

CLAUSE NOTES

POLICE OFFENCES AMENDMENT BILL 2013

Background:

The Bill introduces contemporary legislation to address emerging societal issues and concerns.

PART 1 – PRELIMINARY MATTERS

Clause 1: Short title

Specifies the name of the proposed Act.

Clause 2: Commencement

Specifies that the Act commences on the day to be proclaimed.

PART 2 – POLICE OFFENCES ACT 1935 AMENDED

Clause 3: Principal Act

Specifies that in this Part, the *Police Offences Act 1935* is referred to as the Principal Act.

Clause 4: Section 3 amended (Interpretation)

Section 3 of the Act is amended by inserting a definition of *firework* which accords with the *Explosives Regulations 2012*.

The definition of *sexual offence* is amended to include section 21 – Prohibited Behaviour as a sexual offence.

Clause 5: Section 7 amended (Loiterers, &c.)

This clause amends section 7 by including the word ‘or an offence’ after ‘crime’. This means that a person must not loiter with intent to commit a crime or an offence. Crimes are matters that are usually punishable on indictment (trial before a judge and jury), whilst offences are summary matters, punishable on complaint before a magistrate.

It also amends the section by including an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening section 7. If an implement or instrument is located during the search and a police officer considers it may have been used during the commission of the offence of loiter with intent to commit a crime or offence, it can be seized. If convicted of an offence under this section then any implement or instrument seized is forfeited to the Crown.

The offence of possession of implement or instrument with intent to commit a crime has been removed and replicated at clause 7.

Clause 6: Section 7A amended (Loitering near children)

This clause amends section 7A by providing an authority to detain and search a person who the police officer has reasonable grounds to believe is contravening section 7A. If an implement or instrument is located during the search and a police officer considers it may have been used during the commission of the offence of loitering near children (eg mobile phone with a recording of children on it), it can be seized.

If a person is convicted of the offence then any instrument or item seized is automatically forfeited to the Crown. The court may, if it considers any implement or item that was seized may have been used during the commission of the offence, order that the implement or item be forfeited to the Crown. This order may be made even if the person is not convicted of the offence.

Clause 7: Section 7B inserted

Section 7B (Possession of implement or instrument)

This clause inserts the offence of possession of an implement or instrument without lawful excuse with intent, which was previously in section 7.

This offence has been amended to include that a person must not have in his or her possession, without lawful excuse, any implement or instrument with intent to commit a crime or an offence. Prior to the proposed amendment this section only made reference to a crime.

The clause includes an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening section 7B. If an implement or instrument is located during the search and a police officer considers it could be used to commit a crime or offence, it can be seized. If convicted of an offence under this section then any implement or instrument seized is forfeited to the Crown.

The clause replicates certain provisions of section 7, which relate to proving intent, which are also applicable to section 7B.

Clause 8: Section 8 amended (Begging, imposition, &c.)

This clause amends section 8 by removing the out-dated term of 'alms' and inserting 'money or other financial advantage'. It also omits the words 'a child' and substitutes those words with 'another person'.

Clause 9: Section 10 amended (Disorderly houses)

This clause amends subsection (1) by removing the words 'place of public resort'. This is an out-dated term and of no relevance in today's society.

It also amends the section by providing an authority for a police officer who has reasonable grounds to believe that the an offence under subsection 1A is being, or has been committed, to enter without warrant certain premises and direct any person found to leave and not return for a

specified period of not less than 12 hours. The direction cannot be given to the owner or tenant of the premises.

If a person fails or refuses to comply with such a direction, he or she is guilty of an offence and liable to a fine not exceeding 20 penalty units.

Clause 10: Section 12 amended (Prohibited language and behaviour)

This clause amends section 12(1)(d) to remove the words 'with intent or'.

Clause 11: Sections 13 amended (Public annoyance)

This clause amends this section including an the authority to detain and search a person for fireworks or missiles, in contravention of subsections (1)(f) and (2). Any firework or missile found on that person may be seized. Upon a conviction for an offence under subsections (1)(f) or (2), then any missile or firework seized from a person is to be forfeited to the Crown.

