

CRIMINAL LAW (CRIMINAL ORGANISATIONS DISRUPTION) AMENDMENT BILL 2013

Explanatory Notes

Short title

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

Policy objectives and the reasons for them

On 28 September 2013, in the wake of violence at Broadbeach involving criminal motorcycle gangs, the Queensland Government announced its commitment to:

1. adopt a zero tolerance crackdown on criminal gangs;
2. provide whatever additional resources are necessary for the Queensland Police Service to carry out this crackdown;
3. introduce a range of tougher laws to tackle criminal gangs; and
4. support any moves to have additional criminal gangs declared a 'criminal organisation' under the *Criminal Organisation Act 2009*.

In order to deliver on the commitment to introduce tougher laws to tackle criminal gangs, the Government is introducing a comprehensive package of legislative reforms, contained in three Bills.

The objectives of the Criminal Law (Criminal Organisations Disruption) Amendment Bill 2013 (the Bill) are to:

1. amend the Criminal Code to:
 - create a new offence (section 60A) for participants in criminal organisations who knowingly gather together in a group of three or more persons, carrying a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment served wholly in a corrective services facility;
 - create a new offence (section 60B) for a participant in a criminal organisation to enter or attempt to enter a prescribed place, or attend or attempt to attend a prescribed event, carrying a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment served wholly in a corrective services facility;

- create a new offence (section 60C) for a participant in a criminal organisation to recruit another person to that organisation, carrying a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment served wholly in a corrective services facility;
 - amend section 72 (affray) to create a circumstance of aggravation where the offender is a participant in a criminal organisation, with the circumstance carrying a maximum penalty of seven years imprisonment, and a mandatory minimum penalty of six months imprisonment served wholly in a corrective services facility;
 - amend section 92A (misconduct in relation to public office) to insert a new circumstance of aggravation namely that the person who gained a benefit, directly or indirectly, was a participant in a criminal organisation, with the circumstance carrying a maximum penalty of 14 years imprisonment;
 - amend section 320 (grievous bodily harm) to provide that where an offender who is a participant in a criminal organisation harms a police officer acting in execution of their duty, the mandatory minimum penalty is one year imprisonment served wholly in a corrective services facility;
 - amend section 340 (serious assault) to provide that where an offender who is a participant in a criminal organisation assaults a police officer acting in the execution of their duty in circumstances attracting the maximum penalty of 14 years imprisonment, the mandatory minimum penalty is one year imprisonment served wholly in a corrective services facility; and
 - amend section 408D(1) (obtaining or dealing with identification information) to insert a new circumstance of aggravation namely that the offender supplied the information to a participant in a criminal organisation, with the circumstance carrying a maximum penalty of seven years imprisonment;
2. amend the *Penalties and Sentences Act 1992* to provide that for certain offences committed by an offender who is a participant in a criminal organisation, the court must disqualify the offender from holding or obtaining a driver licence absolutely, or for a period, not less than three months, regardless of whether the offence was committed in connection with or arose out of the driving of a motor vehicle;
 3. amend the *Bail Act 1980* to provide that where the court or police officer is satisfied that a defendant, who is charged with any offence, is a participant in a criminal organisation, then:
 - a mandatory condition of bail is that the defendant must surrender their passport or passports and must be detained until the condition is complied with; and

- the defendant will be in a show cause situation, that is, the court or police officer shall refuse to grant bail unless the defendant shows cause why the defendant's detention in custody is not justified;
4. amend the *Crime and Misconduct Act 2001* to:
- enable the Crime and Misconduct Commission (CMC) to hold hearings in support of its intelligence function about criminal organisations or participants in a criminal organisation;
 - create an immediate response function for the CMC to undertake a crime investigation/hearing (not just related to major crime) or to conduct an intelligence hearing into an incident that has threatened or may threaten public safety;
 - expand the exceptions to the 'use immunity' in section 197 to allow the use of information from any CMC investigation or hearing to be used in confiscation proceedings;
 - clarify that a 'reasonable excuse' does not include the person's fear (whether genuinely held or not) of retribution to the person (or someone else) or to property of the person (or to someone else's property), where that person is a participant in a criminal organisation and the crime investigation or intelligence hearing is about a criminal organisation or participant in a criminal organisation;
 - impose mandatory imprisonment for the punishment of contempt comprising: a term to be decided by the court for the first contempt; two and one half years for the second contempt; and five years for the third and any subsequent contempt, when the contempt involves a refusal to take an oath, answer a question or produce a stated document or thing at any CMC hearing;
 - authorise the CMC to request a police officer to detain a witness in contempt of the presiding officer pending the issue of a warrant of apprehension and the bringing of the person to court to deal with the contempt;
 - allow a Magistrate to issue an arrest warrant under section 167;
 - ensure the CMC is not obliged to disclose any intelligence information to a defendant for the purposes of a criminal prosecution under section 201; and
 - clarify that legal assistance for crime investigations that are approved under section 205 does not apply to crime investigations authorised under the immediate response function;
5. amend the *Police Powers and Responsibilities Act 2000* to:

- provide additional police powers to search without a warrant a person reasonably suspected of being a participant in a criminal organisation and/or a vehicle in that person's possession or use;
 - require a person who is reasonably suspected of being a participant in a criminal organisation or a person found at a prescribed place or event to state their name and address to police;
 - expand the vehicle impoundment regime to incorporate the new Criminal Code offences of sections 60A, 60B and 60C and the Criminal Code offence of affray with the new circumstance of aggravation to be inserted by the Bill, enabling a vehicle used in the commission of these offences to be impounded, and forfeited to the State upon conviction; and
 - increase the mandatory minimum penalty for the offence in section 754 (offence for driver of motor vehicle to fail to stop motor vehicle) to 50 penalty units or 50 days imprisonment to be served wholly in a correctional services facility; or, for an offender who is a participant in a criminal organisation, 100 penalty units or 100 days imprisonment to be served wholly in a correctional services facility;
6. enact the *Criminal Code (Criminal Organisations) Regulation 2013* to declare, for the purposes of certain amendments in the Bill, prescribed criminal organisations and prescribed places; and
 7. amend the *Crime and Misconduct Regulation 2005* to declare, for the purposes of certain amendments in the Bill, prescribed criminal organisations.

Achievement of policy objectives

The Bill achieves the objectives by way of the proposed amendments to existing legislation described below.

Alternative ways of achieving policy objectives

There are no alternative ways of achieving the criminal law reforms.

Estimated cost for government implementation

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

Otherwise, any costs in relation to the amendments will be met from existing agency resources.

The future allocation of resources will be determined through the normal budgetary processes.

Consistency with fundamental legislative principles

Potential breaches of fundamental legislative principles are addressed below.

