample unless the person has a reasonable excuse. The section permits the detention of the person to perform the procedure on the person whether a proceeding is commenced or not for contravening the order.

The section is similar to the current s 309 of the PPRA.

Section 312 (Taking DNA sample after finding of guilt)

Clause 10 inserts s 312. The section provides the authority for the court to order a DNA sample to be taken for DNA analysis from an adult person after the person has been found guilty of an indictable offence, including an indictable offence that has been dealt with summarily. To enable a DNA sampler to take the DNA sample for DNA analysis the court may either order that the person be held in police custody or order the person to attend a police station or police establishment within 7 days or on a stated day or within stated hours within 7 days. The court may also order that if the person fails to attend the required place that the person may be detained by a police officer to enable the procedure to be performed. If the person ordered to attend at a police station or police establishment does not comply with the order that person commits an offence unless the person has a reasonable excuse. The section permits the detention of the person to perform the procedure on the person whether a proceeding is commenced or not for contravening the order. This section also authorises a DNA sampler to take a DNA sample for DNA analysis from the person.

A court may under the current s 310 of the PPRA make a similar order.

Section 313 (Detention for taking DNA sample)

Clause 10 inserts s 313. The section provides that a police officer may take into police custody a person whom a court has ordered be detained, to enable a DNA sample to be taken. If a person is not already in custody, the time that the person may be detained is 1 hour or a longer period reasonably necessary having regard to the particular circumstances. If a person has been remanded in custody the person may be taken into police custody at any time to enable the DNA sample to be taken while the person is in custody for another reason.

Section 314 (Taking DNA sample from prisoner in corrective services facility)

Clause 10 inserts s 314. The section applies to a person serving a term of imprisonment for an indictable offence, including an indictable offence that is dealt with summarily. Where the person is domiciled in a corrective services facility this section authorises a DNA sampler to enter the facility, detain and take the prisoner to an appropriate place within the facility and take a DNA sample from the prisoner for DNA analysis. This section also permits a corrective services officer to be present when the DNA sample is taken.

The section is similar to the current s 311 of the PPRA.

Section 315 (Taking DNA sample from transferred prisoner)

Clause 10 inserts s 315. The section permits, upon the expiry of section 314, DNA samples to be obtained for DNA analysis from prisoners who have been transferred to Queensland from another State or locality and are domiciled in a corrective services facility. This section authorises a DNA sampler to enter the facility, detain and take the prisoner to an appropriate place within the facility and take a DNA sample from the prisoner for DNA analysis. This section also permits a corrective services officer to be present when the DNA sample is taken.

Section 316 (Taking DNA sample from child)

Clause 10 inserts s 316. The section applies where a police officer commences a proceeding against a child for an indictable offence and the police officer considers it reasonably necessary to take a DNA sample from a child for DNA analysis. The section provides that the police officer may make an application to a Childrens Court for authority to take the DNA sample. The police officer must give notice of the application to the child, and where practicable a parent, and the chief executive (family services). Unless the child has a reasonable excuse, the child commits an offence if the child fails to comply with the order. The court may also order that if the child fails to attend the required place that the child may be detained by a police officer to enable the procedure to be performed. The section permits the detention of the person to perform the procedure on the person whether a proceeding is commenced or not for contravening the order.

The section is similar to the current s 312 of the PPRA.

Division 4—Taking DNA sample from prisoner released under a post-prison community based release orders

Section 317 (Application of div 4 and non-application of pt 2)

The clause inserts s 317, which provides that the division applies to a prisoner who is serving a term of imprisonment for an indictable offence and who is the subject of a post prison community based release order. The provisions of Part 2 of chapter 8A do not apply to the asking for consent or the giving of a forensic procedure consent and the taking of the prisoners DNA sample.

Section 318 (Definitions for div 4)

The clause inserts s 318 which provides definitions for the purposes of the division.

Section 318A (Prisoner serving term of imprisonment for prescribed indictable offence)

The clause inserts s 318A. The section authorises a police officer to give a prisoner, who has been imprisoned for a prescribed offence, a DNA

sample notice. The notice will require the prisoner to attend a place, to enable a DNA sampler to take a DNA sample for DNA analysis.

