

Queensland



Police Powers and Responsibilities Act 2000

POLICE POWERS AND RESPONSIBILITIES REGULATION 2000

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Information about this reprint

This regulation is reprinted as at 7 July 2000.

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- omit provisions that are no longer required (s 40)
- omit the words of notification (s 42A).

See endnotes for information about when provisions commenced.

Queensland



**POLICE POWERS AND
RESPONSIBILITIES REGULATION 2000**

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POLICE POWERS AND RESPONSIBILITIES REGULATION 2000

[reprinted as in force on 7 July 2000]

PART 1—PRELIMINARY

Short title

1. This regulation may be cited as the *Police Powers and Responsibilities Regulation 2000*.

Commencement

2. This regulation commences on 1 July 2000.

Dictionary

3. The dictionary in schedule 9 defines words used in this regulation.

PART 2—NOTIFIED AREAS

Applying for notified area declaration

4.(1) An application by a government entity or a local government (the “**applicant**”) for the declaration of a stated area as a notified area¹ must—

- (a) be in the approved form; and
- (b) state a description of the proposed notified area; and

¹ Applications are made under the Act, section 40 (Proposal for notified area).

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- (c) state the period, of not more than 1 year, for which it is proposed the area is to be a notified area.
- (2) The application must be accompanied by the following—
 - (a) a plan clearly showing the location and boundaries of the proposed notified area;
 - (b) for an application for a declaration for more than 14 days but not more than 1 year (“**extended declaration**”)—
 - (i) a copy of each submission received about the proposal and a summary of the submission; and
 - (ii) any comment the applicant wishes to make on the submission;
 - (c) if the applicant relies on criminal conduct or public order problems as a reason for applying for the declaration, written information verifying the existence of the problems.

Examples for subsection (2)(c)—

1. Crime statistics.
2. A statement from the local district officer of the police service.

Content of approved form

5. The approved form for an application for the declaration of a stated area as a notified area must require the applicant to do the following—

- (a) state the area’s street or similar address;
- (b) state when it is proposed the area is to start being a notified area;
- (c) for a declaration for not more than 14 days (“**temporary declaration**”), state when the declaration, if made, is to stop having effect;
- (d) for an application relating to an event—
 - (i) describe the event; and
 - (ii) state when the event is to start and end;
- (e) state why the area should be declared to be a notified area;

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- (f) state who the applicant has consulted about the proposal, the nature of the consultation, and the results of the consultation;
- (g) if the proposed notified area extends beyond a single street, road, park or other place, justify, in detail, why it is necessary for the proposed notified area to be so extensive;
- (h) for an application for a temporary declaration, justify, in detail, the length of time for which the area is proposed to be a notified area;
- (i) for an application for an extended declaration, justify, in detail, why the declaration needs to be for up to a year.

Steps before applying for a temporary declaration

6. Before an applicant applies for a temporary declaration, the applicant must, in relation to the application—

- (a) for a proposed event at the request of the event's organiser, ensure the request is written and states the information relied on for making the request; and
- (b) for an application relating to a proposed event, consult—
 - (i) the district officer of the police service for the police district in which the event is proposed to be held; and
 - (ii) if the event's organiser did not request the declaration—the event's organiser; and
- (c) if the applicant is a government entity—consult the local government for the place in which the proposed notified area is located about the proposed declaration.

Steps before applying for an extended declaration

7.(1) Before an applicant applies for an extended declaration, the applicant must—

- (a) consult about the proposed declaration with the following—
 - (i) the district officer of the police service for the police district in which the proposed notified area is located;

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- (ii) if the applicant is a government entity—the local government for the place in which the proposed notified area is located;
 - (iii) any person carrying on business in the area who wishes to be consulted about the proposal, or the person’s representative; and
- (b) publish a notice of the applicant’s intention to apply to the Minister to have the area declared a notified area.

(2) The notice mentioned in subsection (1)(b) must comply with section 8 and be published in a newspaper circulating generally in the locality of the proposed notified area or, if there is no newspaper circulating generally in the locality, a newspaper circulating generally in the State.

(3) In addition, the applicant must take other reasonably necessary steps to ensure persons who may be affected by the proposed declaration are notified of the proposal in a way that gives them—

- (a) the information that must be included in the notice; and
- (b) at least as much time as is given under the notice to make written submissions supporting or opposing the proposal.

Examples for subsection (3)—

1. Notifying people of the proposal by television advertisement.
2. Arranging for a letterbox drop of leaflets about the proposal.
3. Erecting a notice at or near the place.

Information to be included in notice

8. The notice of intention to apply to the Minister for the declaration of an area as a notified area must include the following information—

- (a) a sketch or plan showing the locality of the proposed notified area;
- (b) a street address or description of the proposed notified area by which the area can be easily identified;
- (c) when it is proposed the area is to start being a notified area;
- (d) why it is intended to apply for the declaration;

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- (e) interested persons may give the relevant applicant written submissions supporting or opposing the proposal;
- (f) a day, at least 1 month after the first publication of the advertisement, by which submissions are to be made;
- (g) an address to which the submissions must be sent.

PART 3—OTHER PROVISIONS

Relevant laws

9.(1) Each Act mentioned in schedule 1 is a relevant law for the Act, chapter 2, part 1.²

(2) Subsection (1) is subject to any restriction stated in schedule 1 for the relevant law.

Prescribed circumstances for requiring name and address

10. Each Act mentioned in schedule 2 is an Act for the enforcement of which a police officer may require a person to state the person's name and address under the Act, section 33(f).³

Corresponding laws

11. Each Act mentioned in schedule 3 is a corresponding law for the Act, section 442.⁴

² Act, chapter 2 (General enforcement powers), part 1 (Entry, inquiries and inspection)

³ Act, section 33 (Prescribed circumstances for requiring name and address)

⁴ Act, section 442 (Ministerial arrangements for transmission and return of seized things)

Acts restricting starting of proceedings

12. Each Act mentioned in schedule 4 is an Act to which the Act, section 450 applies.⁵

Declared law enforcement agencies

13.(1) Each entity mentioned in schedule 5 is a declared law enforcement agency for the Act, schedule 4,⁶ definition “declared law enforcement agency”.

(2) Subsection (1) is subject to any restriction stated in schedule 5 for the entity.

Legal aid organisations

14. Each organisation mentioned in schedule 6 is a legal aid organisation for the Act, schedule 4, definition “legal aid organisation”.

Relevant diseases

15. Each communicable disease mentioned in schedule 7 is a relevant disease for the Act, schedule 4, definition “relevant disease”.

Responsibilities code

16. The responsibilities code is in schedule 8.

⁵ Act, section 450 (Provisions restricting starting of proceedings)

⁶ Schedule 4 (Dictionary)

SCHEDULE 1

RELEVANT LAWS

section 9

Auctioneers and Agents Act 1971

Collections Act 1966

Drugs Misuse Act 1986

Explosives Act 1999

Hawkers Act 1984

Lotteries Act 1997

Nature Conservation Act 1992

Pawnbrokers Act 1984

Racing and Betting Act 1980

Second-hand Dealers and Collectors Act 1984

Tow Truck Act 1973

Transport Operations (Marine Safety) Act 1994

Transport Operations (Passenger Transport) Act 1994

Transport Operations (Road Use Management) Act 1995

Weapons Act 1990, but only in relation to a place used for 1 of the following purposes under a licence or other authority under that Act—

- (a) approved range;
- (b) approved shooting club;
- (c) armourer;
- (d) collector;
- (e) dealer;

SCHEDULE 1 (continued)

- (f) security guard;
- (g) security organisation;
- (h) shooting galleries;
- (i) theatrical ordnance supplier.