Amendments to the Criminal Code, *Bail Act 1980* and *Penalties and Sentences Act 1992*

The Bill impacts on the rights and liberties of individuals through amendments to:

- create new offences restricting freedoms of movement and association;
- increase the penalties for existing offences, by way of inserting a new circumstance of aggravation into section 72 (affray); section 92A (misconduct in relation to public office); and section 408D(1) (obtaining or dealing with identification information);
- provide for mandatory minimum terms of imprisonment, in certain circumstances, for new section 60A (participants in criminal organisation being knowingly present in public places); new section 60B (participants in criminal organisation entering prescribed places and attending prescribed events); new section 60C (participants in criminal organisation recruiting persons to become participants in the organisation); section 320 (grievous bodily harm); and 340 (serious assault);
- introduce stricter bail laws; and
- introduce mandatory driver licence disqualification laws.

The introduction of a mandatory minimum penalty for grievous bodily harm of a police officer or serious assault of a police officer will affect the rights and liberties of some individuals. The mandatory punishment regime is justified given the need to deter this form of concerning conduct; protect police officers carrying out their duties; and ensure the maintenance of civil authority.

All of the amendments outlined above are further justified as they apply only to participants in criminal organisations and thereby target only those individuals who offend while enjoying the support and encouragement of the criminal group. The amendments strike at the illegal conduct of the criminal gang participant; communicate the wrongful and cowardly nature of their offending; and promote community safety and protection from such offenders.

The amendments operate prospectively and will only capture offenders who commit offences after the amendments commence.

Amendments to the *Crime and Misconduct Act 2001*

The *Crime and Misconduct Act 2001* amendments impact on the rights and liberties of individuals by:

- not allowing participants in criminal organisations at hearings under the crime investigation and intelligence functions about criminal organisations to claim fear

of retribution as a reasonable excuse to refuse to take an oath, answer a question or produce a stated document or thing;

- allowing information from any CMC hearing that would otherwise not be permitted into evidence because it tends to incriminate the person to be used in confiscation proceedings;
- imposing a minimum mandatory imprisonment for the punishment of contempt in relation to all CMC hearings;
- requiring the immediate attendance of a witness to a hearing about an incident that has threatened, or may threaten, public safety, without prior approval from the Supreme Court;
- allowing for the detention of a witness pending the CMC bringing an application to the Supreme Court for contempt; and
- not allowing a defendant charged with a criminal offence to obtain any evidence obtained by the CMC at intelligence hearings about criminal organisations or participants in criminal organisations to assist in his or her defence.

Aspects of the amendments relating specifically to criminal organisations are justified on the basis the CMC will be more able to effectively deal with the clandestine operations of criminal organisations and protect public safety. However, some amendments have wider application than criminal organisations, including the mandatory minimum prison punishment for contempt; the use of compelled evidence from CMC investigations and hearings in later confiscation proceedings; and detaining witnesses pending the hearing of contempt by the court.

It is important the integrity of the CMC hearing process is upheld and witnesses who refuse to cooperate are appropriately dealt with and/or encouraged to assist the CMC investigations and hearings. The CMC submit that the current penalties do not provide a sufficient deterrent and should be enlarged. Where the presiding officer is of the view a person is in contempt, the presiding officer is not obliged to certify the contempt for the Supreme Court, but the CMC may proceed with prosecution of the person under the relevant statutory offence provisions in the *Crime and Misconduct Act 2001*, which have a maximum penalty of 85 penalty units or one year imprisonment. In addition, where a mandatory minimum period of imprisonment for the punishment of contempt has been imposed, the amendments will allow the court to discharge the person from prison before the end of the mandatory period of imprisonment where the court is satisfied that the person has purged the contempt and the court has heard the CMC's submissions on the matter.

While the amendment to allow the detention of a person pending the determination of contempt proceeding will apply to any person in any hearing and impinge on the liberties of the person, the CMC is required to bring the person before the Supreme Court as soon as practicable. The Supreme Court may then assess the potential risk of the person absconding and make orders for the release of the person pending the determination of the matter.

The ability of the State to effectively combat crime is enhanced by the laws allowing assets obtained from criminal activity to be targeted and thereby depriving criminals of the spoils of their illegal activity. Currently, a person may be compelled in an examination order proceeding in a court to answer questions (even though the answers may tend to incriminate the person) and the evidence obtained can be used in subsequent confiscation proceedings. The CMC submit that the amendments allowing for the use of compelled evidence from CMC investigations and hearings in later confiscation proceedings will enhance the CMC's ability to confiscate the assets of criminals and combat major crime.

The amendment to exclude evidence obtained in an intelligence hearing from being accessed by a defendant to assist in his or her defence impinges on the rights of the defendant to have a fair trial. The CMC state it is imperative to maintain the integrity of any intelligence gathered by the CMC that a defendant not be allowed unfettered access to it. However, the CMC may give access to the defendant (or his or lawyer) of any evidence to assist with his or her defence under section 202 of the *Crime and Misconduct Act 2001*.

Amendments to the *Police Powers and Responsibilities Act 2000*

The Bill will provide additional police powers to search without a warrant a person reasonably suspected of being a participant of a criminal organisation and/or a vehicle in that participant's possession or use. The amendment might be seen to infringe the rights and liberties of individuals as the only requirement to activate the powers of search is the reasonable suspicion of a police officer that a person is a participant of a criminal organisation. The Bill does not abrogate existing safeguards under the *Police Powers and Responsibilities Act 2000* in relation to the exercise of police powers. The Bill is aimed at ensuring the protection of the community by making the establishment of organised crime in Queensland a difficult prospect.

The Bill will require a person who is reasonably suspected of being a participant of a criminal organisation or persons found at a prescribed place or event to state their name and address. If the person does not provide sufficient evidence of their correct name and address the person can be detained for a reasonable time at a police establishment in order to establish their identity. There currently exists in the *Police Powers and Responsibilities Act 2000* a diverse range of circumstances where a person can be required to state their name and address to a police officer. The Bill seeks to address the difficulty of identifying criminal organisation members who often supply false details or do not carry sufficient proof of name and address on them so as to avoid identification by police. Recent events show that criminal organisations have no regard for the Queensland public and pose a serious threat to the safety of the community. In order to prevent and detect offences by members involved in criminal organisations the police require sufficient powers to establish their identity.