Section 318B (Prisoner serving term of imprisonment for other indictable offences)

The clause inserts s 318B. This section applies to a prisoner who is serving a term of imprisonment for a indictable offence other than a prescribed offence. A police officer may seek the consent of the prisoner to obtain a DNA sample in an approved form to take the prisoners DNA sample.

Section 318C (General requirements for giving informed consent)

The clause inserts s 318C which provides the information that is required to be given to the prisoner for the purposes of obtaining the prisoners consent to the taking of the prisoner's DNA sample.

Section 318D (Application to court under s 312 for order)

The clause inserts s 318D. The section applies if a relevant prisoner refuses to consent or withdraws the prisoner's consent to the taking of a DNA sample. A police officer may make an application to a Court under section 312 for an order to authorise the detention of the prisoner or an order requiring the prisoner to attend at a police station or police establishment for the purpose of obtaining the prisoner's DNA sample.

Section 318E (Court make order despite time elapsed since finding of guilt)

The clause inserts s 318E. The section provides that when a court considers the making of an order, it is immaterial that time has elapsed since the person was found guilty and imprisoned for the indictable offence.

Section 318F (Expiry of div 4)

Section 318F provides that Division 4 expires 1 year after its commences.

Division 5—Analysis and use of DNA samples

Section 318G (Power to analyse etc. DNA samples)

The clause inserts s 318G. The section provides the authority for a DNA sample taken under this chapter or received from a declared law enforcement agency to be analysed, or further analysed if required, and retained, subject to destruction requirements under this chapter. The section also provides the authority for the results of the analysis to be included in QDNA and the comparison of the results of DNA analysis with other DNA analysis results. The section further provides that it is lawful for DNA analysis results to be used for the performance of any function of the police service.

Section 318H (When DNA sample taken from suspected person and results must be destroyed)

The clause inserts s 318H which provides the circumstances and time frames for when a sample and the analysis results must be destroyed. The section also includes that the requirement to destroy does not apply to samples or results of the DNA analysis in specified circumstances. The requirement to destroy results of a DNA analysis is satisfied when the information in QDNA that identifies the person from whom the sample was taken is deleted.

Division 6—DNA databases

Section 318I (State DNA database)

The clause inserts s 318I. The section provides that DNA analysis information held by the Commissioner may be recorded in QDNA i.e. a database in Queensland that is approved by the Commissioner. Further information may also be included in QDNA including information obtained from a declared law enforcement agency. The section also provides that the DNA analysis information may also be placed and grouped into relevant indexes (QDNA index) and moved between indexes at the discretion of the Commissioner and when appropriate. Additionally, the Commissioner may use the information in one index for the purposes of another index and compare information within an index or in different

indexes. The placement of the results of a DNA analysis in an appropriate QDNA index will create a Database system that is consistent with other Australian jurisdictions and will assist to facilitate inter-jurisdiction comparison of DNA information with those jurisdictions including on the national DNA database administered by CrimTrac.

Section 318J (Transmitting information to CrimTrac)

The clause inserts s 318J. The section permits the uploading of DNA information to the CrimTrac database including for intra-jurisdictional and inter-jurisdictional purposes, whether any Ministerial Arrangement with a declared law enforcement agency has been entered into or not. The CrimTrac agency operates as an agent for the commissioner and may compare and store information uploaded to the CrimTrac database on behalf of the commissioner subject to any arrangement made between the commissioner and the CrimTrac agency.

Section 318K (Use of QDNA or CrimTrac database)

The clause inserts s 318K. The section authorises the use of QDNA or the CrimTrac database for performing any function of the police service.

Section 318L (Limitation on use of results of DNA analysis)

The clause inserts s 318L. The section provides the general limitations regarding the use of any DNA analysis under sections 316, 318I(5), 318J or 318K. Limitations on use exist where the DNA sample was provided for a limited purpose, which includes circumstances where a DNA sample was taken by consent from a child under 14.