SCHEDULE 2

ACTS FOR WHICH NAME AND ADDRESS MAY BE REQUIRED

section 10

Animals Protection Act 1925

Casino Control Act 1982

Classification of Computer Games and Images Act 1995

Classification of Films Act 1991

Classification of Publications Act 1991

Gamine Machine Act 1991

Hawkers Act 1984

Health Act 1937

Liquor Act 1992

Nature Conservation Act 1992

Pawnbrokers Act 1984

Plant Protection Act 1989

Public Safety Preservation Act 1986

Racing and Betting Act 1980

Residential Tenancies Act 1994

Second-hand Dealers and Collectors Act 1984

*Tobacco and Other Smoking Products (Prevention of Supply to Children)
Act 1998*

Transport Operations (Road Use Management) Act 1995

Vagrants, Gaming and Other Offences Act 1931

SCHEDULE 3

CORRESPONDING LAWS

section 11

Crimes Act 1900 (ACT)

Crimes Act 1958 (Vic)

Criminal Investigation (Extra-territorial Offences) Act 1984 (SA)

Criminal Investigation (Extra-territorial Offences) Act 1985 (NT)

Criminal Investigation (Extra-territorial Offences) Act 1987 (Tas)

Criminal Investigation (Extra-territorial Offences) Act 1987 (WA)

Search Warrants Act 1985 (NSW)

SCHEDULE 4

ACTS RESTRICTING STARTING OF PROCEEDINGS

section 12

Adoption of Children Act 1964

Auctioneers and Agents Act 1971

Beach Protection Act 1968

Classification of Computer Games and Images Act 1995

Classification of Films Act 1991

Classification of Publications Act 1991

Corrective Services Act 1988

Education (General Provisions) Act 1989

Education (Teacher Registration) Act 1988

Exotic Diseases in Animals Act 1981

Explosives Act 1999

Gaming Machine Act 1991

Motor Accident Insurance Act 1994

Petroleum Products Subsidy Act 1965

Pharmacy Act 1976

Podiatrists Act 1969

Profiteering Prevention Act 1948

Psychologists Act 1977

Public Trustee Act 1978

Queensland Building Services Authority Act 1991

Queensland Heritage Act 1992

SCHEDULE 4 (continued)

Recreation Areas Management Act 1988

Rural Lands Protection Act 1985

Sawmills Licensing Act 1936

Soil Conservation Act 1986

Speech Pathologists Act 1979

Surveyors Act 1977

Timber Utilisation and Marketing Act 1987

Tobacco Products (Licensing) Act 1988

Travel Agents Act 1988

SCHEDULE 5

DECLARED LAW ENFORCEMENT AGENCIES

section 13

1. A police force or police service of another State or the Commonwealth.
2. The following Commonwealth entities—
 - the Australian Customs Service
 - the Australian Securities and Investments Commission
 - the Australian Taxation Office
 - the NCA
 - the Commonwealth department within which the *Migration Act 1958* (Cwlth) is administered
 - Australian Security Intelligence Organization
 - Austrac
 - the unit of the Australian Defence Force known as the Special Air Service, but only when helping the police service reduce the risk of serious injury to a person, and to the extent disclosure of information under the Act is necessary to help reduce the risk.
3. The following New South Wales entities—
 - the New South Wales Crime Commission
 - the Police Integrity Commission
 - ICAC.
4. The following Queensland entities—
 - QCC
 - the CJC.

SCHEDULE 5 (continued)

5. A Royal Commission or another commission of inquiry, not already mentioned in this schedule, established under a law of the Commonwealth or a State for inquiring into allegations involving the commission of serious indictable offences.

SCHEDULE 6

LEGAL AID ORGANISATIONS

section 14

Aboriginal and Torres Strait Islander Corporation (QEA for Legal Services)
Queensland Aboriginal and Torres Strait Islander Legal Services Secretariat
Aboriginal and Torres Strait Islanders Legal Services
Bidjara and South West Queensland Aboriginal Legal Service
Ipswich Regional Aboriginal and Torres Strait Islander Legal Services
Mackay and District Aboriginal and Torres Strait Islanders Legal Service
Njiku Jowan Legal Service
South East Queensland Legal Service
Tharpuntoo Legal Service
Townsville and Districts Aboriginal and Torres Strait Islander Legal Service
Wakka Wakka Legal Aboriginal Corporation
West Queensland Aboriginal and Torres Strait Islander Legal Service.

SCHEDULE 7

RELEVANT DISEASES

section 15

Chancroid

Chlamydia

Donovanosis

Gonorrhoea

Hepatitis B

Hepatitis C

Human immunodeficiency virus (HIV)

Lymphogranuloma venereum

Syphilis.

SCHEDULE 8

RESPONSIBILITIES CODE

section 16

PART 1—PRELIMINARY

Short title

1. This code may be cited as the *Police Responsibilities Code 2000*.

Code does not generally apply to covert operations

2. Unless this code otherwise expressly provides, this code does not apply to functions of a police officer performed as part of a covert operation.

PART 2—PROVISIONS ABOUT SEARCH WARRANTS, OBTAINING DOCUMENTS, AND CRIME SCENES

Division 1—Search warrants

Search warrant application

3. An application for a search warrant⁷ must state the following—
 - (a) the applicant's name, rank, registered number and station;
 - (b) a description of the place to be searched;

⁷ Applications are made under the Act, section 68 (Search warrant application)

SCHEDULE 8 (continued)

- (c) for an occupied place, the name of the occupier of the place, if known;
- (d) the offence to which the application relates or, for a forfeiture proceeding, the Act under which the proceeding may be started;
- (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of the offence;
- (f) information or evidence being relied on to support a reasonable suspicion evidence of the commission of an offence is at the place, or is likely to be taken to the place within the next 72 hours;
- (g) for each search warrant issued in the previous year in relation to the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates⁸—
 - (i) when and where the warrant was issued; and
 - (ii) the type of offence to which the warrant related; and
 - (iii) whether anything was seized under the warrant or a proceeding was started after a search;
- (h) if authority to exercise any of the following powers is being sought—why it is necessary to exercise the power—
 - (i) power to search anyone found at the place for anything sought under the warrant that can be concealed on the person;
 - (ii) power to search anyone or anything in on or about to board, or be put on, a transport vehicle;
 - (iii) power to take a vehicle to, and search for evidence of the commission of an offence that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle;
- (i) if authority to execute the warrant at night is being sought, why it is necessary to execute the warrant at night;

⁸ See the Act, section 68(5)(b)

SCHEDULE 8 (continued)

- (j) for an application for an order requiring a stated person to give to a police officer stated documents⁹—the name or position of the person to be ordered to produce the documents and a description of the documents the person is to be required to produce.