The Bill provides for new offences in the Criminal Code concerning criminal organisation participants (new sections 60A, 60B and 60C) and provide for a circumstance of aggravation to the existing Criminal Code offence of affray (section 72) where a participant of a criminal organisation is involved. These offences will fall within the meaning of a criminal organisation offence for the purposes of vehicle impoundment. If a vehicle is used in the commission of one of these offences it will

be impounded and forfeited to the State upon conviction of the offence. Existing legislation provides for the impoundment and ultimately forfeiture of vehicles for prescribed offences. Criminal organisations are willing to utilise vehicles to travel long distances and to provide support to other members who are engaging in illegal activity. The amendment is necessary to protect Queenslanders from the congregating of criminal organisation members in situations that can spill over into violence.

The Bill will increase the minimum mandatory penalty under section 754 of the *Police Powers and Responsibilities Act 2000* to 50 penalty units or 50 days imprisonment served wholly in a corrective services facility, and a 2 year driver licence disqualification. The mandatory minimum penalty for participants in criminal organisations will be 100 penalty units or 100 days imprisonment served wholly in a corrective services facility, and a 2 year driver licence disqualification. The Bill not only affects the rights and liberties of participants in criminal organisations but includes any person who makes the decision not to stop a motor vehicle when directed to do so by police. It recognises that stringent police pursuit policy to protect the community from injury and damage often overrides the need to pursue and tough penalties need to be in place to deter offenders from failing to stop their vehicles. The tougher penalties aimed at members of criminal organisations are necessary as these organisations have demonstrated they are not as easily deterred from offending as other citizens.

The Bill will introduce forfeiture provisions for particular criminal organisation offences. Impoundment sanctions adversely affect offenders who commit these offences through their vehicles being forfeited. The impact of impounding vehicles may not only affect the offending driver. The impact may extend to the offender's family and associates through not being able to use the vehicle whilst it is impounded. Provision has been made to allow the usual driver, usual possessor or owner of the impounded vehicle to apply to the Commissioner for its release. Release of impounded vehicles can be made on various grounds including severe financial or physical hardship to the owner, usual driver, usual possessor or their families. The owner may also apply to the Commissioner for the release of the impounded vehicle if they can prove that the impounding offence occurred without their consent.

This safeguard is enhanced by allowing an applicant to appeal to the Courts if their application to the Commissioner for the return of an impounded vehicle is unsuccessful. The Queensland Police Service considers this amendment streamlines the impoundment process while making allowance for the return of impounded vehicles when it is appropriate to do so. This safeguard promotes the operational efficiency of courts and the Queensland Police Service and removes the need for the offender to appear in court for the hearing of applications for impoundment or forfeiture orders.

Consultation

Consultation has occurred within Government. Wider consultation has not been possible because of the need to respond urgently to the significant public threat criminal gangs pose in Queensland.

Consistency with legislation of other jurisdictions

The Bill does not introduce uniform or complementary legislation.

Notes on provisions

Part 1 - Preliminary

Clause 1 establishes the short title of the Act as the *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013*.

Part 2 – Amendment of *Bail Act 1980*

Clause 2 provides that this part amends the *Bail Act 1980*.

Clause 3 amends section 6 (definitions) to insert a definition of ‘criminal organisation’ and a definition of ‘participant’. The new definitions refer the reader to section 1 of the Criminal Code and new section 60A to be inserted into the Criminal Code by the Bill. The terms defined are used in the amendments to section 16 made by the following clause.

Clause 4 amends section 16 (refusal of bail) to insert new subsections (3A), (3B), (3C) and (3D). If a defendant is a participant in a criminal organisation, then a court or police officer considering bail for the defendant must refuse bail unless the defendant can show cause why the defendant’s continued detention is not justified. This means that such a defendant is in a ‘show cause’ situation.

If a defendant is a participant in a criminal organisation and bail is granted, then the court or police officer must order that the defendant surrender their passport or passports and order the defendant to be detained until this occurs.

These provisions apply regardless of the type of offence with which the defendant is charged.

The provisions do not apply if the defendant proves that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The clause also makes a consequential amendment to subsection (4)

Part 3 – Amendment of *Crime and Misconduct Act 2001*

Clause 5 provides that this part amends the *Crime and Misconduct Act 2001*.

Clause 6 amends the heading of Part 2 in Chapter 2.

Clause 7 amends the heading of Division 1, in Chapter 2, Part 2.

Clause 8 amends section 25 to include as an additional function to the CMC's crime function - a crime investigation of an incident that has threatened or may threaten public safety and that involves a criminal organisation or a participant in a criminal organisation under the immediate response function as authorised under new section 55F.

Clause 9 amends section 32 to correct a section reference as a consequence of the amendment to section 275.

Clause 10 amends section 53 to include additional functions under the CMC's intelligence function to provide for specific intelligence operations authorised under section 55A and an intelligence function hearing for public safety under the immediate response function and as authorised under section 55F.

Clause 11 inserts a new Division 2A (Particular authorisations by reference committee) and 2B (Public safety) in Chapter 2, Part 4 that provides for the CMC's authorisation processes for a specific intelligence operation and an intelligence hearing for a public safety threat under the immediate response function respectively. Division 2A includes new sections 55A to 55C and Division 2B includes new sections 55D to 55F.

Divisions 2A and 2B are specifically targeted at criminal organisations or participants in criminal organisations; including in Division 2A those who engage in misconduct to support or help criminal organisations or participants in criminal organisations.

Section 55A provides the process for how and when the Crime Reference Committee (reference committee) may authorise the commission to undertake specific intelligence operations, which may include the holding of intelligence hearings.

Section 55B provides for the matters which the reference committee must be satisfied and the matters it may have regard to when the reference committee considers whether to give an authorisation under section 55A.

Section 55C allows the reference committee to give the commission directions as part of its authorisation under section 55A. The directions may relate to the exercise of the commission's powers for the specific intelligence operation or to end the specific intelligence operation. The reference committee may also amend the terms of its authorisation.

Section 55D provides the commission has an immediate response function in relation to an incident that threatened or may threaten public safety if authorised by the chairperson under section 55F.

Section 55E provides for how the commission exercises its immediate response function by exercising powers to undertake a crime investigation and holding an intelligence function hearing.

Section 55F provides the process for when and how the chairperson may give an authorisation to undertake a crime investigation, hold an intelligence function hearing or both, under the immediate response function.

Clause 12 amends section 75A to provide that this section applies to an intelligence function hearing.

Clause 13 amends the note to section 75B(1) to include an intelligence function hearing.

Clause 14 amends section 82 to include the ability of the commission to issue an attendance notice (and what matters are to be included in that attendance notice) for an intelligence function hearing.

The amendments also clarify that a person who is a participant of a criminal organisation may not rely upon a claim of reasonable excuse, that the person has a fear, whether genuinely held or not, of personal physical harm or damage to property (or physical harm or damage to property relating to someone else to whom the person has a connection or bond) to fail to comply with an attendance notice. The attendance notice must be issued for a hearing relating to a criminal organisation or a participant in a criminal organisation. The criminal organisation may or may not be the criminal organisation to which the person is a participant.