The section also provides limitations relating to the results of DNA analysis that are stored in a Queensland DNA database index (QDNA index). The section provides that the comparison of results of DNA analysis that are stored in a QDNA index may not be compared with other DNA analyses unless a matching table prescribed by regulation permits the comparison. The Commonwealth requires the creation of a matching table and indexes relevant to the table before they will recognise Queensland's DNA legislation and permit the exchange of DNA information with the Australian Federal Police. The including of a matching table by regulation will also provide conformity with other jurisdictions that have followed the

Model Bill and already recognise Queensland's DNA legislation as a 'corresponding law'.

The section provides that a regulation may exclude the application of the matching rules as reflected in a matching table. The types and definition of any index may be prescribed by regulation. A regulation may exclude the operation of the matching table including for intra-jurisdictional purposes. Over arching limitations on the comparison of the results of DNA analysis are reflected in subsection (1).

PART 6—NON-MEDICAL EXAMINATIONS

318M (Application of pt 6)

The clause inserts s 318M. The section provides that this part applies to the performance of a non-medical examination on a person, when a police officer is satisfied that the performance of the procedure may provide evidence of the commission of an indictable offence.

Section 318N (Definition for pt 6)

The clause inserts s 318N which provides the definition of who is an "authorised police officer" for part 6.

Section 318O (Commissioner may authorise police officer to perform non-medical examinations)

The clause inserts s 318O that provides that the commissioner may authorise a police officer who, has the necessary experience or expertise to be able to perform the examination, or has satisfactorily completed an approved course, to perform a non-medical examination.

Section 318P (Examination if proceeding started against adult by arrest, notice to appear or complaint and summons)

The clause s 318P. The section applies if a police officer commences or continues a proceeding against an adult for an indictable offence by arrest, notice to appear or complaint and summons. The section provides that

upon the approval of an authorised police officer, a police officer may detain the person for as long as is reasonably necessary and take the person if necessary to a more appropriate facility to enable the performance of a non-medical examination on the person. This section further provides that an authorised examiner can perform the non-medical examination on this person.

The section authorises the detention of the person for no more than one hour for a police officer to obtain approval from an authorised officer for the performance of this examination and requires the authorised police officer to be satisfied, that the performance of the examination may provide evidence of the commission of an indictable offence, before granting approval.

Section 318Q (Non-medical examination notice)

The clause inserts s 318Q. The section applies if a police officer commences or continues a proceeding against an adult for an indictable offence by arrest, notice to appear or complaint and summons. If a police officer considers it is not necessary to immediately perform a non-medical examination on the person the police officer with the approval of an authorised police officer, may issue the person with a non-medical examination notice requiring the person to attend at a police station or police establishment to enable an authorised examiner to perform the examination. This section permits an authorised examiner to perform the non-medical examination on the person issued with the non-medical examination notice.

Section 318R (Requirements for non-medical examination notice)

The clause inserts s 318R. The section provides that a non-medical examination notice must require the person to report to a police officer at a stated police station on or within stated days and times within 7 days of the issue of the notice and stay at the police station for the time reasonably necessary to allow for the performance of the non-medical examination. The section further provides that a non-medical examination notice must state that the person commits an offence if the person fails to comply with the notice and that prior to the examination being performed the person must produce satisfactory identification. This section also requires that the non-medical examination notice must be given to the person with the

notice to appear or summons and must be signed by the police officer giving the notice.

PART 7—FORENSIC PROCEDURES PERFORMED BY DOCTORS AND DENTISTS

Division 1—Preliminary

Section 318S (Application of pt 7)

The clause inserts s 318S which provides that this part applies to the performance of a forensic procedure by a doctor or dentist. The section further provides that this division does not apply if the only procedure to be performed is for the taking of a DNA sample under part 5.

The section further provides that part 7 does not require a police officer to allow a relevant person to contact or have present an independent person if a police officer reasonably suspects the independent person is an accomplice or an accessory of the relevant person or contact with an independent person is likely to result in an accomplice or accessory avoiding apprehension or evidence of the commission of an offence being concealed, destroyed or fabricated or the intimidation of a witness.

Division 2—Actions by police officers and presence of independent persons

Section 318T (When doctor or dentist may be asked to perform forensic procedure)

The clause inserts s 318T. The section provides that a police officer may ask a doctor or dentist to perform a forensic procedure on a person under a forensic procedure consent or when a magistrate makes a forensic procedure order. This section is not intended to limit the other times when a doctor may take a DNA sample. A copy of the forensic procedure order must be given to the doctor or dentist if the procedure is performed upon a person under a forensic procedure order.

