

Terrorism Legislation Amendment Bill 2007

Explanatory Notes

Objectives of the Bill

The Bill seeks to:

Amend the *Terrorism (Preventative Detention) Act 2005*:

- to allow the issuing authority for final orders to order Legal Aid assistance for the duration of detention for a detainee without legal representation;
- to provide that an issuing authority for final orders can direct the applicant to provide further information to a detainee where the issuing authority is not reasonably satisfied that the written summary fairly and accurately informs the detainee of the nature and cause of the application;
- to provide that contact between a detainee and security-cleared lawyer is not monitored, unless the issuing authority orders that contact be monitored;
- to provide that a detainee is entitled to contact a lawyer on any matter;
- to require that a police officer who is detaining a person must apply for the revocation of the preventative detention order or a prohibited contact order as soon as practicable when satisfied that the grounds on which the order was made no longer exist;
- police questioning of a detainee must be electronically recorded except under limited prescribed circumstances;
- to allow police to undertake a search including the removal of clothing, of a person taken into custody under a preventative detention order where police suspect the person of carrying an item that may result in loss of life or serious physical harm; and

- to exclude records or activities done under the *Terrorism (Preventative Detention) Act 2005* from the operation of the *Freedom of Information Act 1992*.

Amend the *Public Safety Preservation Act 1986* and the *Police Powers and Responsibilities Act 2000* to enhance police capability to prevent a terrorist act from occurring or to minimise the impact and potential loss of life resulting from a terrorist incident or incidents. The Bill enables the commissioner or deputy commissioner, if satisfied on reasonable grounds that an emergency situation has arisen or is likely to arise resulting from or may result from or may lead to one or more terrorist acts being committed, to appoint an appropriately qualified police officer to be a terrorist emergency commander, and for each terrorist emergency site, an appropriately qualified police officer to be a terrorist emergency forward commander. The terrorist emergency forward commander may declare a terrorist emergency if satisfied on reasonable grounds that the powers are necessary to manage and control a terrorist emergency site. The powers available under a declared terrorist emergency include:

- to control movement of persons within, or about to enter, a declared terrorist emergency area;
- to stop, detain and search a person within, or suspected of being about to enter or leaving a declared area, without a warrant; and to seize an item that may provide evidence of the commission of an offence, or which the person intends to use to cause harm to themselves or someone else;
- to require a person to state the person's correct name and address; and
- to direct a government agency with respect to the ordinary performance of its functions.

The Bill also proposes to amend the *Disaster Management Act 2003* to ensure that a terrorist emergency declaration is not overridden by any other declarations. This is consistent with the current operation of chemical, biological and radiological (CBR) emergency situations (also governed by the *Public Safety Preservation Act 1986*).

Reasons for the Bill

The Terrorism Legislation Amendment Bill 2007 forms part of Queensland's strong counter-terrorism framework. The Bill is in line with agreed COAG (the Council of Australian Governments) priorities and

supplements Queensland's existing platform of counter-terrorism arrangements to ensure that laws are effective against terrorism and contain appropriate safeguards. Underpinning the Bill is a commitment to parliamentary and judicial review, and an evidence-based, intelligent-led and proportionate approach to the exercise of powers.

The new terrorist emergency powers enable police to effectively manage threats and acts of terrorism and are designed to address contemporary terrorism methodologies, specifically the use of a number of devices either at the one time or the placing of additional devices targeting persons evacuating from the site of the original terrorist act. Furthermore, the Bill takes into account that a number of persons will more than likely be involved in the execution of the terrorist act. The powers are not limited to dealing with incidences involving explosives as the terrorist act may relate to chemical, biological or radiological substances.

The principal focus of the terrorist emergency powers is for the preservation of life through the provision of powers which are designed to assist in the prevention of a terrorist act or further terrorist act occurring and minimising the risk to public health and safety. To assist in such prevention the powers aid in identifying persons who may be involved in the terrorist act.

The power to detain and search persons without warrant assists police to prevent or minimise the effect of the terrorist act or any additional terrorist act. For example, police while evacuating persons from a terrorist emergency site may need to search bags being carried by any person to ensure the safety of all persons being evacuated. Additionally, where a person is wearing a bulging jacket, police may require the person to open or remove the jacket. The existing provisions of the *Public Safety Preservation Act 1986* do not provide a power to detain and search a person and the provisions of the *Police Powers and Responsibilities Act 2000* for search of a person without warrant requires reasonable suspicion to be attached to a person and not an emergency site prior to the exercise of the power.

Current provisions of the *Public Safety Preservation Act 1986*, with the exception of CBR emergencies, do not provide a power to require a person to provide their name and address. The ability to require a person's name and address may assist police in identifying persons responsible for the terrorist act or assist police in identifying witnesses.

At a terrorist emergency site the movement of persons may need to be controlled for a variety of reasons. Police may need to restrict the movement of persons who may pose a threat to other persons by having

them temporarily stay at a stated place within the declared area. Furthermore, police may need to prevent persons from entering a terrorist emergency site or may need to control the movement of persons due to the possibility of additional devices or substances placed at normal exit points, or once moved to a location it may be necessary to move such person to a different location following an assessment of the location.