The amendments also clarify that for a commission hearing held under an authorisation made under section 55F, the chairperson may issue a notice to attend immediately and section 85, which provides for approval of a Supreme Court judge for notices requiring immediate attendance, does not apply.

Clause 15 amends section 85 to provide the circumstances when a Supreme Court judge may approve an attendance notice for an intelligence function hearing authorised under section 55A, requiring the person to attend immediately. The amendments also set out the matters that may be included in the attendance notice.

Clause 16 amends section 167 to provide the commission is to apply to a magistrate for a warrant of apprehension of a person who has been given an attendance notice.

Clause 17 amends section 168 to allow a magistrate to issue an arrest warrant on an application by the commission under section 167.

Clause 18 amends section 176 to provide that the commission may hold an intelligence hearing in the performance of its intelligence function if the hearing is authorised under sections 55A or 55F.

Clause 19 amends the Subdivision 1 heading for Chapter 4, Part 2, Division 2.

Clause 20 amends section 184 to provide that this section applies to an intelligence function hearing.

Clause 21 amends section 185 to clarify that a person who is a participant of a criminal organisation may not rely upon a claim of reasonable excuse, that the person has a fear, whether genuinely held or not, of personal physical harm or damage to property (or physical harm or damage to property relating to someone else to whom the person has a connection or bond) to fail to comply with an attendance notice or a

requirement under section 75B. The attendance notice or requirement under section 75B must be issued for a hearing relating to a criminal organisation or a participant of a criminal organisation. The criminal organisation may or may not be the criminal organisation to which the person is a participant.

Clause 22 amends the Subdivision 1 heading in Chapter 4, Part 2, Division 3.

Clause 23 amends section 189 to provide that this section applies to an intelligence function hearing.

Clause 24 amends section 190 to clarify that a person may rely upon a reasonable excuse to refuse to answer a question at a commission hearing. The amendments also clarify that a person who is a participant of a criminal organisation may not rely upon a claim of reasonable excuse, that the person has a fear, whether genuinely held or not, of personal physical harm or damage to property (or physical harm or damage to property relating to someone else to whom the person has a connection or bond) to refuse to answer a question at a hearing, if the hearing relates to a criminal organisation or a participant in a criminal organisation. The criminal organisation may or may not be the criminal organisation to which the person is a participant.

Clause 25 amends the Subdivision 1 heading in Chapter 4, Part 2, Division 4.

Clause 26 amends section 193 to provide that this section applies to an intelligence function hearing.

Clause 27 amends section 197(3) to provide that an answer, document, thing or statement given or produced at a commission hearing or an investigation that tends to incriminate the person and that the person has claimed self-incrimination privilege before the answer, document, thing or statement was given or produced, may be used in a confiscation proceeding, but not a proceeding for an offence under the *Criminal Proceeds Confiscation Act 2002*. The use immunity provided for in section 197(2) therefore will not apply to confiscation proceedings.

Clause 28 amends section 198 to clarify that a contempt of the presiding officer at a commission hearing includes the matters set out in the new subsection (4)(a) to (c), which involve a witness refusing to take an oath, answer a question or failing to produce a stated document or thing.

Clause 29 inserts a new section 198A to allow the presiding officer to direct a police officer to detain a person during a commission hearing, if the presiding officer expresses his or her intention at the hearing to certify a contempt in writing to a Supreme Court judge for the purpose of bringing the person before the Supreme Court as soon as practicable for the contempt to be dealt with.

Clause 30 amends section 199 to provide for the relevant punishment of contempt that is certified by the presiding officer and relates to a person failing to take an oath, answer a question or produce a stated document or thing. The punishment for a contempt that is so certified by the presiding officer provides for mandatory imprisonment and includes stated minimum periods of imprisonment as punishment for the first contempt offence, second offence and a third (and any subsequent)

offence. The maximum period of imprisonment as punishment will be at the discretion of the Supreme Court.

The mandatory minimum period of imprisonment for the first contempt is a period decided by the court, for the second contempt relating to a hearing dealing with the same subject matter as that dealt with in the hearing in which the first contempt was certified the mandatory minimum period of imprisonment is two and one half years; and for the third and any subsequent contempt offence the mandatory minimum period of imprisonment is five years.

During the term of the mandatory imprisonment, a contemnor may be brought back to the CMC to purge his or her contempt and an application may be made to the court for a declaration the contempt is purged and if proved to the satisfaction of the court, the court may discharge the person before the end of the term of imprisonment.

Clause 31 amends section 201 to confirm that this section does not apply to evidence obtained by the commission in an intelligence function hearing. This will include any intelligence information obtained during an intelligence function hearing that has been authorised under sections 55A and 55F.

Clause 32 amends section 205 to clarify the section does not apply to crime investigations that are authorised under section 55F.

Clause 33 amends section 270 to provide that the chairperson's powers under section 55F and 82(7) may only be delegated to the assistant commissioner, crime.

Clause 34 amends section 275 to provide that the reference committee has a power to authorise the commission to undertake a specific intelligence operation under chapter 2, part 4, division 2A.

Clause 35 amends section 277 to provide that the assistant commissioner, crime or assistant commissioner, misconduct must also keep the reference committee informed generally of his or her operations in relation to the reference committee's authorisation of a specific intelligence operation, including any hearings held under the authorisation. The assistant commissioner, crime or assistance commissioner, misconduct must also comply with any request of the reference committee for information or help in relation to the authorised specific intelligence operation.

Clause 36 amends section 278 to include the assistant commissioner, misconduct as a member of the reference committee, but only when the reference committee is dealing with an authorisation given under section 55A involves suspected misconduct.

Clause 37 amends section 348 to include the authority of the Governor in Council to make a regulation that provides for the declaration of an entity to be a criminal organisation.

Clause 38 inserts a new section 348A which outlines the criteria to which the Minister may have regard in deciding whether to recommend an amendment of the *Crime and Misconduct Regulation 2005* to declare an entity to be a criminal organisation.

Clause 39 amends the Schedule 2 Dictionary to include new definitions for: criminal organisation, intelligence function hearing, participant in a criminal organisation, specific intelligence hearing, and privilege (as it applies to an intelligence function hearing).

Part 4 – Amendment of Criminal Code

Clause 40 provides that this part amends the Criminal Code.

Clause 41 amends section 1 (definitions) to omit and replace the definition of ‘criminal organisation’, to alter the first limb of the definition in subsection (1)(a) and to add a further limb, subsection (1)(c), to the definition, namely an entity declared under a regulation to be a criminal organisation. Schedule 1 to the Bill contains the *Criminal Code (Criminal Organisations) Regulation 2013* section 2 of which declares certain entities to be criminal organisations for the purposes of the definition of ‘criminal organisation’.