Section 318U (What person must be told before doctor or dentist performs a forensic procedure)

The clause inserts s 318U. The section requires police to, prior to a doctor or dentist performing a forensic procedure, inform the person if the procedure is being conducted under the authority of a forensic procedure order that it may be performed regardless of whether the person consents and that the person can have 2 independent persons present during the performance of the procedure. If the person requests the presence of independent persons they may contact a friend, relative and lawyer and request them to be present during the performance of the procedure.

Section 318V (Arrangements for attendance of independent person)

The clause inserts s 318V. The section requires the police officer to delay the procedure for a reasonable time to, allow the relevant person to speak to an independent person and, to allow for an independent person to be present during the procedure. The section further provides that what constitutes a reasonable time is dependent upon the particular circumstances, although unless special circumstances exist a delay of more than 2 hours may be unreasonable. Any costs associated with the attendance of an independent person are not the responsibility of the State.

Section 318W (Speaking to and presence of independent person)

The clause inserts s 318W which applies if the independent person arrives. This section permits a relevant person to speak with a lawyer in private if it is reasonably practicable. If the relevant person is a child, the child may speak to the independent person in private, if it is reasonably practicable to do so. An independent person who is present while the procedure is being performed may give advice to the relevant person.

Section 318X (Absence of independent person does not affect lawfulness of custody etc.)

The clause inserts s 318X. The section provides that the lawfulness of the detention or the performance of the forensic procedure is not affected by the absence of any independent person requested to be present if the independent person fails to attend within a reasonable time or evidence is likely to be lost or destroyed if the procedure is to be delayed to allow their arrival.

Section 318Y (When police officer may exclude independent person)

The clause inserts s 318Y. The section outlines the requirements to be followed before an independent person is excluded from the performance of the forensic procedure for unreasonably interfering. The requirement involves a warning being given to the independent person and an opportunity to desist interfering.

Section 318Z (Action by police officer if independent person excluded)

The clause inserts s318Z. The section provides that if an independent person is excluded, the person subject of the forensic procedure order must be given the opportunity to arrange for another independent person to be present. The section also requires a police officer to arrange an independent person to be present if, the person on whom the procedure is being performed is a child or a person with impaired capacity, and the relevant person has not arranged for an independent person to be present.

Division 3—Performing forensic procedures

Section 318ZA (Doctor's powers)

The clause inserts s 318ZA. The clause provides that a doctor, if asked by a police officer, may perform a forensic procedure on a person either under the authority of a forensic procedure order or where the person has consented. The section is intended to provide sufficient latitude for a doctor to conduct relevant examinations that may provide evidence of the commission of an offence.

Section 318ZB (Dentist's powers)

The clause inserts s 318ZB. The section authorises a dentist, upon the request of a police officer, to perform forensic procedures to the extent necessary to examine a person's mouth, take a sample of the person's saliva or take a dental impression or examine any bite mark, which may provide evidence of the commission of an offence to which the forensic procedure consent or forensic procedure order relates.

Section 318ZC (Samples and results of analysis to be given to person)

The clause inserts s 318ZC. The section requires a doctor or dentist who takes a sample or other things from another person in performing an intimate forensic procedure to provide to the other person or a person nominated a part of or an equivalent sample or thing, unless specified circumstances exist. A police officer as soon as is reasonably practicable after obtaining the results of an analysis is to provide a copy of the results of the analysis to the person or a nominated person.

The section further provides that the requirement to provide a part or an equivalent sample or thing does not apply if it is not practicable or an equivalent sample may be taken any time. Also if a doctor considers that providing the person with the part or equivalent sample is inappropriate, the doctor may send the sample to a doctor or lawyer nominated by the person. If the person or the person's lawyer does not nominate a doctor, the doctor who conducted the procedure need not provide the part or equivalent sample or thing and may have it destroyed.