Examples for paragraph (h)—

1. Power to search anyone found at the place may be necessary because the nature of the thing sought may be concealed on a person.

2. Power to search anyone or anything in on or about to board, or be put on, a transport vehicle may be necessary because the offence relates to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it.

3. Power to take a vehicle to a place with appropriate facilities for searching the vehicle may be necessary because the nature of the thing sought may be concealed in a vehicle or because the vehicle needs to be scientifically examined.

Example for paragraph (i)—

It may be necessary to execute the warrant at night for an early morning search to prevent the loss or destruction of evidence, or because the occupier is only at the place at night.

Example for paragraph (j)—

An order requiring a person to give stated types of documents to a police officer may be necessary because the place contains many documents unrelated to the offence or forfeiture proceeding or because the documents are stored electronically, and accessing the relevant documents is difficult.

Statement to accompany copy of search warrant

4. The statement to be given to the occupier of a place with a copy of a search warrant¹⁰ must state the following—

- (a) the nature of the powers a police officer may exercise under the warrant;

⁹ See the Act, section 71 (Order in search warrant about documents).

¹⁰ See the Act, section 75 (Copy of warrant to be given to occupier).

SCHEDULE 8 (continued)

- (b) the senior police officer present during the search must, as soon as reasonably practicable, state the officer's name, rank and station or, if not in uniform, state he or she is a police officer and produce his or her identity card for inspection;
- (c) the occupier may ask another police officer present for his or her name, rank and station and, if not in uniform, he or she, if asked, must produce an identity card for inspection;
- (d) the effect of the Act, sections 380, 381, 384, 415 and 423.¹¹

Division 2—Post-search approval

Post-search approval application

5. An application for a post-search approval order¹² must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) information or evidence relied on to support a reasonable suspicion—
 - (i) in the circumstances existing before the search, evidence of the commission of an offence was at or about the place, or in the possession of a person at or about the place and would have been concealed or destroyed unless the place was immediately entered and searched; or
 - (ii) a part 2 offence¹³ has been, is being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it;

¹¹ Sections 380 (Receipt for seized property), 381 (Right to inspect seized documents), 384 (Limitation on period of detention for search), 415 (Persons to be given copy of information in register) and 423 (Return of seized things)

¹² Applications are made under the Act, section 78 (Post-search approval).

¹³ See the Act, section 76 for what is a part 2 offence.

SCHEDULE 8 (continued)

- (c) in relation to the thing sought—the type of offence in relation to which the search was conducted, or the Act under which a forfeiture proceeding may be started;
- (d) the nature of the thing sought that was reasonably suspected of being evidence of the commission of an offence;
- (e) the time, date and place of the search;
- (f) a description of anything seized because of the search;
- (g) if known, the name, age and address of each person detained or searched;
- (h) information about any proceeding started against a person, before or because of the search, for an offence in relation to which the search was conducted;
- (i) if an order under the Act, section 424 or 425,¹⁴ for the retention, disposal, return or destruction of anything seized is sought, why the order should be made.

Appeal

6.(1) This section applies if a police officer considers the commissioner should appeal against a decision of a magistrate to order the disposal, destruction or return of a thing seized because of a search to prevent loss of evidence.¹⁵

(2) The police officer must give to the commissioner a report explaining the reasons for appealing against the order.

(3) The report must be accompanied by—

- (a) a copy of the application; and
- (b) a copy of any transcript of the proceeding; and

¹⁴ Section 424 (Application by owner for return of relevant things) or 425 (Application by police officer for order if ownership dispute)

¹⁵ See the Act, section 80 (Appeal).

SCHEDULE 8 (continued)

- (c) an affidavit identifying any relevant document and stating anything else relevant to the appeal.

Division 3—Crime scenes

Who is an authorised assistant for crime scene powers

7. For the Act, schedule 4, definition “authorised assistant”, a person who is not a police officer is an authorised assistant if—

- (a) in the opinion of the responsible officer at a crime scene, the person has specialised knowledge or skills of a kind necessary for exercising a power mentioned in the Act, section 93(1)¹⁶ at the crime scene; and
- (b) the person is asked by the responsible officer or an investigating police officer to exercise the power.

Examples—

1. A doctor, pathologist or forensic scientist.
2. A photographer or fingerprint expert.
3. An electrician or carpenter.
4. A person who can operate an excavator or another machine.

Crime scene warrant application

8. An application for a crime scene warrant¹⁷ must state the following—

- (a) the applicant’s name, rank, registered number and station;
- (b) a description of the place to which the application relates;
- (c) for a crime scene that is an occupied place—
- (i) the name of the occupier of the place, if known; and

¹⁶ See the Act, section 93 (Powers at crime scene)

¹⁷ See the Act, section 87 (Application for crime scene warrant)

SCHEDULE 8 (continued)

- (ii) when the occupier was given notice of the application or, if the occupier has not been given notice, why notice has not been given;
- (d) information or evidence being relied on to reasonably satisfy the issuer of the warrant—
 - (i) a seven year imprisonment offence or an offence involving deprivation of liberty happened at the place; or
 - (ii) there may be at the place evidence, of a significant probative value, of the commission of a serious violent offence that happened somewhere else;
- (e) whether the application is to establish a crime scene or relates to a crime scene established under the Act, section 82;¹⁸
- (f) the suspected offence to which the application relates;
- (g) if the crime scene is a secondary crime scene, when and where the relevant offence was committed, if known;
- (h) why it is necessary to protect the place to search for and gather evidence of the commission of the suspected offence;
- (i) information about any proceeding started against a person for the offence for which the crime scene is, or is to be, established.

Crime scene warrant extension application

9. An application for the extension of a crime scene warrant¹⁹ must be accompanied by a copy of the original warrant and state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) when and where the crime scene was established;

¹⁸ Act, section 82 (Initial establishment of crime scene)

¹⁹ Under the Act, section 90(2), the application must be made before the warrant stops having effect.

SCHEDULE 8 (continued)

- (c) for a crime scene that is an occupied place—when the occupier was given notice of the application or, if the occupier has not been given notice, why notice has not been given;
- (d) what investigations have been conducted at the crime scene;
- (e) why it is necessary to extend the warrant;
- (f) information about any proceeding started against a person for the offence for which the crime scene was established;
- (g) the time for which the extension is sought.

Statement to accompany copy of crime scene warrant

10. The statement to be given to the occupier of a place with a copy of a crime scene warrant²⁰ must state the following—

- (a) the nature of the powers a police officer may exercise at the crime scene;
- (b) the responsible officer at the crime scene must, as soon as reasonably practicable, state the officer's name, rank and station, and, if not in uniform, state he or she is a police officer and produce an identity card for inspection;
- (c) the occupier may ask another police officer present for his or her name, rank and station and, if not in uniform, the officer, if asked, must produce an identity card for inspection;
- (d) the effect of the Act, sections 96, 380, 381, 384, 415 and 423.²¹

²⁰ See section 92 (Copy of crime scene warrant to be given to occupier).

²¹ Sections 96 (Alternative accommodation to be provided in some cases), 380 (Receipt for seized property), 381 (Right to inspect seized documents), 384 (Limitation on period of detention for search), 415 (Persons to be given copy of information in register) and 423 (Return of seized things).