Clause 42 inserts new section 60A which provides that it is an offence for a person who is a participant in a criminal organisation to be knowingly present with two or more other persons who are participants in a criminal organisation. The offence carries a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment to be served wholly in a corrective services facility.

It is a defence to the offence to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term ‘member’ is defined by the clause, and relates to the use of that word in the definition of ‘participant’ in the clause.

The term ‘participant’ is defined by the clause.

The term ‘public place’ is defined by the clause.

The term ‘criminal organisation’ is defined in section 1 of the Criminal Code, as amended by the Bill.

The clause also inserts new section 60B which provides that it is an offence for a person who is a participant in a criminal organisation to enter or attempt to enter a prescribed place. The offence carries a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment to be served wholly in a corrective services facility.

New section 60B also provides that it is an offence for a person who is a participant in a criminal organisation to attend or attempt to attend a prescribed event. The offence carries a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment to be served wholly in a corrective services facility.

It is a defence to both offences to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term ‘participant’ is defined by reference to the definition in new section 60A.

The terms ‘prescribed event’ and ‘prescribed place’ are defined to mean events and places declared by regulation. Section 3 of the *Criminal Code (Criminal Organisations) Regulation 2013*, contained in schedule 1 of the Bill, declares certain places.

The term ‘criminal organisation’ is defined in section 1 of the Criminal Code, as amended by the Bill.

The clause also inserts new section 60C which provides that it is an offence for a person who is a participant in a criminal organisation to recruit another person to become a participant in the criminal organisation. The offence carries a maximum penalty of three years imprisonment and a mandatory minimum penalty of six months imprisonment to be served wholly in a corrective services facility.

It is a defence to the offence to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term ‘criminal organisation’ is defined in section 1 of the Criminal Code, as amended by the Bill, but for the purposes of this section does not include subsection (b) of that definition, namely a criminal organisation under the *Criminal Organisation Act 2009*. This is provided because section 100 of the *Criminal Organisation Act 2009* already contains the offence of ‘recruiting persons to become member of criminal organisation’ which applies to a criminal organisation declared as such under that Act.

The term ‘participant’ is defined by reference to the definition in new section 60A.

The term ‘recruit’ is defined for the purposes of the section.

Clause 43 amends section 72 (affray) to insert a new circumstance of aggravation, namely that the offender is a participant in a criminal organisation. The circumstance of aggravation carries a maximum penalty of seven years imprisonment, and a mandatory minimum penalty of six months imprisonment served wholly in a corrective services facility.

It is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term ‘participant’ is defined by reference to the definition in new section 60A.

The term ‘criminal organisation’ is defined in section 1 of the Criminal Code, as amended by the Bill.

Clause 44 amends section 92A (misconduct in relation to public office) to insert a new circumstance of aggravation, namely that the person who dishonestly gained a benefit, directly or indirectly, was a participant in a criminal organisation. The circumstance of aggravation carries a maximum penalty of 14 years imprisonment.

It is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term 'participant' is defined by reference to the definition in new section 60A.

The term 'criminal organisation' is defined in section 1 of the Criminal Code, as amended by the Bill.

Clause 45 amends section 320 (grievous bodily harm) to provide that for an offender who is a participant in a criminal organisation and who harms a police officer acting in execution of their duty, the mandatory minimum penalty is one year imprisonment served wholly in a corrective services facility.

It is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term 'participant' is defined by reference to the definition in new section 60A.

The term 'criminal organisation' is defined in section 1 of the Criminal Code, as amended by the Bill.

Clause 46 amends section 340 (serious assaults) to provide that for an offender who is a participant in a criminal organisation and who assaults a police officer in any of the circumstances attracting 14 years imprisonment, the mandatory minimum penalty is one year imprisonment served wholly in a corrective services facility.

It is a defence to the new circumstance of aggravation to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term 'participant' is defined by reference to the definition in new section 60A.

The term 'criminal organisation' is defined in section 1 of the Criminal Code, as amended by the Bill.

Clause 47 amends section 408D (obtaining or dealing with identification information) to insert a circumstance of aggravation, namely that the offender supplied the information to a participant in a criminal organisation. The circumstance of aggravation carries a maximum penalty of seven years imprisonment.

It is a defence to the circumstance of aggravation to prove that the criminal organisation is not an organisation whose participants have as their purpose, or one of their purposes, engaging in, or conspiring to engage in, criminal activity.

The term ‘participant’ is defined by reference to the definition in new section 60A.

The term ‘criminal organisation’ is defined in section 1 of the Criminal Code, as amended by the Bill.

Clause 48 amends section 552D (when Magistrates Court must abstain from jurisdiction) to insert new subsection (2A) which provides that a Magistrates Court must abstain from dealing summarily with a charge where it is alleged that the defendant is a vicious lawless associate under the *Vicious Lawless Association Disestablishment Act 2013*. Such matters must proceed on indictment.

Clause 49 inserts new section 708A to set out the criteria the Minister may have regard to in deciding whether to recommend an amendment of the *Criminal Code (Criminal Organisations) Regulation 2013* to declare an entity to be a criminal organisation.

Part 5 – Amendment of *Penalties and Sentences Act 1992*

Clause 50 provides that this part amends the *Penalties and Sentences Act 1992*.

Clause 51 amends section 160A (application of ss 160B-160D) to include a reference to a provision providing for a minimum term of imprisonment in the examples given in subsection (4).

Clause 52 amends section 187 (disqualification from holding Queensland driver licence) to insert new subsection (2) which applies to a person convicted of a prescribed offence. The court must, in addition to any other sentence that it may impose, order that the offender is disqualified from holding or obtaining a Queensland driver licence absolutely or for a period of not less than three months. The provision applies regardless of whether the offence was committed in connection with, or arose out of the driving of, a motor vehicle.

The clause amends subsection (4), as renumbered, to define ‘prescribed offence’ to mean an offence against these sections of the Criminal Code – new sections 60A, 60B or 60C or section 72 (affray) where the new circumstance of aggravation applies.

The clause also makes a consequential amendment to the introductory words to renumbered subsection (4).

Part 6 – Amendment of *Police Powers and Responsibilities Act 2000*

Clause 53 provides that this part amends the *Police Powers and Responsibilities Act 2000*.

Clause 54 amends section 29 to provide police officers with the additional power to search a person without warrant if the police officer reasonably suspects the person is a participant in a criminal organisation.

Clause 55 amends section 32 to provide that a prescribed circumstance for searching a vehicle without warrant includes circumstances where a police officer reasonably suspects the vehicle is being used by or is in the possession of a participant in a criminal organisation.