PART 8—MATTERS RELATING TO PERFORMING FORENSIC PROCEDURES

Section 318ZD (Right to interpreter)

The clause inserts s 318ZD. The section requires that an interpreter to be present before a qualified person performs a forensic procedure under a forensic procedure consent or a forensic procedure order when a person, whom a police officer reasonably suspects is unable to speak English.

Section 318ZE (Power to analyse samples)

The clause inserts s 318ZE. The section provides that it is lawful for a person to analyse any thing obtained from or as a result of the performance of a forensic procedure and for a police officer to keep the thing and any results for use in a proceeding for an offence or for performing any function of the police service. This section is subject to the destruction requirements for identifying particulars under section 301 and the analysis, use and destruction requirements of DNA samples under part 5, division 4 of this chapter.

Section 318ZF (Order for person who fails to comply with reporting notice)

The clause inserts s 318ZF. The section applies if a police officer reasonably believes that a person has failed to comply with a reporting notice issued by a police officer that required the person to attend a place to permit a forensic procedure to be conducted. A police officer may apply to a Magistrate in an approved form, whether a proceedings has been commenced under section 445 of the PPRA or not, to obtain an order to perform the relevant forensic procedure that had been previously authorised by an authorised police officer. The relevant person is not entitled to be given notice or be heard on the application and the Magistrate may make the order if satisfied of that it is justified in the circumstances to make the order and the person failed to comply with the relevant notice.

Section 318ZG (Detention for performing forensic procedure)

The clause inserts s 318ZG. The section provides the time period that applies to the detention, by a police officer, of a person subject to an order made under section 318ZF.

Section 318ZH (General power for performing forensic procedure)

The clause inserts s 318ZH. The section provides that if a forensic procedure is performed under this chapter, a police officer may give any direction that is reasonably necessary for ensuring the procedure is performed. However, a person who has given a forensic procedure consent does not commit an offence if they fail to comply with a direction of a police officer. This section also authorises a qualified person to use any equipment necessary to perform the forensic procedure.

Section 318ZI (Help with, and use of force for, performing forensic procedure)

The clause inserts s 318ZI. The section provides that a qualified person who may perform a forensic procedure may request help to perform the procedure. If the forensic procedure is an intimate forensic procedure the person asked to help the doctor or dentist, if reasonably possible, should be a person of the same sex as the relevant person or another doctor or dentist. This section also provides that it is lawful for a qualified person, and any

person helping, to use reasonably necessary force for performing the procedure.

Section 318ZJ (General power to require further attendance)

The clause inserts s 318ZJ. The section provides that if a person attends a stated place as required by any order, requirement or direction for the performance of a forensic procedure and a police officer considers that it is not reasonably practicable to perform the forensic procedure at that time or place, the police officer may direct the person to return or attend another place at a nominated time and date. This later direction is an extension of the original direction.

Section 318ZK (Protecting the dignity of person in performing a non-intimate forensic procedure)

The clause inserts s 318ZK. The section provides the authority for a police officer to ask a person to remove particular items of clothing if it is reasonably necessary to perform a non-intimate forensic procedure. If the police directs the removal of clothing, other than outer garments, no more clothing than is reasonably necessary is to be removed and if reasonably practicable the procedure should not be performed in the presence of anyone who is not required to be present or where someone else not involved can see the procedure being performed.

Section 318ZL (Effect of withdrawal of consent)

The clause inserts s 318ZL. The section provides that if a person consents to a forensic procedure being performed and during the procedure withdraws the consent a person conducting or assisting with the procedure must stop. The withdrawal of consent does not affect the admissibility in evidence of anything observed, taken or collected before consent was withdrawn, or any subsequent analysis or anything else done under this chapter.

Section 318ZM (Powers under this part are additional to other powers)

This clause inserts s 318ZM which provides that any power a person has under part 8 are additional to, and are not limited by, the powers the person otherwise has under chapter 8A.

**PART 9—CORRESPONDING FORENSIC PROCEDURE
ORDERS**

Section 318ZN (Definitions for pt 9)

This clause inserts s 318ZN which provides the meanings of certain words and phrases used in this part.

Section 318ZO (Arrangements with the Commonwealth and other States)

This clause inserts s 318ZO. The section provides authority for the Minister to enter into arrangements with a responsible Minister for the registration of a corresponding forensic procedure order or the registration of a forensic procedure order under this chapter in the other jurisdiction.