SCHEDULE 8 (continued)

Division 4—Production notices

Production notice application

11. An application for a production notice²² must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the cash dealer to be given the notice;
- (c) the offence or suspected offence to which the application relates or, for a forfeiture proceeding, the Act under which the proceeding may be started;
- (d) the nature of the documents sought;
- (e) information or evidence being relied on to support a reasonable suspicion documents held by the cash dealer may be evidence of the commission of the offence;
- (f) for a production notice relating to an offence—the cash dealer is not a party to the offence;
- (g) for each production notice issued within the previous year in relation to the person suspected of being involved in the commission of the offence or suspected offence to which the application relates²³—
 - (i) when and where the notice was issued; and
 - (ii) the type of offence to which the notice related; and
 - (iii) whether anything was seized or a proceeding started because of the notice.

Examples for paragraph (d)—

1. Documents relating to transactions conducted by B between 31 December 1993 and 1 July 1995.
2. Documents relating to mortgages or property sales to which B is a party.

²² See the Act, section 97 (Production notices).

²³ See the Act, section 97(3)(b).

SCHEDULE 8 (continued)

Access order application

12.(1) An application for an access order²⁴ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the cash dealer to whom the application relates;
- (c) the nature of the documents sought under the production notice to which the application relates;
- (d) the cash dealer has produced documents it claims contain privileged communications;
- (e) an outline of any reason given by the cash dealer for claiming the documents contain privileged communications;
- (f) when notice of the application was given to the cash dealer;
- (g) why access to the documents is necessary;
- (h) the type of order sought.

(2) The application must be accompanied by a copy of the application for the production notice, a copy of the production notice given to the cash dealer, and the sealed container or envelope containing the relevant documents.

Division 5—Production orders

Production order application

13. An application for a production order²⁵ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the person to whom the application relates;

²⁴ See the Act, section 102 (If cash dealer claims documents contain privileged communications)

²⁵ See the Act, section 106 (Production order applications)

SCHEDULE 8 (continued)

- (c) the name of the person to be given the production order;
- (d) the serious offence to which the application relates;
- (e) the nature of the property tracking documents sought under the production order;
- (f) information or evidence being relied on to support a reasonable suspicion the person named in the application possesses a document that may be a relevant property tracking document;
- (g) for each production order issued within the previous year in relation to the person to whom the application relates²⁶—
 - (i) when and where the order was issued; and
 - (ii) how long the order was in force; and
 - (iii) the type of offence to which the order related; and
 - (iv) how the order helped in the investigation or another investigation; and
 - (v) information about any proceeding started because of the use of the production order.

**PART 3—COVERT EVIDENCE GATHERING
POWERS**

Division 1—Monitoring orders

Monitoring order application

14. An application for a monitoring order²⁷ must state the following—

²⁶ See the Act, section 106(3)(b).

²⁷ See the Act, section 116 (Monitoring order applications)

SCHEDULE 8 (continued)

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the financial institution to be given the order;
- (c) the name of the person about whom the application is made;
- (d) information or evidence being relied on to support a reasonable suspicion the person named in the application—
 - (i) has committed, or is about to commit, a serious offence; or
 - (ii) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
 - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence;
- (e) the suspected serious offence to which the application relates;
- (f) the name or names in which each relevant account with the financial institution is believed to be held;
- (g) the type of information the institution is to be required to give;
- (h) for each monitoring order issued in the previous year in relation to an account held with the financial institution by the named person²⁸—
 - (i) when and where the order was issued; and
 - (ii) how long the order was in force; and
 - (iii) the type of offence to which the order related; and
 - (iv) how the order helped in the investigation or another investigation; and
 - (v) information about any proceeding started because of the use of the order.

²⁸ See the Act, section 116(2)(b).

SCHEDULE 8 (continued)

Division 2—Use of surveillance devices under surveillance warrants

Applications to Supreme Court judge to be made with help of lawyer

15. An application to a Supreme Court judge for a surveillance warrant must, if reasonably practicable, be made with the help of a lawyer approved by the commissioner.²⁹

Surveillance warrant application—Supreme Court judge

16. An application to a Supreme Court judge for a surveillance warrant must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the type of surveillance device to be used under the warrant;
- (c) the indictable offence to which the application relates;
- (d) if the application relates to a person—
 - (i) the applicant reasonably believes the person has been, is, or is likely to be, involved in the commission of the offence; and
 - (ii) the person's name, if known; and
 - (iii) a description of the class of place where the person is likely to be; and
 - (iv) if the application is for the use of a device in a public place where the person is likely to be—that fact;
- (e) if the application relates to a place the applicant reasonably believes has been, is being, or is likely to be involved in the commission of the offence—a description of the place;
- (f) if the application is—

²⁹ See the Act, section 124 (Surveillance warrant applications)

SCHEDULE 8 (continued)

- (i) to install a visual surveillance device in a dwelling—the parts of the dwelling in which the device is proposed to be installed; or
 - (ii) for the use of a class A surveillance device in the office of a practising lawyer—the person is a practising lawyer and the device is to be used in the person’s office;
- (g) for each warrant issued in the previous year in relation to the person or the place stated in the application³⁰—
- (i) the class of surveillance device to which the warrant related; and
 - (ii) when and where the warrant was issued; and
 - (iii) how long the warrant was in force; and
 - (iv) whether the warrant related to a person or a place; and
 - (v) the type of offence to which the warrant related; and
 - (vi) any evidence seized during a previous search; and
 - (vii) how a previous covert search or surveillance warrant helped in the investigation or another investigation; and
 - (viii) information about any proceeding started after the search or use of the surveillance device;
- (h) information or evidence of the following being relied on to support a reasonable belief an offence of the type stated in the application has been, is being, or is about to be, committed—
- (i) for an application relating to a person—the person has been, is, or is likely to be, involved in the commission of the offence;
 - (ii) for an application relating to a place—a person at the place has been, is, or is likely to be, involved in the commission of the offence;

³⁰ See the Act, section 124(4)(b).

SCHEDULE 8 (continued)

- (iii) for an application for the use of a class A surveillance device in the office of a practising lawyer—the lawyer is involved in the commission of the offence;
- (i) for an application for a class A surveillance device that is a tracking device—a description of how the use of the device in or on a vehicle or other moveable object relating to the offence, or a person involved in the offence, is likely to help in the investigation of the offence.

Examples of a class of place for paragraph (d)(iii)—

1. A rental car.
2. A motel room.
3. A warehouse at Rocklea.

Examples of a description of a place for paragraph (e)—

1. A dwelling house, garage and storage shed at 300 Trudgian Street, Sunnybank.
2. A warehouse and office area at 150 Shankhill Road, Rocklea.

Surveillance warrant application—Magistrate

17. An application to a Magistrate for a surveillance warrant³¹ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the type of class B surveillance device to be used under the warrant;
- (c) the indictable offence to which the application relates;
- (d) if the application relates to a person—
 - (i) the applicant reasonably believes the person has been, is, or is likely to be, involved in the commission of the offence; and
 - (ii) the person's name, if known;

³¹ See the Act, section 138 (Surveillance warrant applications).