Section 5B is omitted as it is no longer relevant. Section 5A, to which it relates was repealed on 17 December 2001.

Clause 12: Section 13A amended (Observation or recording in breach of privacy)

This clause amends the section by rewording subsection (2) and ensuring that it is clear that there is a defence to the offence of observing or recording a person in private, if consent of the person being recorded has been provided.

It also amends the section by including an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening section 13A. If a visual recording, item or instrument is located during the search and a police officer considers it could be used during the commission of the offence, it can be seized.

If a person is convicted of the offence then any visual recording, item or instrument seized is automatically forfeited to the Crown. The court may, if it considers any visual recording, instrument or item that was seized may have been used during the commission of the offence, order that the implement or item be forfeited to the Crown. This order may be made even if the person is not convicted of the offence.

Clause 13: Section 13B amended (Publishing or distributing prohibited visual recording)

This clause amends the section by including an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening section 13B. If a prohibited visual recording, item or instrument is located during the search and a police officer considers it could be used for publishing or distributing a prohibited visual recording, it can be seized.

If a person is convicted of the offence then any prohibited visual recording, item or instrument that has been seized is automatically forfeited to the

Crown. The court may, if it considers any prohibited visual recording, instrument or item that was seized may have been used during the commission of the offence, order that the implement or item be forfeited to the Crown. This order may be made even if the person is not convicted of the offence.

Clause 14: Section 13C amended (Possession of prohibited visual recording)

This clause amends the section by including an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening section 13C. If a prohibited visual recording, item or instrument is located during the search and a police officer considers it could be used for storing a prohibited visual recording, it can be seized.

A court may, if it considers any prohibited visual recording that was seized may have been used during the commission of the offence, order that prohibited visual recording, be forfeited to the Crown. This order may be made even if the person is not convicted of the offence. If a person is convicted of the offence then the prohibited visual recording is automatically forfeited.

Clause 15: Section 14B amended (Unlawful entry on land)

This clause amends section 14B to increase the penalty for the offence of Trespass.

It then amends the section so that the Commissioner replaces the Minister of Police, to determine how to dispose of any firearm seized that has been used in the commission of the offence of Trespass.

Section 14B currently has an automatic penalty for a person who is convicted of this offence and was in possession of a firearm during the actual commission of the offence. As a result, this clause amends the section by including an authority to detain and search a person, who a police officer has reasonable grounds to believe is contravening section 14B. If a firearm is located during the search it can be seized.

Clause 16: Sections 15 and 15A repealed

This clause repeals both sections. These sections are no longer relevant in modern society and have been superseded by other sections in the Principal Act.

Clause 17: Section 18 amended (Discharge of distress signals)

This clause amends the definition of a *distress signal* to include an electronic device (eg EPIRB).

Clause 18: Section 19A amended (Sports grounds)

This clause amends this section to change the offence from unlawfully enter the reserved area of a sports ground' to 'sports venue'. This is to ensure all modern sporting arenas are covered by this section.

The amendment also removes the requirement that the person must be asked to leave the reserved area of a sports venue by a police officer before the power of arrest that the section currently provides for, can be exercised. The authority to arrest is still constrained by the limitations detailed in subsection 1B.

Clause 19: Section 20AA repealed

This clause repeals the rescue and illegal impounding of distress damage feasant. Clauses 59 and 60 provide for the replication of section 20AA in the *Law of Animals Act 1962*.

Clause 20: Section 21A amended (Unlawfully administering drug, &c.)

This clause provides for the same offence currently contained with the Principal Act, but restructures the section to provide for some additional authorities.

The clause includes an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening or has contravened section 21A. If any drug, liquor or other thing is located during the search and a police officer believes it is likely to impair the consciousness or bodily function of another person, it can be seized. If convicted of an offence under this section then any drug, liquor or other thing seized is forfeited to the Crown.