Section 318ZP (Registration of orders)

This clause inserts s 318ZP. The section provides that an appropriate person may apply to the commissioner for the registration of a corresponding forensic procedure order or its cancellation. The section requires that any application must have a certified copy of the corresponding forensic procedure order attached.

Section 318ZQ (Effect of registration)

This clause inserts s 318ZQ. The section provides that upon registration of a corresponding forensic procedure order, the order is treated as an order made under this chapter.

PART 10—OFFENCES

Section 318ZR (Unlawful supply of destroyable DNA sample)

This clause inserts s 318ZR. This section creates an offence to knowingly unlawfully supply a DNA sample to another person for DNA analysis to enable the results to be included in QDNA or the CrimTrac database, that should have been destroyed under section 318H.

Section 318 ZS (Unlawful supply of DNA sample)

This clause inserts s 318ZS. This section creates an offence for a person to unlawfully supply a DNA sample to another for analysis to enable the results to be included in QDNA or the CrimTrac database.

Section 318ZT (Unlawful use of stored information)

This clause inserts s 318ZT. This section creates an offence for a person to unlawfully access information, stored in QDNA or the CrimTrac database, which can be used to discover the identity of any person.

Section 318ZU (Unlawful matching of DNA analysis results)

This clause inserts s 318ZU. The section creates an offence for a person to knowingly compare a DNA record with another DNA record, whether or not the DNA record is compared with records kept on QDNA, which is not permitted under chapter 8A. The section also includes an offence for a person in Queensland to cause a comparison that is not permitted on the CrimTrac database. This section does not apply if the DNA record match was for the purpose of administering QDNA or the CrimTrac database.

Section 318ZV (Unlawful recording of identifying information on QDNA)

This clause inserts s 318ZV. The section creates an offence for a person to knowingly cause identifying information obtained from a DNA sample taken under this chapter to be recorded in QDNA when the time for the destruction of the sample under section 318H has passed.

Section 318ZW (Unlawful retention of results of DNA analysis in QDNA)

This clause inserts s 318ZW. The section creates an offence for a person to wilfully fail to destroy the results of analysis of a DNA sample recorded in QDNA when required under section 318H to destroy the results of DNA analysis. The section also recognises that the results of analysis of a DNA sample may be destroyed under section 318H by removing the information that identifies the person from whom the DNA sample was taken.

Section 318ZX (Unlawful disclosure of information)

This clause inserts s 318ZX. The section creates an offence for a person to unlawfully disclose information stored in QDNA or the CrimTrac database that can be used to discover the identity of a person.

PART 11—OTHER PROVISIONS

Section 318ZY (Ministerial arrangements)

The clause inserts s 318ZY. The section provides for the making of Ministerial arrangements between entities of participating jurisdictions and with declared law enforcement agencies for the access to and use of DNA material.

The arrangement may recognise that access to and comparison of the results of a DNA analysis of a sample by a declared law enforcement agency may be by use of the national DNA database administered by CrimTrac. Additionally, the Ministerial arrangements may provide details about how DNA information is to be transmitted to the receiving jurisdiction for the jurisdictions use of that information including for evidentiary purposes. Under any arrangement made under this section the commissioner may provide access to DNA material held by the commissioner or stored on the CrimTrac database to a declared law enforcement agency or an entity of another jurisdiction. The section also provides that under an arrangement made under this section the commissioner may use DNA material to which the commissioner has access for performing any function of the police service.

Section 318ZZ (Application of other laws)

This clause inserts s 318ZZ. The section provides that this chapter does not limit or exclude the operation of another law of the State relating to the conducting of a forensic procedure. Additionally, it is lawful for a person to exercise a power under this chapter to do or perform a nominated procedure etc even though the other law specifies the way the power may or may not be exercised.

Section 318ZZA (Forensic material lawfully obtained in another jurisdiction)

This clause inserts s 318ZZA. The section provides that forensic material which has been lawfully obtained under the law of another jurisdiction may be retained and used in this State for performing a function of the police service regardless that this Act would not have authorised the material to be obtained.