Clause 56 amends section 40 to provide police officers with the additional power to require a person state their name and address if the person is a person mentioned in section 41(ba). If the person cannot provide evidence supporting the correctness of their name and address the person can be detained for a reasonable time at a police establishment to allow for the verification of the required particulars.

Clause 57 amends section 41 to add to the prescribed circumstances in which a police officer can require a person to provide their name and address. The additional circumstances are when a police officer reasonably suspects the person is a participant in a criminal organisation or when a person is found by a police officer at a prescribed place or prescribed event as defined under section 60B of the Criminal Code.

Clause 58 amends section 42 of the Act to include under subsection 42(1)(c)(i) the new chapter 4A of the Act.

Clause 59 amends section 60 of the Act to include under subsection 60(3)(h) the new chapter 4A of the Act.

Clause 60 amends the Act by inserting Chapter 4A.

Chapter 4A Heading

The clause inserts the heading name of Chapter 4A.

Part 1, Division 1

The clause inserts Part 1 ‘Preliminary’ and Division 1 ‘Interpretation’.

Definitions

The clause provides definitions contained in Chapter 4A. For example, the clause defines the term ‘immobilise’ which includes restricting the use of a motor vehicle by an immobilising device such as a wheel clamp or through the removal and confiscation of the motor vehicle’s number plate.

Meaning of criminal organisation offence

The clause provides for the meaning of criminal organisation offence. Criminal organisation offences mean offences against section 60A, 60B, 60C or section 72(2) of the Criminal Code committed in relation to a motor vehicle. It also means an offence against section 754 of the Act if the driver is a participant in a criminal

organisation. The clause further provides a meaning for the term ‘committed in relation to a motor vehicle’.

References to motor vehicle

The clause clarifies that any reference in the chapter to a motor vehicle includes a motorbike.

When a person is charged for this chapter in relation to a criminal organisation offence

The clause applies where a proceeding for a criminal organisation participant is started against a person by notice to appear or arrest. If the proceeding is started by notice to appear the person is taken to have been charged with having committed the offence when the notice to appear is issued and served on the person. If the proceeding is started by arrest the person is taken to have been charged with having committed the offence when the person is arrested.

Punishment under this chapter

The clause provides that forfeiture of a motor vehicle is in addition to any other penalty that may be imposed on a person for the criminal organisation offence.

Division 2

The clause inserts Division 2 ‘Relationship with other legislation’.

Relationship with other legislation

The clause clarifies that nothing in this chapter affects the rights of a credit provider to repossess a motor vehicle under the National Credit Code and sell it.

Part 2, Division 1

The clause inserts Part 2 ‘Impounding motor vehicles and forfeiture of motor vehicles’, Division 1 ‘Impounding powers and forfeiture of vehicles in particular circumstances’.

Impounding motor vehicles for criminal organisation offence

The clause provides that a police officer may impound a vehicle if the driver of the vehicle is charged with having committed a criminal organisation offence in relation to a motor vehicle. It further provides that a motor vehicle may be impounded until the end of proceedings for all charges of criminal organisation offences in relation to the motor vehicle. The section applies subject to Division 5 which relates to applications for release.

Forfeiture of motor vehicles if driver found guilty of criminal organisation offence

The clause applies to a motor vehicle impounded in relation to a criminal organisation offence. It provides that the vehicle will be forfeited to the State upon a driver being found guilty of the criminal organisation offence. Further, any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cth) is extinguished unless the secured interest is against the State. This provision is subject to Division 5 which relates to applications for release.

Subsection 5 applies if before the driver of the motor vehicle is found guilty of the criminal organisation offence the motor vehicle is released under sections 123X, 123Z or 123ZB with a condition and the motor vehicle is later impounded or immobilised under section 123ZJ because of a breach of the condition. Subsection 5 states that subsection 2 (motor vehicle becomes property of the State) applies in relation to the motor vehicle as if the motor vehicle had not been released under sections 123X, 123Z or 123ZB.

Division 2

The clause inserts Division 2 ‘Immobilising powers’.

The clause inserts Subdivision 1 ‘Preliminary’.

Immobilising powers

The clause inserts Division 2 ‘Immobilising powers’ which provides police with powers to immobilise a motor vehicle as a temporary measure until the motor vehicle is impounded.

Purpose of Division

The clause clarifies the purpose of the division is to provide for the keeping of a motor vehicle that is to be impounded at a place other than a holding yard before it is impounded under Division 1.

References to impounding a motor vehicle

The clause specifies that where context permits under the chapter a reference to impounding in relation to a motor vehicle includes a reference to immobilising the motor vehicle.

Subdivision 2

The clause inserts Subdivision 1 ‘Removal and confiscation of number plate powers’.

Removal and confiscation of number plates

The clause provides a police officer with the power to remove and confiscate number plates. It allows a police officer to remove and confiscate number plates attached to a motor vehicle if the officer decides it is appropriate for the motor vehicle to be kept at a place other than a holding yard before it is impounded under Division 1. The police officer may also attach a number plate confiscation notice to the motor vehicle. A

motor vehicle to which a number plate confiscation notice is attached is prohibited from being operated from the day the notice is attached to the vehicle.

Moving motor vehicle under confiscation notice

The clause allows a motor vehicle bearing a number plate confiscation notice to be moved to a place authorised by a police officer where that vehicle may lawfully stand.

Subdivision 3

The clause inserts Subdivision 3 ‘Immobilising device powers’.

Subdivision 3 ‘Immobilising device powers’ outlines the powers police officers have in immobilising a motor vehicle prior to impoundment.

Power to attach immobilising device

The clause allows a police officer to attach an immobilising device to a motor vehicle. A motor vehicle to which an immobilising device is attached is taken to be impounded from the day the device is attached to the vehicle.

Division 3

The clause inserts Division 3 ‘Vehicle production notices’.

This clause ‘Vehicle production notices’ outlines how police officers may require a person to produce a motor vehicle for immobilisation or impoundment under a vehicle production notice.

Section 123N (Power to require motor vehicle to be produced) allows a police officer to require by notice the owner or driver of a vehicle that may be impounded or immobilised to produce the vehicle at a stated time and place for the vehicle to be immobilised or impounded.

Section 123O (Impoundment starts when motor vehicle produced) provides that the motor vehicle is impounded when the motor vehicle is produced at the place stated in the notice.

Section 123P (Vehicle production notices generally) outlines that the vehicle production notice must state a date of production no later than the first business day occurring 5 business days after the notice is given. This section allows the Commissioner to withdraw the notice under certain circumstances.

Division 4

The clause inserts Division 4 ‘General provisions relating to impounding motor vehicles’.