SCHEDULE 8 (continued)

- (e) if the application relates to a place the applicant reasonably believes has been, is being, or is likely to be involved in the commission of the offence—a description of the place;
- (f) for each warrant issued in the previous year in relation to the person or the place stated in the application³²—
 - (i) the class of surveillance device to which the warrant related; and
 - (ii) when and where the warrant was issued; and
 - (iii) how long the warrant was in force; and
 - (iv) whether the warrant related to a person or a place; and
 - (v) the type of offence to which the warrant related; and
 - (vi) any evidence seized during a previous search; and
 - (vii) how a previous covert search or surveillance warrant helped in the investigation or another investigation; and
 - (viii) information about any proceeding started after the search or use of the surveillance device;
- (g) information or evidence of the following being relied on to support a reasonable belief an offence of the type stated in the application has been, is being, or is about to be, committed—
 - (i) for an application relating to a person—the person has been, is, or is likely to be, involved in the commission of the offence;
 - (ii) for an application relating to a place—a person at the place has been, is, or is likely to be, involved in the commission of the offence;

³² See the Act, section 138(3)(b).

SCHEDULE 8 (continued)

- (h) a description of how the use of a surveillance device in or on a vehicle or other moveable object relating to the offence, or a person involved in the offence, is likely to help in the investigation of the offence.

Examples of a description of a place for paragraph (e)—

1. A dwelling house, garage and storage shed at 300 Trudgian Street, Sunnybank.
2. A warehouse and office area at 150 Shankhill Road, Rocklea.

Surveillance warrant extension application

18. An application for the extension of a surveillance warrant must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the class and type of surveillance device being used under the warrant;
- (c) the indictable offence to which the warrant relates;
- (d) the particulars of the person or place stated in the warrant;
- (e) information that was included in the application for the surveillance warrant about each warrant issued in the previous year in relation to the person or the place stated in the application;³³
- (f) information or evidence of any of the following being relied on to support a reasonable belief an offence of the type stated in the application has been, is being, or is about to be, committed—
 - (i) for an application relating to a person—the person has been, is, or is likely to be, involved in the commission of the offence;
 - (ii) for an application relating to a place—a person at the place has been, is, or is likely to be, involved in the commission of the offence;

³³ See the Act, section 124(4)(b) and 138(3)(b).

SCHEDULE 8 (continued)

- (iii) for an application for the use of a class A surveillance device in the office of a practising lawyer—the lawyer is involved in the offence;
- (g) for an application for a class A surveillance device that is a tracking device—a description of how the use of the device in or on a vehicle or other moveable object relating to the offence, or a person involved in the offence, is likely to help in the investigation of the offence.

Approval of emergency use of surveillance devices application

19. If, under the Act, a police officer of at least the rank of inspector authorises the use of a surveillance device,³⁴ the police officer's application for a Supreme Court judge's approval of the exercise of powers under the authorisation must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) when the applicant authorised the use of the surveillance device;
- (c) whether the application relates to the use of a class A surveillance device or class B surveillance device;
- (d) a description of—
 - (i) the place or moveable object where the surveillance device was used; and
 - (ii) the type of surveillance device used at the place or on the moveable object;
- (e) if known, the identity of the person allegedly responsible for the risk of serious injury to a person;
- (f) information or evidence being relied on to support a reasonable belief that when the police officer authorised the use—
 - (i) there was a risk of serious injury to a person; and

³⁴ See the Act, section 132 (Emergency use of surveillance devices).

SCHEDULE 8 (continued)

- (ii) using a surveillance device may help reduce the risk;
- (g) how using the surveillance device helped reduce the risk of serious injury to a person.

Powers relating to use of surveillance device

20.(1) This section applies if either of the following (an “**interceptor**”) is using a listening device to electronically record a conversation under a surveillance warrant for a class A surveillance device—

- (a) a police officer;
- (b) a staff member under the *Police Service Administration Act 1990* who is authorised by the commissioner to intercept and record communications under a surveillance warrant.

(2) Unless authorised under the warrant, the interceptor must suspend the use of the listening device if a conversation being intercepted starts, or is about to start, and the conversation is between a person and the person’s lawyer.

(2) The interceptor may not resume using the listening device until the conversation ends, other than for deciding if the conversation has ended.

Report on activities under a surveillance warrant

21.(1) If, because of a condition of a surveillance warrant, a police officer must give to a Supreme Court judge a report on activities under the warrant within a stated time, the police officer coordinating the investigation must ensure the report is given to a Supreme Court judge within the stated time.

(2) The report must be accompanied by a copy of the warrant and state the following—

- (a) the reporting police officer’s name, rank, registered number and station;
- (b) the type of indictable offence to which the warrant relates;
- (c) when the use of the surveillance device started;

SCHEDULE 8 (continued)

- (d) if the warrant has ended—the surveillance device is no longer being used;
- (e) the facts and circumstances of compliance with the warrant and its conditions of issue;
- (f) for a warrant authorising the use of a listening device or a visual surveillance device—
 - (i) whether any recording, photograph or transcript kept, includes information not related to the offence mentioned in the warrant; and
 - (ii) whether the information relates to an investigation of another indictable offence started because of information obtained under the warrant or is linked to another offence under investigation; and
 - (iii) how long the listening device or visual surveillance device was used under the warrant; and
 - (iv) how many people were involved in the conversation or the activity monitored and, if known, each person's identity.

Security of facilities used under a surveillance warrant

22.(1) This section applies to premises containing equipment being used by an interceptor to electronically record a conversation or visual images under a surveillance warrant for a class A surveillance device.

- (2) The premises must—
 - (a) be capable of being locked; and
 - (b) have suitable facilities for securely storing recordings made under the warrant; and
 - (c) be used in a way that prevents anyone outside it from hearing or seeing anything being listened to or monitored.
- (3) The interceptor must take reasonable steps to ensure—

SCHEDULE 8 (continued)

- (a) only police officers helping or involved in the investigation, other interceptors, and persons authorised under subsection (4) enter the premises; and
 - (b) when the premises are unattended, the premises are locked and any recordings made under the warrant are securely stored at the premises or another secure place.
- (4) The following persons are also authorised to enter the premises—
- (a) the police officer who applied for the surveillance warrant;
 - (b) persons responsible for the management of the premises;
 - (c) persons appointed by the commissioner to investigate misconduct;
 - (d) anyone else the interceptor permits to be present for helping in or monitoring the investigation.

Storage of recordings made under a surveillance warrant

23. A person must not remove information obtained under a surveillance warrant or transcripts of recordings made under the warrant from the secure place in which the information or recording is kept, other than—

- (a) to take it to another secure place; or
- (b) to disclose it to someone to whom relevant information may be disclosed;³⁵ or
- (c) to destroy it.

³⁵ For authorised disclosure, see the Act, section 146 (Disclosure of information obtained using surveillance warrant).

SCHEDULE 8 (continued)

Destruction of recordings made under a surveillance warrant

24. If a provision of the Act or an order of a Supreme Court judge requires the destruction of information obtained under a surveillance warrant or any transcripts of recordings made under the warrant, the information must be destroyed in the way the commissioner directs.