A court may, if it considers any drug, liquor or other thing that was seized may have been used during the commission of the offence, order that the drug, liquor or other thing, be forfeited to the Crown. This order may be made even if the person is not convicted of the offence. If a person is convicted of the offence then the drug, liquor or other thing is automatically forfeited.

Clause 21: Section 34B amended (Resistance to, and obstruction of, public officers prohibited)

The clause inserts the definition of an emergency service worker into section 34B and creates a new offence for assaulting, resisting, wilfully obstructing, threatening, intimidating or abusing an emergency service worker in the execution of his or her duty.

This clause increases the penalty provisions for assaulting, resisting, wilfully obstructing, threatening, intimidating or abusing a police officer, emergency service worker or public officer in the execution of his or her duty.

Clause 22: Section 35 amended (Common assault and aggravated assault)

This clause amends the section to allow a complaint for any offence against section 35 to be made within 12 months after the date of the offence.

Clause 23: Section 35A inserted

Section 35A (Tattooing, body piercing and body modification)

A new section has been inserted to provide for the offences of tattooing, body piercing and body modifications of youths.

The clause creates an offence for a person to perform a body modification procedure on a youth (youth means a person who is less than 18 years of age).

A body modification procedure means:

- (a) tattooing;
- (b) body branding; and
- (c) body implantation; and
- (d) earlobe stretching; and
- (e) tongue splitting; and
- (f) body scarification; and
- (g) any other procedures prescribed by Regulations.

It also creates an offence for a person to perform an intimate body piercing on a youth or an offence for a person to perform any other body piercing on a youth, unless the youth is aged at least 16 years old, without the consent, in writing, of the youth's guardian.

An intimate body piercing means the piercing of a person's genitalia, anal region, perineum, nipples or uvula.

It will not be an offence if the tattooing, body piercing or body modification procedure is performed in the course of medical treatment or for medical or therapeutic purposes as prescribed by Regulations.

The clause also provides a defence to the three offences if a youth or another person makes a false statement or produces false evidence. The person who seeks to rely on this defence must produce the identifying details or a copy of the evidence offered at the time of the offence.

For all three offences the penalty is a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 12 months.

Clause 24: Section 37 amended (Offences relating to property)

This clause amends the section to allow a complaint for any offence against section 37 to be made within 12 months after the date of the offence.

It also repeals subsection (4) which is no longer required as it is out-dated and the offence is covered by Section 37(1).

Clause 25: Section 37AAA and 37AA inserted

Section 37AAA (Interference with war memorials)

This clause creates a specific offence for the interference with a war memorial and allows a complaint for such an offence to be made within 12 months after the date of the offence.

The clause provides for a penalty for interfering with a war memorial of a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 12 months.

Section 37AA (Unlawfully setting fire to property)

An offence of unlawfully setting fire to property is to be included in the Principal Act. It is currently only a crime contained within in the *Criminal Code Act 1924*. The new section applies to all property and vegetation as defined in Chapter XXXI of the *Criminal Code Act 1924*. For this section to

apply and an offence to have occurred the damage to the property or vegetation is not to exceed \$5000.

This clause also provides for a complaint for such an offence to be made within 12 months after the date of the offence. The penalty for committing such an offence is a fine not exceeding 100 penalty units or imprisonment for a term not exceeding 2 years or both.

Clause 26: Section 37I substituted

Section 37I (Tampering with vehicles)

This clause provides for the same offence currently contained with the Principal Act, but restructures the section to provide for some additional authorities.

The clause includes an authority to detain and search a person who a police officer has reasonable grounds to believe is contravening or has contravened section 37I. If any tools, equipment or materials are located during the search and a police officer believes has been used in the commission of the offence, they can be seized. If convicted of an offence under this section then any tools, equipment or materials seized are forfeited to the Crown.

An offence occurs attracts a penalty of a fine not exceeding 20 penalty units.

Clause 27: Section 37J amended (Excessive noise, smoke, &c., from vehicles)

This clause replaces the word 'exhibition' with the words 'unnecessary execution'.