Estimated Cost for Government Implementation

The costs associated with an issuing authority for final orders directing Legal Aid Queensland to provide legal representation to a person the subject of a preventative detention order under the *Terrorism (Preventative Detention) Act 2005* may have funding and resource implications for Legal Aid Queensland. No determination can be made as to the number of preventative detention orders that may be sought or granted and therefore the cost to Government can not be estimated. The costs associated with the provision of legal representation will be met from within existing agencies' budget allocation, however, Legal Aid Queensland and the Department of Justice and Attorney-General will monitor the issue.

The implementation of specific legislative provision for the management of terrorist emergencies will not have any direct financial implications and will be met from within existing agencies' budget allocations.

Consistency with Fundamental Legislative Principles

The Bill deals with policing powers which infringe a number of fundamental legislative principles.

The Bill, however, will minimise discord with fundamental legislative principles by ensuring that under the *Terrorism (Preventative Detention) Act 2005*:

- a detainee who does not have legal representation be given the opportunity for free legal representation whilst the detainee is detained under a preventative detention order;
- police must give reasonable assistance to a detainee to choose and contact a lawyer including arranging for the assistance of an interpreter if the detainee has difficulties because of an inadequate knowledge of the English language, or a disability, to communicate with reasonably fluency;
- a detainee is entitled to contact a lawyer on any matter;

- a detainee is entitled to unmonitored contact with a security cleared lawyer unless the issuing authority orders otherwise;
- an issuing authority for final orders can review the summary of the application provided to a detainee and, if the issuing authority is not reasonably satisfied that the written summary fairly and accurately informs the detainee of the nature and cause of the application, may direct the applicant to provide further information; and
- limited police questioning of a detainee must be electronically recorded except under prescribed circumstances.

The Bill also incorporates stringent and appropriate safeguards on the new terrorist emergency powers under the *Public Safety Preservation Act 1986* which achieves an appropriate balance between individual rights and liberties and protecting the broader community. The powers are, in general, not new powers. Instead, these powers are of a type currently conferred under Queensland legislation in the *Police Power and Responsibilities Act 2000* and the *Public Safety Preservation Act 1986*.

Activation of terrorist emergency powers

The terrorist emergency powers can only be activated after the commissioner or deputy commissioner is satisfied on reasonable grounds that an emergency situation has arisen or is likely to arise resulting from or may result from or may lead to one or more terrorist acts being committed. If so satisfied, the commissioner or deputy commissioner must appoint an appropriately qualified police officer as a terrorist emergency forward commander to manage and control each terrorist emergency site. A terrorist emergency forward commander must be satisfied on reasonable grounds the terrorist emergency powers are necessary to manage and control the site, before declaring a terrorist emergency. Furthermore, the declared area for the terrorist emergency must be the smallest area reasonably necessary to effectively deal with the terrorist emergency. Before a terrorist emergency forward commander or a police officer acting under the terrorist emergency forward commander's direction can exercise any terrorist emergency powers, they must be satisfied that the exercise of power is necessary to effectively deal with the terrorist emergency.

The trigger mechanism of declaration, and the definition of 'terrorist act' in the *Police Powers and Responsibilities Act 2000*, operate together as rigorous threshold to the activation of special terrorist emergency powers. The definition of 'terrorist act' is based on the Commonwealth model in the spirit of a nationally consistent approach.

Restrictions on terrorist emergency powers

The period during which the terrorist emergency powers may be exercised is limited to seven days' duration. Extension of this period to a maximum of fourteen days is subject to Ministerial scrutiny.

Oversight, reporting, accountability and review

The Minister must be immediately notified of a declaration of a terrorist emergency or where a significant change is made to the declaration. The Minister or the Premier can extend the terrorist emergency beyond seven days, to a maximum of fourteen days, if it is necessary to protect life or health at serious risk. The Minister or the Premier can end a terrorist emergency if satisfied it is no longer necessary for police to continue to exercise terrorist emergency powers to protect life or health at serious risk. A direction given by the commissioner or the deputy commissioner to another government agency can be withdrawn by the Premier or the Minister responsible for the agency.

The commissioner must give a report to the Minister within six months of the exercise of the terrorist emergency powers. The Minister must table a report in the Legislative Assembly within six months of the exercise of the terrorist emergency powers. The Minister must review of the powers before the end of five years following commencement and a report on the outcome of the review must be tabled in the Legislative Assembly.

Consultation

Consultation was entered into with the Leader of the Opposition; Leader of the Liberal Party; the Honourable Member for Gladstone; Bar Association of Queensland; Queensland Law Society; Queensland Council for Civil Liberties; Legal Aid Queensland; the Judiciary; and Muslim community leaders.

Notes on Provisions

Part 1 Preliminary

Clause 1 Short Title: This clause stipulates that the Act's short title is the *Terrorism Legislation Amendment Act 2007*.

Clause 2 Commencement: This clause provides that the Act will commence on a day fixed by proclamation.