Section 318ZZB (Evidentiary provision)

This clause inserts s 318ZZB. The section is a deeming provision which allows the commissioner to provide a certificate to a court which certifies the things mentioned in the section. Having done this, the Court is then able to accept the certificate as evidence of the things in the certificate. This provision does not remove the right of an accused to contest those matters and sets out the procedure to be followed if the accused intends to challenge any such matter.

CHAPTER 8B—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES

Replacement of ch 8, pt 5, div 1, hdg (Preliminary)

Clause 11 omits chapter 8, part 5, division 1, heading and inserts new heading

‘PART 1—PRELIMINARY’

Amendment of s 319 (Purpose of pt 5)

Clause 12 amends section 319 by omitting the heading ‘pt 5’ and inserting ‘ch 8B’. This clause further amends section 319 by omitting the word ‘part’ and inserting the word ‘chapter’.

Amendment of s 320 (Application of pt 5)

Clause 13 amends section 320 by omitting the heading ‘pt 5’ and inserting ‘ch 8B’. This clause further amends section 320 by omitting the word ‘part’ and inserting the word ‘chapter’.

Amendment of s 321 (Certain Acts do not apply to this part)

Clause 14 amends section 321 by omitting the word ‘part’ and inserting the word ‘chapter’.

Replacement of ch 8, pt 5, div 2, hdg (Taking blood and urine samples)

Clause 15 omits the heading of chapter 8, part 5, division 2 and inserts a new heading

‘PART 2—TAKING BLOOD AND URINE SAMPLES’.

Replacement of ch 8, pt 5, div 3, hdg (General)

Clause 16 omits the heading of chapter 8, part 5, division 3 and inserts a new heading

‘PART 3—GENERAL’

Amendment of s 329 (Restriction on disclosure of results of analysis)

Clause 17 amends section 329(1) by omitting the word ‘part’ and inserting the word ‘chapter’. This clause also amends section 329(2) by omitting the words ‘this part’ and inserting the words ‘this chapter’.

Amendment of s 330 (Certain evidence inadmissible)

Clause 18 amends section 330 by omitting the word ‘part’ and inserting the word ‘chapter’.

Amendment of s 420 (Application of pt 3)

Clause 19 amends section 420(2) to provide that chapter 11, part 3 does not apply to chapter 8B or any sample or thing taken or collected from a person under chapter 8A.

Amendment of s 445 (Offences to contravene direction or requirement of police officer)

Clause 20 amends section 445 to provide when a police officer directs or requires a person to do an act under chapter 8A for the purposes of conducting a forensic procedure, that it is not a reasonable excuse for a person not to comply on the basis that compliance would provide information that would tend to incriminate the person.

Amendment of s 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

Clause 21 amends section 451 to permit the obtaining of a forensic procedure order from a magistrate by telephone or similar facilities when a person is not entitled to be given notice of the application.

Amendment of s 453 (Presumption about exercise of powers under prescribed authority)

Clause 22 amends subsection (c) to provide that a court must find the exercise of a power by a police officer was not authorised by a prescribed authority if the police officer cannot prove that the police officer obtained the prescribe authority.

Amendment of ch 13, pt 2, hdg (Transitional provisions)

Clause 23 amends the heading of part 2 of chapter 13.

Insertion of new ch 13, pt 3

Clause 24 amends chapter 13 by inserting after section 473 the following heading

**PART 3—TRANSITIONAL PROVISIONS FOR POLICE
POWERS AND RESPONSIBILITIES (FORENSIC
PROCEDURES) AMENDMENT ACT 2003**

Section 474 (Definitions for pt 3)

The clause inserts s 474 which defines the meanings of the terms “amending Act”, “commencement” and “pre-amended Act” for this part.

Section 475 (Identifying particulars)

The clause inserts s 475. The section enables anything started or done under chapter 8 part 2 of the PPRA for the purpose of gathering information for the identifying of suspects to continue and have effect as if it was as if it was done under chapter 8A, part 4 of the Bill.

The section makes it clear that an identifying particulars notice or court order for the taking of identifying particulars made under the pre-amended Act is to be treated as an identifying particulars notice or court order for the taking of identifying particulars under this Bill.