Clause 28: Section 37K amended (Interpretation of Division)

This clause inserts the words 'and its keys' in the definitions of *confiscated vehicle* and *forfeiture order*.

Clause 29: Section 37N amended (Clamping and confiscation of vehicles)

This clause inserts the words 'and its keys' into subsections (1)(b), (2), (3)(d), (6), (6)(b) and (8). This provides for the keys of a vehicle and the vehicle to be confiscated.

Clause 30: Section 37O amended (Period of clamping or confiscation for first prescribed offence)

This clause amends section 37O by substituting the words 'found offending in respect of a prescribed offence by a police officer' and replacing them with 'proceeded against by way of complaint under the *Justices Act 1959* in respect of a prescribed offence'.

This provides for a vehicle used in connection with the commission of a prescribed offence be confiscated for the set period as already outlined in the section, if the person has previously not been proceeded against by

way of complaint for a prescribed offence. That is, this is the first offence for the offending driver for committing a prescribed offence.

Clause 31: Section 37P amended (Period of clamping or confiscation for second prescribed offence)

This clause amends this section by omitting the words ‘found offending in respect of a prescribed offence by a police officer on one occasion’ and substituting them with ‘proceeded against by way of complaint under the *Justices Act 1959* in respect of a prescribed offence on one occasion’.

This provides for a vehicle used in connection with the commission of a prescribed offence be confiscated for the set period as already outlined in the section, if the person has previously been proceeded against by way of complaint for a prescribed offence.

It is intended that amendment provide for situations where someone has been prosecuted by way of civilian witness statements or was found offending by a police officer. In essence, it would be the second prescribed offence for the offending driver.

Clause 32: Section 37Q amended (Period of clamping or confiscation for third or subsequent prescribed offence)

This clause amends this by omitting the words ‘found offending in respect of a prescribed offence by a police officer on 2 or more occasions’ and substituting ‘proceeded against by way of complaint under the *Justices Act 1959* in respect of a prescribed offence on 2 or more occasions’.

This provides for a vehicle used in connection with the commission of a prescribed offence be confiscated for the set period as already outlined in the section, if the person has previously been proceeded against by way of complaint for a prescribed offence on 2 or more occasions.

It is intended that amendment provide for situations where someone has been prosecuted by way of civilian witness statements or found offending by a police officer. In essence, it would be the third or more prescribed offence for the offending driver.

The amendment also states that the vehicle that is confiscated or clamped under the provisions of this section is to be held until the resolution of the prescribed offence for which it has been clamped or confiscated or until the Court has made a determination in relation to any application for forfeiture that has been made.

Clause 33: Section 37SA amended (Unlawful interference with clamped vehicle, &c.)

This clause provides for a police officer to seize the vehicle and move it to a holding yard if a person commits an offence against subsection (2) or (3), previously it only allowed this to be done if there was an offence against subsection (3).

It also inserts two new subsections to allow an owner of a clamped vehicle to have the vehicle transported to another location. If a vehicle is transported to another location, the owner must notify a police officer,

within 3 days of the date of which it is transported to the other location, of the new location of the vehicle.

If the owner of a vehicle does not notify a police officer of the new location, then an offence occurs which attracts a fine not exceeding 10 penalty units.

Clause 34: Section 37T amended (Notice of clamping or confiscation to be given)

This clause allows for a police officer to amend the period of confiscation or clamping of a vehicle commensurate with the number of prior prescribed offences committed by the offender.

The amended notice is to be given to the owner of the vehicle within 14 days of the date on which the notice was amended

Clause 35: Section 37Y amended (Application for forfeiture of vehicles)

This clause allows for a police officer or any person who is or who has prosecuted a complaint for a prescribed offence to make an application for a forfeiture order in respect of the vehicle that has been seized for a prescribed offence. This may be made on the date of conviction or at any time during the 14-day period immediately following the date of conviction.

It amends the section to allow for a Court to impose a monetary penalty instead of the forfeiture of the vehicle. This is for such circumstances where the offender does not use his or her own vehicle to commit the prescribed offence and another person will be penalised if the vehicle is forfeited.