Part 2 Amendment of Disaster Management Act 2003

Clause 3 Act amended in pt 2: This clause provides that this part amends the *Disaster Management Act 2003*.

Clause 4 Amendment of s 9 (Directions about powers under other Acts during disaster situation): This clause amends s 9(8) to exclude terrorist emergency powers from the application of s 9(2) clarifying that terrorist emergency powers under the *Public Safety Preservation Act 1986* can not be the subject of directions about the circumstances in which the powers may be exercised during the period of the disaster situation.

Part 3 Amendment of Police Powers and Responsibilities Act 2000

Clause 5 Act amended in pt 3 and schedule: This clause provides that this part and the schedule amend the *Police Powers and Responsibilities Act 2000*.

Clause 6 Amendment of sch 6 (Dictionary): This clause inserts a definition for 'explosives detection dog', and amends the definition of 'enforcement act' to provide that the use of an explosives detection dog to carry out explosives detection in the search of a person, vehicle or premises is not an

enforcement act for the purposes of the *Police Powers and Responsibilities Act 2000*.

Part 4 Amendment of Public Safety Preservation Act 1986

Clause 7 Act amended in pt 4 and schedule: This clause provides that this part and the schedule amend the *Public Safety Preservation Act 1986*.

Clause 8 Amendment of long title: This clause amends the long title to include terrorist emergencies.

Clause 9 Replacement of s 4A (Notes): This clause omits s 4A (Notes) and inserts new section 4A (Relationship with another declaration under another Act) to clarify that a declaration of an emergency situation, terrorist emergency or a CBR emergency under the *Public Safety Preservation Act 1986* do not prevent a declaration of a state of disaster or other emergency being made under another Act. The section further clarifies that a declaration of an emergency situation, terrorist emergency or a CBR emergency, or the exercise of any power, under the *Public Safety Preservation Act 1986* are neither prevented nor limited by the existence of a declaration made under any other Act.

Clause 10 Amendment of s 5 (Declaration of emergency situation): This clause amends section 5 to rename the declaring commissioned officer for an emergency situation from ‘incident coordinator’ to ‘emergency commander’ to reflect the role of the commissioned officer and to make the term consistent with the Queensland Police Service’s emergency management framework.

This clause also deletes subsection 5(4) as the interoperability of declarations made under the *Public Safety Preservation Act 1986* are now contained within new Part 3A (Relationship between emergencies). Subsections 5(5) and 5(6) are renumbered as subsections 5(4) and 5(5) respectively.

Clause 11 Replacement of s 7 (Power to delegate): This clause inserts a new section 7 (Power to Delegate), which applies only for any period in which the emergency commander is not acting as the emergency commander: section 7(1).

Subsection 7(2) clarifies to whom an emergency commander for an emergency situation under the *Public Safety Preservation Act 1986* may delegate the emergency commander's functions. The subsection also includes the power to subdelegate functions,

Subsection 7(3) sets out the restrictions on the emergency commander's power to delegate.

Subsection 7(4) sets out the delegation documentation the emergency commander must attach to the emergency situation certificate.

Subsection 7(5) clarifies that a delegation under this section, unless sooner cancelled, ends when the declaration of the emergency situation is revoked.

Subsection 7(6) clarifies that for section 7, 'functions' is defined to include powers.

Clause 12 Insertion of new pt 2A: This clause inserts a new Pt 2A (Terrorist Emergency) following Part 2. Part 2A is divided into three Divisions.

Division 1 (Declaring, extending and ending terrorist emergencies) is subdivided into two Subdivisions.

Division 1, Subdivision 1 (Appointments) provides for the appointment and functions of a 'terrorist emergency commander' and a 'terrorist emergency forward commander'.

New section 8A (Appointment of terrorist emergency commander and terrorist emergency forward commander) Section 8A(1) sets out the criteria, for which the commissioner or a deputy commissioner must be satisfied of on reasonable grounds, for the section to apply. The criteria to be met are:

- an emergency situation has arisen, or is likely to arise. The use of the word 'likely' is necessary to enable police to respond to threats or information received; and
- the emergency situation results from or may result from or may lead to one or more terrorist acts. The use of the word 'may' is necessary as it may be some time after a threat was made, information received, or an emergency situation had occurred before it could be identified that act was done with:
 - the intention of advancing a political, religious or ideological cause; or
 - the intention to coerce or influence by intimidation, the government of the Commonwealth, a State or a foreign country, or of part of a State or foreign country; or

- the intention of intimidating the public or a section of the public.

Therefore the provision enables the commissioner or a deputy commissioner to be satisfied on reasonable grounds that the emergency situation results from or may result from or may lead a terrorist act due to the nature of a threat made, explosive or other thing located or used, irrespective of any information linking the threat or act with the intentions aforementioned. This includes, but is not limited to, situations where the nature of the threat involves a suicide bomber, where multiple devices are intended to be, or have been, detonated at a location, a person intends to use, or has used, a chemical, biological or radiological substance or where a person involved is, or is reasonably suspected of being, a member of a terrorist organisation as defined in s 102.1 (Definitions) *Criminal Code Act 1995* (Cwlth).