Division 3—Covert search

Applications to be made with help of lawyer

25. An application to a Supreme Court judge for a covert search warrant must, if reasonably practicable, be made with the help of a lawyer approved by the commissioner.³⁶

Covert search warrant application

26. The application must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to be searched;
- (c) the type of organised crime related offence to which the application relates;
- (d) for an occupied place—if known, the name of the occupier of the place and any person reasonably suspected of being involved in the offence;
- (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of an organised crime related offence;
- (f) information or evidence being relied on to satisfy a judge there are reasonable grounds for believing there is evidence of the organised crime at the place;

³⁶ See the Act, section 148 (Covert search warrant applications)

SCHEDULE 8 (continued)

- (g) for each warrant issued in the previous year in relation to the place or person suspected of being involved in the organised crime to which the application relates³⁷—
- (i) the type of warrant and, for a surveillance warrant, the class of device to which the warrant related; and
 - (ii) when and where the warrant was issued; and
 - (iii) for a surveillance warrant or covert search warrant, how long the warrant was in force; and
 - (iv) whether the warrant related to a person or a place; and
 - (v) the type of offence to which the warrant related; and
 - (vi) any evidence seized during a search; and
 - (vii) how a previous covert search or surveillance warrant helped in the investigation or another investigation; and
 - (viii) information about any proceeding started after the search or use of the surveillance device.

Covert search warrant extension application

27. An application for an extension of a covert search warrant must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to be searched;
- (c) for an occupied place—if known, the name of the occupier of the place and any person reasonably suspected of being involved in the offence;
- (d) the type of organised crime related offence to which the warrant relates;

³⁷ See the Act, section 148(2)(b).

SCHEDULE 8 (continued)

- (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of an organised crime related offence;
- (f) information or evidence being relied on to satisfy a judge there are reasonable grounds for believing there is evidence of organised crime at the place;
- (g) information included in the application for the covert search warrant about each warrant issued in the previous year in relation to the place or person suspected of being involved in the organised crime to which the application relates.³⁸

Report on covert search

28. A report on the exercise of powers under a covert search warrant must be accompanied by a copy of the warrant and state the following³⁹—

- (a) the reporting police officer's name, rank, registered number and station;
- (b) the organised crime related offence to which the warrant relates;
- (c) when the powers under the warrant were exercised;
- (d) the facts and circumstances of compliance with the warrant and its conditions of its issue;
- (e) particulars of anything seized, inspected or photographed under the warrant;
- (f) a description of any order sought in relation to anything seized or photographed under the warrant and the reason for the order.

Examples of order for paragraph (f)—

1. An order that anything seized and any photograph taken be retained for the purpose of the investigation of the organised crime related offence or another serious indictable offence.

³⁸ See the Act, sections 68(5)(b), 124(4)(b), 138(3)(b) and 148(2)(b).

³⁹ See the Act, section 156 (Report on covert search).

SCHEDULE 8 (continued)

2. An order that anything seized and any photograph taken be retained for the purpose of a proceeding started under the *Crimes (Confiscation) Act 1989* relating to an offence arising out of the investigation.

3. An order that anything seized and any photograph taken be retained for use as evidence in the prosecution of the persons named in the application.

4. An order that a thing seized be destroyed in a way the commissioner considers appropriate.

PART 4—ARREST AND CUSTODY POWERS

Medical or dental procedure order application

29. An application for an order to perform a medical or dental procedure on a person⁴⁰ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name and age of the person in lawful custody;
- (c) the type of indictable offence to which the application relates;
- (d) whether the application is for an order for the performance of a medical or a dental procedure;
- (e) information or evidence about the nature and seriousness of the offence;
- (f) information or evidence that may be relied on to support a reasonable belief that performing the procedure on the person may provide evidence of the commission of the offence.

⁴⁰ Applications are made under the Act, section 289 (Application for order for performance of medical or dental procedure).

SCHEDULE 8 (continued)

DNA sample order application—child

30. An application for an order of a Childrens Court authorising a DNA sampler to take a DNA sample from a child for DNA analysis⁴¹ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the child;
- (c) a stated indictable offence has been committed;
- (d) information or evidence that may be relied on to support a reasonable suspicion that the child has committed the indictable offence;
- (e) taking a DNA sample for DNA analysis may tend to prove or disprove the child's involvement in the offence;
- (f) notice of the making of the application has been given under the Act, section 312(3) and when the notice was given.

Disease test order application

31. An application for a disease test order⁴² must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the person to whom the application relates;
- (c) a stated relevant offence has been committed;
- (d) taking a blood or urine sample may help find out whether the person may have transmitted a relevant disease to the victim of the offence or another person;

⁴¹ Applications are made under the Act, section 312 (Taking DNA sample from child).

⁴² Applications are made under the Act, section 322 (Application for order for blood and urine testing of person)

SCHEDULE 8 (continued)

- (e) information supporting the application and indicating semen, blood, saliva or another bodily fluid may have been transmitted to another person during or soon after the commission of the offence;
- (f) the person has been advised of the person's right to have a lawyer present at the hearing of the application;
- (g) if the person is a child—notice of the application has been given under the Act, section 323(2) and when the notice was given.

**PART 5—POWERS AND RESPONSIBILITIES
RELATING TO INVESTIGATIONS AND
QUESTIONING FOR INDICTABLE OFFENCES**

Division 1—Questioning relevant persons about indictable offences

Application of div 1

32. This division only applies to indictable offences.

Asking persons to attend for questioning

33.(1) This section applies if a police officer wants to question a person as a suspect, other than a person mentioned in the Act, section 229.

(2) If the police officer approaches the person when not at a police station or police establishment, the police officer must caution the person in a way substantially complying with the following—

‘I am (name and rank) of (name of police station or police establishment).

I wish to question you about (briefly describe offence).

Are you prepared to come with me to (place of questioning)?

SCHEDULE 8 (continued)

Do you understand that you are not under arrest and you do not have to come with me?'.

(3) If the person, while not in the company of a police officer, attends a police station or police establishment for questioning, the caution must substantially comply with the following—

‘I am (name and rank) of (name of police station or police establishment).

I wish to question you about (briefly describe offence).

Did you come here of your own free will?’.

(4) Before the police officer starts to question the person, the police officer must caution the person in a way substantially complying with the following—

‘Do you understand you are not under arrest?

Do you understand you are free to leave at any time unless you are arrested?’.

(5) If the police officer reasonably suspects the person does not understand the caution, the officer may ask the person to explain the meaning of the caution in the person’s own words.

(6) If necessary, the police officer must further explain the caution.

Right to communicate with friend, relative or lawyer

34.(1) If a police officer must advise a relevant person of his or her right to contact a friend, relative or lawyer,⁴³ the advice the police officer gives must substantially comply with the following—

‘You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him or her to be present during questioning.

⁴³ See the Act, section 249 (Right to communicate with friend, relative or lawyer).

SCHEDULE 8 (continued)

You also have the right to telephone or speak to a lawyer of your choice to inform the lawyer where you are and to arrange or attempt to arrange for the lawyer to be present during questioning.

If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose.

Is there anyone you wish to telephone or speak to?'

(2) If the police officer reasonably suspects the relevant person does not understand the advice, the police officer may ask the relevant person to explain the meaning of the advice in the person's own words.

(3) If necessary, the police officer must further explain the advice.