Clause 36: Section 37A amended (Defence to show no knowledge and consent)

The word 'or' is inserted to fix a grammatical error.

Clause 37: Section 37A amended (Powers for enforcing forfeiture order)

This clause will make it mandatory for a Court to include in a forfeiture order, the authority for a police officer to use reasonable force, means and assistance as is necessary to enter any place where the police officer reasonably believes the vehicle may be located to affect the order.

Clause 38: Section 37ZD amended (Unclamping or recovery of vehicle clamped or confiscated for a second or subsequent prescribed offence)

This clause provides a penalty provision for the offence of contravening a condition of a Court order at subsection (3). The penalty is a fine not exceeding 20 penalty units

Clause 39: Section 37ZH amended (Disposal of confiscated vehicle)

This clause amends the section so that a written notice detailing the sale or the disposal a confiscated vehicle is only to be given if the registered operator can be found.

Section 40: Section 37ZJ amended (Voluntary transfer of ownership of vehicle to Crown)

This amendment allows for the ownership of a clamped or confiscated vehicle, with the agreement of the owner, to be transferred to the Crown at any time during the authorised period, not just at the end of the authorised period.

Clause 41: Section 37ZK substituted

Section 37ZK (Clamped or confiscated vehicle not to be sold or disposed of)

This clause prevents a person from selling or disposing of a clamped or confiscated vehicle. It also prevents a person from tampering with, interfering with or altering such a vehicle. Vehicles that are clamped are currently being sold, damaged or destroyed to avoid forfeiture. This clause now provides for a penalty for contravening this section of 50 penalty units to deter this type of behaviour.

Clause 42: Section 38 inserted

Section 38 (Taking property not exceeding \$500 in value)

A summary offence of stealing is to be included in the Principal Act. It is currently only a crime contained within in the *Criminal Code Act 1924*. The new offence relates stealing anything that does not exceed the value of \$500.

The penalty for committing such an offence is a fine not exceeding 10 penalty units or imprisonment for a term not exceeding 3 months or both. This amendment will allow for the issuing of infringement notices for such an offence. The limitations and/or conditions for the issuing of such an infringement notice will be prescribed in the Regulations. It is intended that such infringement notices will only be used as a cautionary tool for first time adult offenders.

Clause 43: Section 39 amended (Possession of stolen property)

The clause amends this section so that the belief of a police officer, that a person had possession that property stolen or unlawfully obtained, may exist even after possession or control of that property by the person has passed. The amendment removes the requirement that the belief has to be held during the time the person had possession or control of the property. The belief no longer has to be concomitant with the finding of the person in possession with the property.

Clause 44: Sections 39A and 40 repealed

Both sections are no longer relevant in today's society

Clause 45: Section 44A amended (False reports to police)

This amendment is intended to include situations where a report is made to any person and the circumstance of such a report are likely to be passed to, and investigated by, police. For example, false reports of sightings of distress signals to organisations such as Coast Radio. The

penalty for this offence is currently inadequate and has been increased from 10 penalty units to 100 penalty units or imprisonment for a term not exceeding 6 months to a term of imprisonment not exceeding 12 months.

Clause 46: Section 47 amended (Interpretation)

This clause amends the section by changing the term *accident* to *crash*, which is defined in the *Road Rules 2009* and is current terminology.

Clause 47: Section 49 amended (Power of Commissioner to grant permit)

This clause provides for the omission of the word 'accident' in this section which is substituted with the word 'crash'.

Clause 48: Section 55 amended (Arrest)

Amendments have occurred to ensure that all appropriate offences are included in this section. This section authorises police officers to arrest without warrant for certain offences.

Clause 49: Section 55A substituted

Section 55A (Names and addresses of offenders)

This clause provides for the same offences currently contained with the Principal Act, but restructures the section to provide for an additional authority relating to section 15B - Dispersal of Persons, of the Principal Act.