Subsection 8A(2) places a requirement on the commissioner or a deputy commissioner to appoint a police officer, whom the commissioner or a deputy commissioner considers is appropriately qualified, to be the terrorist emergency commander.

Subsection 8A(3) provides the commissioner or a deputy commissioner has all the powers of a terrorist emergency commander until a terrorist emergency commander is appointed. This enables the commissioner or a deputy commissioner to declare a terrorist emergency exists for a declared area prior to a terrorist emergency commander being appointed.

Subsection 8A(4) requires for each terrorist emergency site, the commissioner or a deputy commissioner, or a terrorist emergency commander under a section 8B delegation, must appoint a police officer, whom the commissioner, a deputy commissioner or a terrorist emergency commander considers is appropriately qualified, to be the terrorist emergency forward commander for a terrorist emergency site.

New section 8B (Commissioner's or deputy commissioner's power to delegate) ensures that the commissioner or the deputy commissioner can only delegate the power to appoint a terrorist emergency forward commander to the terrorist emergency commander.

New section 8C (Function of terrorist emergency commander) sets out the functions of the terrorist emergency commander. Subsection 8C(1) clarifies that the terrorist emergency commander is responsible for the overall management and control of all terrorist emergencies including all terrorist emergency sites.

Subsections 8C(2) and (3) clarify that the terrorist emergency commander may give directions to a terrorist emergency forward commander about the performance of functions and the exercise of powers and requires the terrorist emergency forward commander to comply with such directions, and is generally subject to the management and control, of the terrorist emergency commander.

Subsection 8C(4) provides the terrorist emergency commander with all the powers of a terrorist emergency forward commander, and for that purpose clarifies that a reference to a terrorist emergency forward commander in the *Public Safety Preservation Act 1986* includes a reference to the terrorist emergency commander.

Subsection 8C(5) clarifies that subsections 8C(2) and (4) do not limit other powers of the terrorist emergency commander.

New section 8D (Terrorist emergency commander's power to delegate) enables a terrorist emergency commander to delegate the commander's functions to a police officer whom the terrorist emergency commander considers is appropriately qualified. The delegation power also includes a power to subdelegate. The section clarifies that the section only applies when the terrorist emergency commander is not acting as the commander and further clarifies that for the section the term functions includes powers.

New section 8E (Function of terrorist emergency forward commander) describes the functions of the terrorist emergency forward commander. Subsection 8E(1) states that the terrorist emergency forward commander appointed for a terrorist emergency site is responsible for the management and control of the terrorist emergency site and on-site investigation and the terrorist emergency.

Subsection 8E(2) provides that a terrorist emergency forward commander also has the powers of an emergency commander under Pt 2 and a reference in section 8 to an emergency situation therefore includes a reference to the terrorist emergency; furthermore, a reference in section 8 to an emergency commander includes a reference to a terrorist emergency forward commander.

Subsection 8E(3) provides for the purpose of the powers of a terrorist emergency officer acting on the instructions of a terrorist emergency forward commander, a reference in section 8 to a police officer acting on the commander's instructions includes a reference to a terrorist emergency officer.

Subsection 8E(4) clarifies that subsections 8E(2) or (3) do not limit other powers of terrorist emergency officers. However, powers conferred by this

section are subject to section 8L (Grounds for exercise of power): subsection 8E(5).

New section 8F (Terrorist emergency forward commander's power to delegate) describes the terrorist emergency forward commander's power to delegate and subdelegate. The section clarifies that the section applies only when the terrorist emergency forward commander is not acting as the terrorist emergency forward commander and stipulates the delegation documentation which the terrorist emergency forward commander must attach to the terrorist emergency certificate. The section further clarifies that any delegation under this section, unless sooner cancelled, ends when the terrorist emergency ends. The section also provides that a reference to functions in the section includes a reference to powers.

Division 1, Subdivision 2 (Declaration) provides for the declaration, extension and cessation of a terrorist emergency.

New section 8G (Terrorist emergency may be declared) describes how and when a terrorist emergency may be declared and by whom. Subsection 8G(1) empowers a terrorist emergency forward commander to declare a terrorist emergency for a stated area (the 'declared area'). The exercise of this power is contingent upon the terrorist emergency forward commander being satisfied on reasonable grounds that the terrorist emergency powers are necessary to manage and control the site and circumstances surrounding the site.

Subsection 8G(2) requires that a declared area for a terrorist emergency is to be the smallest area necessary to effectively manage the terrorist emergency thereby limiting the area in which the terrorism powers can be utilised.

Subsection 8G(3) states that a declared area can be, but not limited to, a description of an area surrounding a moving activity.

Subsection 8G(4) requires that as soon as reasonably practical after making the declaration the terrorist emergency forward commander must sign and issue a certificate and sets out the information to be stated in the certificate.

Subsection 8G(5) details how a terrorist emergency forward commander may change the nature, or declared area, of a terrorist emergency.