This division refers to general provisions about the impounding and immobilising of motor vehicles.

This clause consolidates the powers a police officer may use in impounding a motor vehicle through relocating the obligation a police officer has to move a motor vehicle to a holding yard from its previous position.

Release of motor vehicle in particular circumstances

The clause obliges a police officer to return a motor vehicle to its owner if the vehicle is impounded and the vehicle is being unlawfully used, has been stolen or is a rental motor vehicle.

Police officer may authorise tow

This section authorises a police officer to arrange for either an impounded motor vehicle to be towed to a holding yard or a place.

Impounding notice or immobilising notice

The clause obligates police officers to provide an impounding notice or an immobilising notice to the driver of the motor vehicle as soon as reasonably practicable upon the vehicle being impounded or immobilised respectively. If the driver is not the owner or not the only owner of motor vehicle, these notices must be given to each other owner. Further, if the driver is a child, these notices must also be given to the child's parent or guardian.

This clause allows information to be contained in the impounding or immobilising notice to be prescribed under the Act.

Division 5

The clause inserts Division 5 'Other provisions relating to impounded motor vehicles'.

This division allows for the release of motor vehicles that are impounded after an application to the Commissioner has been made by an eligible person. The Commissioner may grant the application with or without conditions. If a person is aggrieved by the decision of the Commissioner, the person may appeal to the Court. The Court may confirm the Commissioner's decision or substitute another decision that it considers appropriate.

This division applies to a motor vehicle impounded under this chapter but does not apply to a motor vehicle registered under a transport Act in the name of an entity that was a declared criminal organisation when the criminal organisation offence for which the vehicle was impounded was committed.

Division 5 consists of four subdivisions. Subdivision 1 'Preliminary', contains section 123U (Definitions for div 5). This section defines an eligible person to mean an owner, usual driver or usual possessor of the motor vehicle. This section also prescribes the information that must be contained in an 'information notice' and a 'vehicle release notice'.

Subdivision 2 ‘Application for release of impounded motor vehicle’, outlines the grounds upon which applications for the release of impounded motor vehicles may be sought. These grounds are:

- severe hardship, either physical or financial;
- the prescribed offence happened without the owner’s consent and was committed by a person other than the owner, usual driver or usual possessor of the motor vehicle; or
- the offences causing the impoundment have been rectified. For example the driver is found not guilty of the relevant offence or the offender is not a participant in a criminal organisation for a relevant offence in section 123B(1)(b) or (c).

Applications must be in the approved form and be supported by enough information to enable the Commissioner to decide the application. The Commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required to support the application.

If the Commissioner is satisfied:

- that refusing to grant the application would cause severe financial or physical hardship to the applicant or their family;
 - the relevant prescribed offence happened without the consent of the owner and was committed by a person other than the owner, usual driver or usual possessor of the motor vehicle;
 - the relevant criminal organisation offence has been rectified; or
 - there were not reasonable grounds to impound the motor vehicle
- the Commissioner must then give the applicant a vehicle release notice for the motor vehicle.

The vehicle release notice contains important information including:

- the decision made by the Commissioner;
- any conditions to which the release of the vehicle is subject; and
- the time and date when the impoundment of the vehicle ends.

Section 123ZC (Impoundment ends if application for release of motor vehicle granted) provides that the impoundment of a motor vehicle ends upon the Commissioner granting an application.

If the Commissioner refuses to grant the application the Commissioner must give the applicant an information notice outlining:

- the decision made by the Commissioner;
- the reasons for the decision;
- that the person to whom notice is given may appeal against the decision; and
- how the person may appeal.

Subdivision 3 ‘Appeals’, outlines how a person aggrieved by a decision of the Commissioner may appeal. A decision made by the Commissioner includes a condition imposed upon the release of a motor vehicle.

Section 123ZE (How to start appeal) provides that an appeal is started through filing a notice to appeal with the clerk of the Magistrates Court within 28 days of the appellant being given an information notice. A copy of the notice must be served on other persons entitled to appeal against the decision made by the Commissioner. The notice of appeal must fully state the grounds upon which the appeal is relied upon.

Section 123ZF (Effect of appeal on decision) outlines that starting an appeal does not affect the operation of a decision made by the Commissioner. For example, starting an appeal will not affect the impoundment of a motor vehicle if the Commissioner has refused to grant the application. However, this section does allow the court to make an order staying the operation of the decision being appealed against until the appeal is decided.

Section 123ZG (Commissioner has right of appearance) provides the Commissioner has a right of appearance and to be heard before the court under an appeal under this subdivision.

Section 123ZH (Hearing procedures) provides an appeal must be decided on the evidence before the Commissioner, however the Court may order that the appeal be heard afresh, in whole or part.

Section 123ZI (Powers of Magistrates Court) provides that a Court may confirm the Commissioner's decision or set it aside and substitute another decision.

Subdivision 4 'Miscellaneous', outlines how a motor vehicle can be impounded if the Commissioner grants an application for release with a condition and the condition is breached.

Section 123ZJ (Power to take certain action if breach of condition) allows a police officer to re-impound a motor vehicle that has been released under this Division if it is being used contrary to conditions imposed upon its release. The vehicle may be re-impounded for the remainder of the period for which the vehicle would have been impounded starting from the day on which the condition was breached.

Part 3

The clause inserts Part 3, 'Offences' sections 123ZK to 123ZR.

The clause inserts a number of offence provisions to ensure that criminal organisation offences are enforceable. These offences are:

- Section 123ZK (Offence to remove vehicle from holding yard);
- Section 123ZL (Failure to comply with requirement to produce motor vehicle);
- Section 123ZM (Offence to operate vehicle to which number plat confiscation notice attached);
- Section 123ZN (Offence to remove, tamper with or modify number plate confiscation notice);
- Section 123ZO (Offence to tamper with, remove or modify immobilising device);
- Section 123ZP (Offence to operate motor vehicle if immobilising device unlawfully removed, tampered with or modified);

- Section 123ZQ (Offence to breach condition made on release of motor vehicle); and
- Section 123ZR (Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice given under section 123M).

A defendant who commits any of these offences faces a maximum penalty of 40 penalty units unless the defendant has a reasonable excuse.

Part 4

The clause inserts Part 4 ‘Other provisions’, Division 1 ‘Liability for cost of impounding’.

State’s liability to pay costs of impounding

The clause explains when the State will be liable to pay costs for removing and keeping a motor vehicle under section 123ZS.

Liability to pay costs of impounding- adult driver

The clause explains an adult driver’s liability to pay costs for removing and keeping a motor vehicle under section 123ZT.