(4) If the relevant person wants to speak to a lawyer, the police officer must, without unreasonable delay, make available to the person—

- (a) if there is a regional lawyer list available and the person has not asked to speak to a particular lawyer—the regional lawyer list; or
- (b) a telephone directory for the region.

(5) A police officer must not do or say anything with the intention of—

- (a) dissuading the relevant person from obtaining legal advice; or
- (b) persuading a relevant person to arrange for a particular lawyer to be present.⁴⁴

Right to remain silent not affected

35.(1) This section applies if a person, the person's lawyer, or someone whose presence is required during questioning of a person indicates to the police officer questioning or intending to question the person—

- (a) if questioning has not started—the person does not want to answer questions; or

⁴⁴ For circumstances where this may not apply see the Act, section 268 (When sections 249-253, 259 and 261 do not apply).

SCHEDULE 8 (continued)

(b) if questioning has started—the person does not want to answer any further questions.

(2) The police officer must clarify the person's intention to exercise his or her right to silence by asking the person—

(a) whether the person does not want to answer any questions generally or only questions about the offence for which the person is being questioned; and

(b) if any further question was asked relating to the offence or another offence, whether the person would not answer the question.

(3) If the person confirms that he or she does not want to answer any questions, the police officer must not question or continue to question the person.

(4) However, if the person later indicates he or she is prepared to answer questions, a police officer must, before questioning or continuing to question the person, ask the person—

(a) why he or she has decided to answer questions; and

(b) if a police officer or someone else in authority has told the person to answer questions.

Questioning of aboriginal people and Torres Strait islanders

36.(1) A police officer who is about to question a relevant person the police officer reasonably suspects is an adult aborigine or Torres Strait islander must, unless he or she already knows the relevant person, first ask questions necessary to establish the person's level of education and understanding.

(2) The questions the police officer may ask include questions, not related to the relevant person's involvement in the offence, that may help the police officer decide if the person—

(a) is capable of understanding the questions put to him or her, what is happening to him or her, and his or her rights at law; and

SCHEDULE 8 (continued)

- (b) is capable of effectively communicating answers to the questions;
and
- (c) is aware of the reason the questions are being asked.

(3) If the police officer consider it is necessary to notify a representative of a legal aid organisation that the relevant person is about to be questioned in relation to an offence, the police officer must inform the relevant person of the intention to notify the legal aid organisation, in a way substantially complying with the following—

‘As you have not arranged for a lawyer to be present, a legal aid organisation will be notified you are here to be questioned about your involvement in an indictable offence’.⁴⁵

(4) If the relevant person has indicated he or she does not wish to telephone or speak to a support person or arrange for a support person to be present during questioning, the police officer conducting the questioning must inform the relevant person that he or she may have a support person present during the questioning.

(5) The information given under subsection (5) must substantially comply with the following—

‘Is there any reason why you don’t want to telephone or speak to a support person and arrange for a person to be present during questioning?’

Do you understand that arrangements can be made for a support person to be present during the questioning?’

Do you also understand that you do not have to have a support person present during questioning?’

Do you want to have a support person present?’.

⁴⁵ For the obligation to notify the legal aid organisation, see the Act, section 251 (Questioning of Aboriginal people and Torres Strait Islanders).

SCHEDULE 8 (continued)

(6) If the police officer reasonably suspects the person is at a disadvantage in comparison with members of the Australian community generally, and the person has not arranged for a support person to be present during the questioning, the police officer must arrange for a support person to be present.⁴⁶

Cautioning relevant persons about the right to silence

37.(1) A police officer must caution a relevant person about the person's right to silence⁴⁷ in a way substantially complying with the following—

‘Before I ask you any questions I must tell you that you have the right to remain silent.

This means you do not have to say anything, answer any question or make any statement unless you wish to do so.

However, if you do say something or make a statement, it may later be used as evidence.

Do you understand?’.

(2) If the police officer reasonably suspects the relevant person does not understand the caution, the police officer may ask the person to explain the meaning of the caution in his or her own words.

(3) If necessary, the police officer must further explain the caution.

(4) If questioning is suspended or delayed, the police officer must ensure the relevant person is aware he or she still has the right to remain silent and, if necessary, again caution the person when questioning resumes.

(5) If a police officer cautions a relevant person in the absence of someone else who is to be present during the questioning, the caution must be repeated in the other person's presence.

⁴⁶ See the Act, section 267 (List of support persons and interpreters).

⁴⁷ Section 258 (Cautioning of persons)

SCHEDULE 8 (continued)

Provision of information relating to a relevant person

38.(1) If a person who is a relative, friend or lawyer of a relevant person asks for information about the relevant person's whereabouts, the police officer receiving the request must, if the person asking for the information is not known to the police officer, ask the person—

- (a) if he or she is a relative, friend or lawyer of the relevant person; and
- (b) for his or her name and address or, for a lawyer, place of business; and
- (c) if the person makes the request personally—for proof of his or her identity.⁴⁸

(2) The police officer may also ask any other question the police officer considers necessary to establish that the person is a relative, friend or lawyer of the relevant person.

(3) Also, the police officer must make or cause to be made a check of the register for information about the relevant person.

Right to interpreter

39.(1) This section applies for deciding whether to arrange for the presence of an interpreter during questioning of a relevant person.⁴⁹

(2) A police officer may ask the relevant person a question, other than a question related to the person's involvement in the offence for which the person is to be questioned, that will help the police officer decide if an interpreter should be present.

(3) In particular, the police officer may ask questions that may help the police officer decide whether or not the relevant person—

- (a) is capable of understanding the questions put to him or her, what is happening to him or her, and his or her rights at law; and

⁴⁸ See the Act, section 259 (Provision of information relating to a relevant person).

⁴⁹ See the Act, section 260 (Right to interpreter).

SCHEDULE 8 (continued)

- (b) is capable of effectively communicating answers to the questions;
and
- (c) is aware of the reason the questions are being asked.

Right of visiting foreign national to communicate with embassy etc.

40.(1) This section applies if a police officer reasonably suspects a relevant person may have the right to telephone or attempt to telephone the embassy or consular office of the country of which the person is a citizen.⁵⁰

(2) For deciding whether the relevant person has the right to telephone or attempt to telephone an embassy or consular office, a police officer may ask the relevant person a question, other than a question related to the person's involvement in the offence for which the person is to be questioned.

(3) If the police officer reasonably suspects the person has the right to telephone or attempt to telephone an embassy or consular office, the police officer must inform the relevant person of the right in a way substantially complying with the following—

‘Before I ask you any questions I must tell you that you have the right to telephone, or attempt to telephone, the embassy or consular office of the country of which you are a citizen.

Do you want to telephone your embassy or consular office?’.

(4) If the police officer reasonably suspects the relevant person does not understand the advice, the police officer may ask the person to explain the advice in his or her own words.

(5) If necessary, the police officer must further explain the advice.

Rights of a person to be electronically recorded

41.(1) If it is not reasonably practicable for a police officer to electronically record the giving to a relevant person of information,

⁵⁰ See the Act, section 261 (Right of visiting foreign national to communicate with embassy etc.)