Subsections 8G(6), (7) and (8) require the commissioner to make immediate efforts to contact the Minister for Police, or if the Minister is not readily contactable, to inform the Premier, or next most senior Minister who is available if neither the Minister nor Premier are contactable, that a terrorist emergency has been declared or the description of the nature of the

terrorist emergency or declared area has significantly changed. The intended effect is to ensure that at the earliest stage possible, Ministerial sanction is obtained for the declaration or the significant change to the declaration and use of the terrorist emergency powers.

Subsection 8G(9) states that a terrorist emergency declaration automatically expires after seven days unless, it is ended sooner under the requirements of section 8I, or extended by the Minister and the Premier under section 8H.

New section 8H (Extension of terrorist emergency beyond 7 days to a maximum of 14 days) describes how a terrorist emergency may be extended by the Minister and the Premier beyond the first seven days up to a maximum period of fourteen days from the time the terrorist emergency was first declared. The Minister and the Premier may only agree to extend the terrorist emergency if they are satisfied that the terrorist emergency still exists it is necessary for police to continue to exercise terrorist emergency powers to protect life or health at serious risk.

New section 8I (Relevant person must end terrorist emergency in particular circumstances) makes provision for the cessation of the terrorist emergency by the terrorist emergency commander, the Minister or the Premier (a 'relevant person').

Subsection 8I(1) requires that a terrorist emergency must be ended as soon as a relevant person is satisfied that it is no longer necessary for police to continue to exercise terrorist emergency powers to protect life or health at risk. The purpose of section 8I is to make it abundantly clear that terrorist emergency powers are not to be used beyond the time for which they are strictly necessary.

Subsection 8I(2) requires the terrorist emergency forward commander to promptly notify police officers of the ending of the terrorist emergency by a relevant person and the terrorist emergency commander must notify the ending of the terrorist emergency and when it ended by gazette notice and comply with s 8J.

Subsection 8I(3) defines the term 'relevant person' for the section as being the terrorist emergency commander, the Minister or the Premier.

New section 8J (Dealing with the terrorist emergency certificate at the end of the emergency) describes the process for dealing with a terrorist emergency certificate when a terrorist emergency ends. The terrorist emergency forward commander is required to note on the terrorist emergency certificate when the terrorist emergency ended. The terrorist emergency forward commander is required to give the completed terrorist

emergency certificate to the office of the commissioner within fourteen days after the terrorist emergency ends, and requires such certificate to be kept for a minimum period of six years after the ending of the terrorist emergency.

Division 2 (Exercise of powers) is subdivided into two Subdivisions.

Division 2, Subdivision 1 (Terrorist emergency officer powers) describes the powers of the terrorist emergency officer, and the circumstances in which and by whom they may be exercised.

New section 8K (Definition for sdiv 1) defines the term ‘terrorist emergency officer’ for Division 2, Subdivision 1, as being the terrorist emergency forward commander or a police officer acting on the instructions of the terrorist emergency forward commander.

New section 8L (Grounds for exercise of power) sets out the circumstances in which a terrorist emergency officer may exercise a terrorist emergency power. Subsection 8L(1) limits the exercise of terrorist emergency powers to terrorist emergency officers and only during the terrorist emergency, and unless otherwise provided, only in the declared area; and only if the terrorist emergency officer is satisfied that the exercise of power is necessary to effectively deal with the terrorist emergency.

Subsection 8L(2) provides that a terrorist emergency officer exercising a terrorist emergency power may use force that is reasonably necessary. The note that a terrorist emergency officer also has section 8E (Function of terrorist emergency forward commander) powers clarify that a terrorist emergency officer has, in addition to the powers provided under subdivision (1), the powers that a terrorist emergency forward commander has under section 8E including the powers of an emergency commander under Pt 2 of the Act.

New section 8M (Power to control movement of persons) describes the power available to a terrorist emergency officer to give directions to control the movement of persons and sets out the circumstances when the directions can be given. The section enables a terrorist emergency officer to control the movement of all persons in a declared area, including persons who may be involved in committing a terrorist act. The section provides power for a terrorist emergency officer to prevent persons from leaving the declared site via normal exits, which may be necessary due to the possibility of explosive devices or other substances being placed at or near to those locations. The section also enables persons to be moved from one location in the declared area to another for the safety of any person. The power of a terrorist emergency officer to direct a person to temporarily stay

at or in a stated place in the declared area includes a terrorist emergency officer being able to have a person remain at a stated place for a period reasonably necessary to ensure that the person does not pose a threat to the safety of any person. Subsections (4) and (5) provide that for the purposes of the *Police Powers and Responsibilities Act 2000* a person subject of the exercise of a power under this section is neither under arrest or in the custody of a police officer nor is the exercise of the power an enforcement act.

New section 8N (Power to search a person without a warrant) describes the powers available to a terrorist emergency officer to stop, detain and search persons without a warrant who are in, about to enter or reasonably suspected of having just left a declared area and to make seizures of things that may be evidence or that the person intends to use to harm any person. The section also provides that the safeguards contained in chapter 20 of the *Police Powers and Responsibilities Act 2000* apply to this section. Subsection (4) and (5) clarify that powers exercised under this section are not enforcement acts for the purposes of the *Police Powers and Responsibilities Act 2000* unless the search of a person involves the removal of clothing other than outer garments.