Section 476 (Medical and dental procedures)

The clause inserts s 476. The section provides that chapter 8 part 3 of the PPRA continues to apply to the performance of a medical or dental procedure as if this Bill had not been enacted if immediately before the commencement of the Bill, consent was given for the performance of a medical or dental procedure under section 285, or a court order was issued for the performance of a medical or dental procedure under section 290 of the PPRA.

This section does not apply to an application made to the court for an order for a medical or dental procedure under the pre-amended Act if the court has not dealt with the application before the commencement of the Bill. In these situations a new application would need to be made under the provisions of the Bill. The section further provides that anything obtained under the consent or order may be dealt with or used as if it were obtained under chapter 8A of the Bill.

Section 477 (DNA procedures)

The clause inserts s 477. The section provides that chapter 8, part 4 of the PPRA continues to apply to DNA sampling procedures if immediately before the commencement of this Bill, consent or a commissioned officer's approval or a DNA sample notice or a court order under a nominated section was granted or issued for the taking of a DNA sample.

This section further provides following commencement of the Bill, an undecided application to the Children's Court for the taking of a DNA sample from a child made under the pre-amended Act is to be treated as an application made under section 316 of the Bill.

Section 478 (Police officers authorised to take DNA samples)

The clause inserts s 478 which provides that a police officer who, immediately before the commencement of the Bill, is authorised to take a DNA sample under the PPRA is taken to be authorised to take a DNA sample under the Bill.

Section 479 (Taking of certain DNA samples)

The clause inserts s 479 which relates to sections 310, 311 and 316 of the PPRA. The section provides that despite the sections being omitted by

the Bill, declarations contained in those sections in the PPRA relating to a reference to an indictable offence as including, and has always included, a reference to an indictable offence dealt with summarily, continue to have effect in relation to the offences to which they applied immediately before the commencement of the Bill. The section further provides that any DNA sample taken as mentioned in sections 310(5) and 311(5) of the PPRA retains the validation that the exercise of the sampling power was not unlawful after the commencement of the Bill.

Section 480 (QDNA)

The clause inserts s 480. The section provides that the approved database under section 317 of the PPRA is an approved database under section 318I of the Bill and anything lawfully stored in the section 317 database immediately before the commencement of the Bill may continue to be lawfully stored in QDNA or the CrimTrac database and may be used as provided for by the Bill.

Section 481 (Certain arrangements made by Minister)

The clause inserts s481. The section provides that after the commencement of section 318ZY any lawful arrangement, relating to a matter mentioned in section 318ZY(1), made by the Minister with a declared law enforcement agency or a responsible Minister of another jurisdiction before the commencement of section 318ZY is taken to have been entered into under section 318ZY.

Section 482 (Provision for ch 11, pt 3)

The clause inserts s 482. The section provides that a sample or other thing to which section 420(2)(b), (c) or (d) of the PPRA applies following the commencement of the Bill is taken to have been taken or collected under chapter 8A or 8B.

Amendment of sch 4 (Dictionary)

Clause 25 provides amendments to the Schedule 4 Dictionary of the PPRA. The definitions of “commissioned officer”, “DNA database”, “DNA sample”, “DNA sample notice”, “DNA sampler” and “take” have been omitted, and a series of new definitions have been inserted together

with amendments to certain current definitions. These definitions are necessary to complement the Bill.

PART 3—AMENDMENT OF CORRECTIVE SERVICES ACT 2000

Act amended in pt 3

Clause 26 provides that this part amends the *Corrective Services Act 2000*.

Amendment of s 14 (Directions to prisoners)

Clause 27 amends section 14 by renumbering section 14(1)(d) as section 14 (1)(e) and inserting a new subsection (d) that provides that in circumstances where a DNA sample may be taken from a prisoner under Chapter 8A of the PPRA, a corrective services officer may give a prisoner, including a transferred prisoner or a prisoner released under a post-prison community based release order, a direction to do any act including attending a place for the purposes of enabling a DNA sample to be taken.

SCHEDULE

AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

The Schedule amends section 311(6) by changing the expiry time for the section after commencement from 3 years to 4 years.