

CLAUSE NOTES

Police Legislation Miscellaneous Amendment Bill 2019

Background:

The Bill makes miscellaneous amendments to the *Community Protection (Offender Reporting) Act 2005*, *Road Safety (Alcohol and Drugs) Act 1970*, *Police Powers (Vehicle Interception) Act 2000* and the *Police Offences Act 1935* to correct issues that have arisen as a result of previous amendments or to enhance the operation of existing provisions.

PART 1 – PRELIMINARY

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies that the Act commences on the day on which it receives the Royal Assent.

PART 2 – COMMUNITY PROTECTION (OFFENDER REPORTING) ACT 2005 AMENDED

Clause 3: Principal Act

Identifies the *Community Protection (Offender reporting) Act 2005* as the Act amended by this Part.

Clause 4: Section 3 amended (Interpretation)

Amends the list of definitions in section 3 of the Principal Act to include *community protection order*, which will have the meaning provided by a new section 3A, inserted by clause 5 of the Bill.

Clause 5: Section 3A inserted

Defines the term *community protection order* to include community protection orders made under section 10A of the Act, interim orders made under section 10B of the Act, and similar orders made in other Australian jurisdictions and New Zealand.

Through use of this definition, the offence provision contained in section 33A of the Act will be applicable to all three types of orders.

Clause 6: Section 33A amended (Failure to comply with community protection order)

Amends the offence provision in section 33A for breaches of community protection orders to utilise the new definition of community protection order in section 3A (inserted by clause 5).

Through this change, the offence provision will be applicable to full orders, interim orders, and orders from other Australian jurisdictions and New Zealand when breaches occur in Tasmania.

PART 3 – POLICE OFFENCES ACT 1935 AMENDED

Clause 7: Principal Act

Identifies the *Police Offences Act 1935* as the Act amended by this Part.

Clause 8: Section 37K amended (Interpretation of Division)

This clause extends the definition of 'prescribed offence' for the clamping and confiscation of vehicles to include dangerous driving, causing death by dangerous driving, and dangerous driving causing grievous bodily harm under the *Criminal Code*.

In September 2017, the offence of dangerous driving was moved from section 32 of the *Traffic Act 1925* to the *Criminal Code* and made a crime by the *Criminal Code Amendment (Dangerous Driving) Act 2017*. An inadvertent consequence of this change was to remove dangerous driving from the confiscation and clamping provisions. The amendment proposed by the Bill will remedy this issue.

Clause 9: Section 37O amended (Period of clamping or confiscation for first prescribed offence)

Section 37O of the *Police Offences Act 1935* defines the period in which police can clamp or confiscate a vehicle for a first prescribed offence by a driver.

This clause rewords the definition of first offence to ensure it recognises previous offences proceeded against by either complaint or indictment, given the recognition by the amended section 37K (clause 8) of the indictable dangerous driving crimes.

Clause 10: Section 37P amended (Period of clamping or confiscation for second prescribed offence)

Section 37P of the *Police Offences Act 1935* defines the period police can clamp or confiscate a vehicle used for a second prescribed offence by a driver. Similarly to clause 9, this clause refines the definition to recognise previous offences proceeded against by complaint or indictment.

Clause 11: Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)

Section 37Q of the *Police Offences Act 1935* defines the period police can clamp or confiscate a vehicle used by a driver for a third or subsequent prescribed offence. Similarly to clauses 9 and 10, this clause refines the definition to recognise previous offences proceeded against by either complaint or indictment.

Clause 12: Section 47 amended (Interpretation)

This clause replaces the reference to the *Road Rules 2009* in section 47 of the *Police Offences Act 1935* to simply the *Road Rules*.

The *Road Rules 2009* is a piece of subordinate legislation that is due to expire this year and will consequently be remade. The change made by this clause to refer simply to the *Road Rules* – an approved citation in the short title of the rules – will eliminate the need to regularly amend this section each time the rules are remade.

PART 4 – POLICE POWERS (VEHICLE INTERCEPTION) ACT 2000 AMENDED

Clause 13: Principal Act

Identifies the *Police Powers (Vehicle Interception) Act 2000* as the Act amended by this Part.

Clause 14: Section 3 amended (Interpretation)

This clause amends section 3 of the Principal Act to identify the term *oral fluid* as having the same meaning as it does within the *Road Safety (Alcohol and Drugs) Act 1970*. This definition is relevant to the amendment to section 11A of the Principal Act which is made by clause 15.

Clause 15: Section 11A amended (Evading police)

Section 11A(2A) of the Principal Act provides an offence of evading police with aggravated circumstances. One of these aggravated circumstances includes that the driver was committing a drink or drug-driving offence at the time of the evasion. However, due to the overlapping development of the amendment Act that created this offence and amendments to the Principal Act that allow samples of oral fluid to be collected to prove drug-driving, the section incorrectly refers to the presence of an illicit drug in the driver's breath.

This clause will amend the Principal Act to replace the word *breath* with the term *oral fluid*, to remedy this issue.

PART 5 – ROAD SAFETY (ALCOHOL AND DRUGS) ACT 1970 AMENDED

Clause 16: Principal Act

Identifies the *Road Safety (Alcohol and Drugs) Act 1970* as the Act amended by this Part.

Clause 17: Section 27A inserted

This clause inserts a new section 27A into the *Road Safety (Alcohol and Drugs) Act 1970* allowing for evidence of the taking and delivery of oral fluid samples to be given by an evidentiary certificate.

The new section is modelled on the existing section 27 of the Principal Act, which allows for evidence of the taking and delivery of blood samples to be given by an evidentiary certificate.

When the taking of oral fluid was introduced by the 2017 amendment Act, this provision was overlooked, and this clause corrects this omission.

PART 6 – REPEAL OF THE ACT

Clause 18: Repeals this amendment Act 365 days after it commences.