New section 8O (Power to require name and address) enables a terrorist emergency officer to require a person's correct name and address and evidence of the correctness of the details provided in specified circumstances. The section provides a definition for the term 'address' for the purpose of the section.

Division 2, Subdivision 2 (Other powers) provides other powers available in a terrorist emergency.

New section 8Q (Power to direct officers of government agencies) describes the power the commissioner or a deputy commissioner has to direct officers, including officers holding a type of officer or exercising a function, of government agencies in response to a terrorist emergency. The section sets out the circumstances when a direction can be given and places a requirement on the officer of the agency to comply. The Premier or the Minister responsible for the agency receiving the direction can withdraw the direction. The section clarifies that for the section the term 'function' includes power, that performance of a function includes the exercise of a power and officer includes any employee of government whether the person holds an office or not.

Division 3 (Other provisions) relates to the reporting of a terrorist emergency to the Minister and the Legislative Assembly, and the review process applicable to Pt 2A.

New section 8R (Report to Minister) requires the commissioner to provide a report to the Minister about a terrorist emergency within six months of the declaration ending and prescribes the information to be included in the report. The commissioner may also add any additional information the commissioner considers appropriate.

New section 8S (Tabling of report in Legislative Assembly) requires the Minister to table a report about a terrorist emergency in the legislative assembly within six months after the end of the declaration. The section prescribes the information that is to be included and excluded from the report and is intended to promote transparency by keeping the public informed and to make the Government accountable to Parliament for actions undertaken in a terrorist emergency.

New section 8T (Review) requires the Minister to review Pt 2A (Terrorist emergency) before the end of five years after the commencement of this section and table a report on the outcome of the review in the Legislative Assembly within twelve months after the end of the five year period.

Clause 13 Omission of s 10 (Relationship to other Acts): This clause omits section 10 as new section 4A describes the relationship between the exercise of powers under this Act and a declaration of a state of disaster or other emergency.

Clause 14 Amendment of s 16 (Meaning of CBRE coordinator): This clause renames the term 'CBRE coordinator' to 'CBRE commander'.

Clause 15 Insertion of new pt 3A: This clause inserts a new Pt 3A (Relationship between emergencies) following Pt 3. Part 3A describes the interrelationship between an 'emergency situation', a 'terrorist emergency' and a 'CBR emergency'.

New sections 43A (Emergency situation), 43B (Terrorist emergency) and 43C (CBR emergency) describes the interoperability between declarations for an emergency situation, a terrorist emergency and a CBR emergency under the Act. The section provides that an emergency situation is to have no effect in an area covered by a terrorist emergency or CBR emergency as these emergencies are under the control of a terrorist emergency forward commander or a CBRE commander respectively and police have the powers available in an emergency situation in a terrorist emergency or CBR emergency. The sections provide the ability to have multiple declarations for the same emergency to enable the emergency to be effectively managed. For example, a terrorist emergency may be declared to manage a terrorist emergency site, however, in keeping with the requirement that the declared area for a terrorist emergency is to be the smallest area necessary

to effectively deal with the emergency, it may not be necessary to utilise the terrorist emergency powers to evacuate premises surrounding the terrorist emergency site and an emergency incident declaration may be utilised to enable the evacuation of those premises.

New section 43D (Multiple appointments) clarifies that a person may hold multiple appointments as an emergency commander, terrorist emergency commander, terrorist emergency forward commander or CBRE commander under the Act.

Clause 16 Insertion of new ss 49 and 50: This clause inserts sections 49 (Application of Police Powers and Responsibilities Act 2000 to a direction given by a police officer under this Act) and 50 (Powers unaffected by failure to comply with formal provision). Section 49 provides that the *Police Powers and Responsibilities Act 2000* applies as if a direction given by a police officer under the *Public Safety Preservation Act 1986* were a direction under *Police Powers and Responsibilities Act 2000*. A person who contravenes a requirement or direction given by a police officer under the *Public Safety Preservation Act 1986* is taken to have committed an offence against section 791 (Offence to contravene direction or requirement of police officer) of the *Police Powers and Responsibilities Act 2000*.

New section 50 (Powers unaffected by failure to comply with formal provision) states that a failure to comply with formal provisions in relation to an emergency has no effect on the exercise of the emergency powers and such failure does not make the exercise of the power unlawful. The particular formal provisions are:

For an emergency situation,

- section 5(2) (the provision of a certificate by the emergency commander);

For a terrorist emergency,

- section 8G(4) (the issuing of, or details required in, a terrorist emergency certificate);
- section 8G(6) (the commissioner must immediately notify the Minister of any declaration of a terrorist emergency under s 8G or any significant alterations under s 8G(5)); and
- section 8G(7) (if after reasonable efforts the Minister cannot be contacted, the commissioner must immediately inform the Premier of any declaration of a terrorist emergency under s 8G or any significant alterations under s 8G(4)); and

- section 8G(8) (if neither the Minister nor the Premier can be contacted, the commissioner must immediately inform the next most senior Minister of any declaration of a terrorist emergency under s 8G or any significant alterations under s 8G(4)); and

For a CBR emergency,

- section 12(5) (the making of a written record of the time and date of a CBR emergency declaration).