Liability to pay costs of impounding- child driver

The clause explains a child driver’s liability to pay costs for removing and keeping a motor vehicle under section 123ZU. The clause further provides for a court to call on the child’s parent to show cause why they should not pay the costs of removing and keeping the vehicle where it considers the child does not have capacity to pay.

Payment of costs if motor vehicle not recovered

The clause explains that if persons become entitled to recover a motor vehicle and fail to collect it the person will be liable for the costs of keeping the motor vehicle for each day after the period for impounding ends.

Registration of costs under State Penalties Enforcement Act 1999

The clause applies if a person who is liable to pay costs under section 123ZU(11) fails to pay the costs. The Commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999*.

Division 2 Release of impounded vehicle

The clause inserts Division 2 ‘Release of impounded vehicle’.

Release of motor vehicle if driver found not guilty

The clause states, subject to subsections 3 and 4, that if a driver is found not guilty of a criminal organisation offence or a proceeding is discontinued, the motor vehicle

must be released to the owner as soon as reasonably practicable. This clause provides that a vehicle must be released unless another criminal organisation offence or prescribed offence for which the vehicle may be impounded under chapter 4 applies in relation to the motor vehicle.

Division 3

The clause inserts Division 3 ‘Sale, transfer or disposal of impounded, immobilised or forfeited motor vehicle’.

Sale of motor vehicle if not recovered after impounding ends

The clause allows for the administrative forfeiture of motor vehicles in certain circumstances. This clause applies if within 30 days after a period of impoundment ends the owner of the motor vehicle does not recover the vehicle or after making reasonable inquiries a police officer cannot find out who owns the motor vehicle. The clause allows the Commissioner to dispose of a motor vehicle including through the sale of the vehicle. Notice of the proposed sale or disposal must be given to the owner, if name and address of the owner is known. Notice must also be given by making the information about the proposed sale of the motor vehicle available on the police service website.

Sale of impounded motor vehicle if driver fails to appear

The clause applies if a court orders a warrant to be issued for the arrest of the driver because they have failed to appear in court in relation to the charge for the criminal organisation offence. On the warrant being issued the vehicle is taken to have been forfeited to the State. The clause allows the Commissioner to dispose of a motor vehicle including through the sale of the vehicle. Notice of the proposed sale or disposal must be given to the owner, if the name and address of the owner is known. Notice must also be given by making the information about the proposed sale of the motor vehicle available on the police service website.

Disposal of forfeited motor vehicle

The clause provides that the Commissioner may dispose of a motor vehicle forfeited to the State under this chapter in the way the Commissioner considers appropriate, including by selling it.

Applications of proceeds of sale

The clause applies if the Commissioner decides to sell a motor vehicle under section 123ZY, 123ZZ or 123ZZA. The proceeds of sale will go to consolidated funds if the owner was the driver issued with a fail to appear warrant as mentioned in section 123ZZ. Otherwise, the owner is eligible to receive the proceeds of sale pursuant to this section provided they are not the person subject of a warrant mentioned in section 123ZZ, the usual driver or usual possessor of the vehicle.

Compensation for disposal of motor vehicle if driver found not guilty etc.

The clause allows compensation to be paid to an owner of a motor vehicle which has been disposed of by the Commissioner and the driver is later found not guilty of a criminal organisation offence or the proceedings are discontinued. In accordance with the existing compensation regime under the Act, the Minister decides the amount of compensation and a person dissatisfied with this decision may appeal to a Court within 28 days.

Division 4 Other provisions

The clause inserts Division 4, 'Other provisions'.

Protection from liability

The clause provides that a police officer, acting in good faith and without negligence, is not liable for any damage, loss or depreciation to an impounded motor vehicle. Further a police officer who signs a towing authority for a vehicle is not liable for any damage, loss or depreciation to the motor vehicle whilst it is moved or kept in a holding yard.

Third party protection

The clause extends the third party protections certain persons have in forfeited motor vehicles. Persons who may rely on this section are extended to include persons who have an interest in a motor vehicle forfeited under a criminal organisation offence other than the defendant. These persons may apply to a court which may order the State:

- transfer the motor vehicle to the applicant if the motor vehicle is still vested in the State; or
- pay the applicant the value of their interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest if the motor vehicle is no longer vested in the State.

This application must be made before the end of six months starting on the day the motor vehicle became the property of the State unless the determining court gives leave.

Delegation-commissioner

The clause clarifies that the Commissioner may delegate his powers under this division to a police officer of at least the rank of Inspector.

Clause 61 amends section 150 to include a reference to chapter 4A.

Clause 62 amends section 156 to include a reference to chapter 4A.

Clause 63 amends section 686 to include a reference to chapter 4A.

Clause 64 amends section 754 to specify the mandatory minimum penalty when a driver fails to stop a motor vehicle when directed to do so by a police officer. The mandatory minimum penalty is 50 penalty units or 50 days imprisonment wholly

served in a correctional services facility, and a 2 year driver licence disqualification. The mandatory minimum penalty for participants in criminal organisations will be 100 penalty units or 100 days imprisonment served wholly in a corrective services facility, and a 2 year driver licence disqualification. The clause requires the minimum imposition of either the minimum fine or minimum sentence of imprisonment and excludes other sentencing options, for example a good behaviour order, probation, or a suspended sentence.

Clause 65 amends section 809 to include a reference to chapter 4A.

Clause 66 amends schedule 6 to include definitions and references for the purposes of the amendments to the Act.

Part 7 – Amendment of Tow Truck Act 1973

Clause 67 provides that this part amends the *Tow Truck 1973*.

Clause 68 amends section 38 of the Act to include a reference to chapter 4A of the *Police Powers and Responsibilities Act 2000*.

Clause 69 amends section 43 of the Act to include a reference to chapter 4A of the *Police Powers and Responsibilities Act 2000*.

Part 8 – Other matters

Clause 70 provides that schedule 1 has effect to make the *Criminal Code (Criminal Organisations) Regulation 2013*.

Clause 71 provides that schedule 2 amends the *Crime and Misconduct Regulation 2005*.

Clause 72 provides that for the purposes of section 22C (automatic repeal of amending Act) *Acts Interpretation Act 1954* this Act is an amending Act.

Schedule 1 – Criminal Code (Criminal Organisations) Regulation 2013

Schedule 1 contains the *Criminal Code (Criminal Organisations) Regulation 2013*, which declares entities for the purposes of new sections 60A, 60B and 60C of the Criminal Code, and other amendments made by the Bill; and declares places for the purposes of new section 60B of the Criminal Code.

Schedule 2 – Minor Amendments

Schedule 2 contains the amendments to the *Crime and Misconduct Regulation 2005*, which declares entities for the purposes of the definition of criminal organisation that apply to other amendments made by the Bill to the *Crime and Misconduct Act 2001*.