It still provides for a police officer being able to require a person to state his or her name and address if the police officer becomes aware or has reasonable grounds for believing a person has committed or is committing an offence. Further, the section now includes the ability for a police officer to require a person to state his or her name and address, who he or she has reasonable grounds for believing that a person is likely to commit an offence against section 15B.

The amendment creates an offence and penalty for a person who fails or refuses to provide his or her name and address in each circumstance and increases the current penalty provisions from 2 penalty units to 10 penalty units.

The section currently provides the authority for a police officer to arrest without warrant any person who fails or refuses to comply with this section and that authority has been replicated in the substituted section.

Clause 50: Section 57B repealed

This clause repeals this section, the *Search for and detention of skins suspected to be stolen* as it is not relevant in today's society.

Clause 51: Section 58A amended (Power to search for liquor)

The authority to search for liquor has been amended to provide for all liquor offences contained within the Principal Act.

Clause 52: Part VII, Division IV: Heading amended

The heading has been amended to omit the words '*Liquor infringement*' and these words are replaced with the word '*Infringement*'.

Clause 53: Section 61 amended (Infringement notices)

This clause provides for the issuing of infringement notices for a wide variety of offences. Previously, infringement notices could only be issued for liquor offences against section 25 or section 26 of the Principal Act. The offences that have been included are as follows:

- Prohibited language and behaviour – sections 12(1)(a), (b), (c) or (d);
- Public annoyance – sections 13(1)(a), (b), (c), (d), (e) or (f), (2), (4), (6) or (7);
- Trespass – section 14B
- Dispersal of persons – 15B
- Graffiti and graffiti equipment – section 15CA(1) or (4);
- Street entertainment – sections 16(1) or (2);
- Sports venues – section 19A(1)
- Consumption of liquor in streets – sections 25(2) or (3);
- Requirement of owner or registered operator to provide details – section 37G(1);
- Notice of demand – section 37GA(3);
- Use of spotlights on vehicles on public streets – section 37JA(1);
- Stealing – section 38(1);
- Advertising reward for return of stolen property – section 41(1);
- No motor-vehicle race to be held without a permit – section 48(1);
- Public street permits – section 49AB(1) or (8); or
- Power of Commissioner to control public entertainments – section 49B(1)

Regulations will specify penalty units for each offence and contain instructions as to the issuing of infringement notices for stealing.

Clause 54: Section 63B amended (Declaration of serious incident site)

This clause amends this section by fixing two errors. It replaces the words ‘an officer’ with the words ‘a police officer’. It also replaces the words ‘crime scene’ with the words ‘serious incident site’.

Clause 55: Section 67A amended (Evidentiary provision)

This clause amends this section to provide for an averment provision for all liquor offences contained within the Principal Act.

Clause 56: Section 68 amended (Procedure for seized firearms)

This clause removes the authority for the need for a Ministerial delegation to dispose of firearms seized under the Principal Act. The *Firearms Act*

1996 allows for the Commissioner to determine disposal of firearms seized under that Act and the Principal Act is amended to ensure consistency.

PART 3 – FORENSICS PROCEDURES ACT 2000 AMENDED

Clause 57: Principal Act

Specifies that in this Part, the *Forensic Procedures Act 2000* is referred to as the Principal Act.

Clause 58: Section 3 amended (Interpretation)

This clause inserts the two new offences of stealing and unlawfully setting fire to property now contained in the *Police Offences Act 1935* in the definition of 'serious offence' in the Principal Act.

PART 4 – LAW OF ANIMALS ACT 1962 AMENDED

Clause 59: Principal Act

Specifies that in this Part, the *Law of Animals Act 1962* is referred to as the Principal Act.

Clause 60: Section 7A inserted

This clause provides for the offence of Rescue and illegal impounding of distress damage feasant which was contained in the *Police Offences Act 1935* and is repealed by this Bill to be inserted into the Principal Act.

PART 5 – REPEAL OF ACT

Clause 61: Repeal of Act

This clause provides that the *Police Offences Amendment Act 2013* is repealed on the three hundred and sixty fifth day from the day on which it commences.