Clause 17 Amendment of schedule (Dictionary): This clause amends the Schedule by omitting the definitions of 'CBRE coordinator' and 'incident coordinator' and inserts new definitions of particular terms used in the Act.

Part 5 Amendment of Terrorism (Preventative Detention) Act 2005

Clause 18 Act amended in pt 5 and schedule: This clause provides that this part and the schedule amend the *Terrorism (Preventative Detention) Act 2005*.

Clause 19 Insertion of new s 7A: This clause inserts new section 7A (Freedom of Information Act 1992). Section 7A exempts documents received or brought into existence because of carrying out any activity under the Terrorism (Preventative Detention) Act 2005 from the *Freedom of Information Act 1992*.

Clause 20 Amendment of s 13 (Presence or absence at application for order of detainee and other persons): Subclause (1) amends subsection 13(3) to provide, subject to the application of section 14 (General provisions that apply of the PIM must be notified about an application to an issuing authority), the Public Interest Monitor may be present at an application for a preventative detention order or the extension, or further extension, of a preventative detention order for a person. Subclause (2) amends subsection 13(4) to enable the issuing authority, in the public interest, to extend those persons who may be present at a particular application.

Clause 21 Amendment of s 23 (Notice to and representations by the person): Subclause (1) amends subsection 23(1)(a) to provide that the applicant for final orders must provide the detainee with a summary of the application rather than just a summary of the grounds for the application.

Subclause (2) amends section 23 by inserting new subsections (3A), (3B) and (3C) to enable the issuing authority for final orders to review the summary of the application provided to the detainee and to direct the applicant to provide further information in the summary of the application if the issuing authority is not reasonably satisfied with the content, subject to prescribed limitations of information that can be included.

Clause 22 Amendment of s 27 (Application for extension of final order): This clause amends section 27 to require where practicable, an application for an extension of a final order should be made to the issuing authority who made the final order.

Clause 23 Amendment of s 29 (Notice to and representations by the person): This clause amends section 29 to require that the person subject of a preventative detention order is to be provided with a summary of the application for the extension of final orders rather than a summary of the grounds of the application.

Clause 24 Insertion of new pt 2, div 3A: This clause inserts a new Part 2, Division 3A (Legal Aid). This division makes provision for the issuing authority to order free legal assistance for a detainee and describes the effect of such an order.

New section 31A (Order for free legal assistance) requires, in prescribed circumstances, an issuing authority for final orders to make an order that a detainee be provided with free legal assistance for any detention proceedings during the period of the person's detention. The section defines terms 'detention proceeding' and 'legal representation' used in the section.

New section 31B (Effect of order) describes the effect of a section 31A (order for free legal assistance) and requires Legal Aid to give the person free legal assistance as required but only in relation to the person's detention and only while the person is in detention under the *Terrorism (Preventative Detention) Act 2005*.

Clause 25 Amendment of s 35 (Revocation of preventative detention order or prohibited contact order): This clause amends section 35 to require that a police officer who is detaining the person must apply *as soon as practicable* to the issuing authority for the revocation of the preventative detention order or prohibited contact order when the police officer is satisfied that the grounds on which the relevant order was made cease to exist.

Clause 26 Amendment of s 38 (Nominated police officer to oversee functions and powers): This clause amends section 38(4) to enable

prescribed persons to make representations to a nominated police officer about the revocation of a preventative detention order.

Clause 27 Amendment of s 40 (Requirement to provide name etc.): This clause amends section 40 by omitting s 40(4)(c) and s 40(4)(d) and inserts a new subsection (c), requiring a police officer who requests a person's name and address under section 40(1) must provide his or her rank to the person.

Clause 28 Insertion of new ss 43A and 43B: This clause inserts new sections 43A (Search involving removal of clothing) and 43B (Safeguards apply). New section 43A applies only at the time a person is being taken into custody under a preventative detention order and enables a police officer to require a person to remove their clothing to enable a thorough search in prescribed circumstances.

New section 43B (Safeguards apply) provides that the prescribed *Police Powers and Responsibilities Act 2000* safeguards apply when a search of a person is conducted under sections 42, 43 or 43A.

Clause 29 Amendment of s 45 (Release of person from preventative detention): This clause replaces the note in subsection 45(1) to clarify that a person can be released from a preventative detention order to enable the person to be arrested and dealt with for an offence.

Clause 30 Amendment of s 46 (Arrangement for detainee to be held) This clause inserts new subsection 46(16) to have the effect that a certified copy of a preventative detention order is a warrant for the detention of a person under the either the *Corrective Service Act 2006* or the *Juvenile Justice Act 1992*.

Clause 31 Amendment of s 47 (Effect of initial order to be explained to person detained): This clause amends section 47(2) by prescribing additional requirements that a police officer detaining a person under a preventative detention order has to inform the person. The requirement that the police officer provide the detainee with the work telephone number of the person is replaced with the requirement that the police officer provide the detainee with the nominated officer's rank and station as the detainee will not have direct access to a telephone and requires the police officer, if requested, to assist the detainee to contact the nominated police officer.

Clause 32 Amendment of s 48 (Effect of final order to be explained to person detained): This clause amends s 48(2) by prescribing additional requirements that a police officer detaining a person under a final order has to inform the person. The requirement that the police officer provide the detainee with the work telephone number of the person is replaced with the

requirement that the police officer provide the detainee with the nominated officer's rank and station as the detainee will not have direct access to a telephone and requires the police officer, if requested, to assist the detainee to contact the nominated police officer.

Clause 33 Amendment of s 51 (Copy of preventative detention order and summary of grounds): This clause amends section 51 to require police to provide a detainee with additional prescribed information subject to prescribed limitations.

Clause 34 Amendment of s 53 (Questioning of person prohibited while person detained): Clause 34 amends section 53 by replacing the section heading and requiring that any questioning of a detainee for prescribed purposes must be electronically recorded unless it is not practicable to do so because of the seriousness and urgency of the circumstances. For example, it may not be practicable due to the seriousness and urgency to electronically record the questioning of the detainee as to identity or health when the person is being initially detained. Any recording is required to be kept for the prescribed time frames.

Clause 35 Amendment of s 54 (Offences of contravening safeguards): This clause amends section 54 by replacing the section heading for section 53 (Restrictions on questioning detained person) in subsection (e) as a consequence of the section heading for section 53 being replaced.

Clause 36 Amendment of s 58 (Contacting lawyer): This clause substantially amends 58(1) to entitle the detainee to contact a lawyer on any matter. The clause also inserts section 58(1A), requiring a police officer to give assistance to a detainee to choose and contact lawyer, including arranging for the assistance of an interpreter if the detainee is unable to communicate with reasonable fluency in the language, because of inadequate knowledge of English or a disability; and therefore may have difficulties in choosing or contacting a lawyer.

Clauses 37 Amendment of s 59 (Monitoring contact under section 56, 58 or 61) and clause 38 Insertion of new s59A: These clauses restrict the monitoring of contact between a detainee and a security-cleared lawyer unless the issuing authority orders the contact to be monitored and sets out the process for an applicant to require monitoring of a security cleared lawyer. New subsection 59A (6) enables a lawyer to question a person providing information to an issuing authority for final orders unless the limitations of subsection apply. Clause 37 also defines the terms monitored and listening device used in section 59 of the Act.

Clause 39 Amendment of s 61 (Child or person of impaired capacity to be contacted by relevant chief executive): This clause amends section 61 to ensure that in addition to children and persons of impaired capacity, the section applies to a person who has a mental illness.

Clause 40 Amendment of s 62 (The relevant chief executive and the chief executive's delegate): This clause amends section 62 to identify for the purposes of section 61 who the relevant chief executive is for a person who has, or is suspected to have, a mental illness. The clause also provides a delegation power for the relevant chief executive.

Clause 41 Amendment of s 64 (Lawyer): This clause amends section 64(d) to include that a disclosure by a lawyer for the purpose of an application for legal assistance is a prescribed circumstance when a lawyer does not commit an offence under section 64.

Clause 42 Amendment of s 65 (Parent/guardian): This clause amends section 65(1)(c) to provide that a parent or guardian commits a disclosure offence if the parent or guardian discloses information prescribed under subsection (1)(b) to a lawyer, if the lawyer is not in contact with the detainee.

Clause 43 Amendment of s 72 (Review by Supreme Court initiated by police officer detaining a person): This clause amends section 72 to provide that the commissioner does not have to bring an application before the Supreme Court for a decision whether a preventative detention order or prohibitive contact order should be revoked unless an issuing authority has not considered the preventative detention order or extended or further extended the preventative detention order in the past seven days.

Clause 44 Insertion of a new s 80A: This clause inserts a new s 80A (No cost orders against person detained) into Pt 7 and provides that a cost order cannot be made against a detainee who makes an application under the *Terrorism (Preventative Detention) Act 2005*.

Clause 45 Insertion of a new pt 8: This clause inserts a new Pt 8 (Transitional provisions) after s 84. Section 85 (Application of section 7A) describes the application of section 7A (Particular Acts do not apply) in providing exemptions from the *Freedom of Information Act 1992*. Section 85 provides that section 7A applies retrospectively and to any activity or record even if the activity happened or record was brought into existence before the commencement of the section.

Clause 46 Amendment of schedule (Dictionary): This clause amends the specified terms in the Schedule Dictionary.

Schedule Minor Amendments

Section 3

Police Powers and Responsibilities Act 2000

Clauses 1 to 3 make minor and consequential amendments to the *Police Powers and Responsibilities Act 2000*

Public Safety Preservation Act 1986

Clauses 1 to 11 make minor and consequential amendments to the Public Safety Preservation Act 1986

Terrorism (Preventative Detention) Act 2005

Clauses 1 to 15 make minor and consequential amendments to the Terrorism (Preventative Detention) Act 2005.