SCHEDULE 8 (continued)

including a caution, the police officer must make a written record of the giving of the information and the person's response.⁵¹

(2) The police officer must make the record as if the Act, section 264⁵² applied to the giving of the information and the response.

Procedure for reading back a written record

42.(1) This section applies if a police officer makes a written record of things said by or to a relevant person during questioning because it is not reasonably practicable to electronically record the things said.⁵³

(2) Before reading to the relevant person the written record of the things said, the police officer questioning the person must explain the procedure in a way substantially complying with the following—

‘Some of the questions I have asked you and your responses have not been electronically recorded.

I have made a written record of the unrecorded conversation. This is your copy of the record. I will now read the written record aloud.

If you consider there is an error in the record or there is something left out of the record, you should say so after I read that part of the record aloud.

You will then be asked to say what the record should read.

Do you understand this is your opportunity to disagree with anything in the written record?

Do you understand this procedure?’.

⁵¹ See the Act, section 262 (Rights of a person to be electronically recorded).

⁵² Section 264 (Requirements for written record of confession or admission)

⁵³ See the Act, section 263 (Recording of questioning etc.) and 264 (Requirements for written record of confession or admission)

SCHEDULE 8 (continued)

(3) If the police officer reasonably suspects the relevant person does not understand the explanation, the police officer may ask the person to explain the procedure in his or her own words.

(4) If necessary, the police officer must further explain the procedure.

Division 2—Questioning etc. of persons detained

Removal order application

43. An application for a removal order⁵⁴ must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name and age of the person to whom the application relates;
- (c) where the person is held in custody;
- (d) whether the person is in custody for an offence that has not been decided, or under sentence for a term of imprisonment or, for a child, under a detention order;
- (e) the type of indictable offence to which the questioning or investigation relates;
- (f) whether the removal of the person into police custody is for questioning the person or for a stated investigative procedure;
- (g) whether the person has been advised of the application;
- (h) information or evidence about the nature and seriousness of the offence;
- (i) information or evidence that may be relied on—
 - (i) to support a suspicion the person has committed the offence mentioned in the application; and

⁵⁴ See the Act, section 230 (Application for removal of person from lawful custody).

SCHEDULE 8 (continued)

- (ii) to satisfy a magistrate removal of the person from a prison or detention centre is necessary for questioning the person or the investigation of the offence.

Detention period extension application

44.(1) An application by a police officer for the extension of a detention period⁵⁵ must be made in a way that allows the relevant person or the person's lawyer to make submissions about the application.

Example for subsection (1)—

If the application is faxed to a magistrate, the relevant person may speak to the magistrate by telephone.

- (2)** Before the application is made, the police officer must—
 - (a) tell the relevant person or the person's lawyer of the application; and
 - (b) give the person a copy of the application; and
 - (c) ask the person or the person's lawyer if he or she—
 - (i) agrees to the application or wants to oppose it; and
 - (ii) wants to make submissions or say anything to the justice or magistrate hearing the application.
- (3)** The application must state the following—
 - (a) the applicant's name, rank, registered number and station;
 - (b) the following information about the person to whom the application relates—
 - (i) the person's name, age and address;

⁵⁵ Applications are made under the Act, section 236 (Application for extension of detention period)

SCHEDULE 8 (continued)

- (ii) whether the person is in custody under the *Corrective Services Act 1988* or the *Juvenile Justice Act 1992* for an offence that has not been decided or under a sentence for a term of imprisonment or, for a child, a detention order;
 - (iii) whether the person is an aborigine, a Torres Strait islander, a child, or a person with impaired capacity;
 - (iv) if the person is a child—whether a parent of the child has been advised of the child’s detention;
- (c) whether, since the questioning or detention started, the person has asked to telephone or speak to a relative, friend or lawyer and has since spoken to a relative, friend, lawyer or support person;
 - (d) when the detention period started, how long the person has been questioned, and what delays to questioning have happened;
 - (e) the offence to which the questioning or investigation relates and information and evidence about the nature and seriousness of the offence;
 - (f) information or evidence supporting a reasonable suspicion the relevant person has committed the offence mentioned in the application;
 - (g) what investigations have taken place;
 - (h) why further detention of the person is necessary;
 - (i) the time sought for time out, the purpose of the time out, and the period of time sought for questioning.
- (4) The applicant must tell the justice or magistrate whether or not the relevant person or the person’s lawyer wants to make submissions or say anything to the justice or magistrate.

SCHEDULE 8 (continued)

PART 6—POWERS IN RELATION TO PERSONS IN CUSTODY*Division 1—General requirements for witness identification***Management of witnesses during identification procedure**

45.(1) The way an identification procedure is conducted must allow only 1 witness involved in the procedure to see or hear the procedure at a time.

(2) Also, after a witness has taken part in the procedure, the witness must, as far as reasonably practicable, be prevented from speaking about the procedure to any other witness until the procedure ends.

(3) Also, if reasonably practicable, the way a witness identifies a person during an identification procedure must be electronically recorded.

(4) A police officer must not stop a person being present during the procedure to support the witness unless—

- (a) the other person is a witness involved in the procedure; or
- (b) the officer suspects the person will influence the witness's decision or disrupt the procedure.

(5) If a police officer stops someone being present during the procedure to support a witness, the police officer must—

- (a) give to the witness the reasons for stopping the person being present; and
- (b) advise the witness he or she may arrange for someone else to be present to support the witness; and
- (c) if asked, allow someone else to be present.

SCHEDULE 8 (continued)

Division 2—Identification parades

Application of div 2

46. This division applies if a police officer conducts an identification parade that includes a person reasonably suspected of having committed an offence (the “**suspect**”).

Recording of identification parade

47. If reasonably practicable, a police officer must cause the behaviour and position of each person in an identification parade to be photographed or otherwise electronically recorded.

Explanation of procedure

48.(1) A police officer must explain the procedure for an identification parade to a suspect before conducting the identification parade.

(2) If the police officer reasonably suspects the suspect does not understand the procedure, the police officer must ask the suspect to explain the procedure in his or her own words.

(3) If necessary, the police officer must further explain the procedure.

(4) The explanation must include the police officer telling the suspect the following—

- (a) the identification parade can not be conducted unless the suspect agrees;
- (b) the suspect may have a friend, relative or lawyer present at the identification parade if that person can attend within a reasonable time;
- (c) anyone present may not interfere with the procedure in any way;
- (d) the suspect may choose a position in the parade and change position in the parade after each witness has viewed the parade;

SCHEDULE 8 (continued)

- (e) the suspect's identity will not be given to a witness unless the witness identifies the person and a proceeding is started against the person.

Identification parade conditions

49. A police officer conducting an identification parade must, as far as reasonably practicable, replicate the conditions, described by the witness, when the witness saw a person involved in the offence, for example, by—

- (a) changing the lighting in the room; or
- (b) varying the distance from which the witness views the identification parade; or
- (c) concealing aspects of the participants in the identification parade.

Conducting the identification parade

50.(1) Each witness must view the identification parade separately.

(2) The police officer conducting the identification parade must ask the witness to carefully view the parade and to state whether the witness recognises anyone in the parade.

(3) The police officer must ask the question in a way that does not suggest the identity of any participant in the identification parade.

(4) If the witness indicates he or she recognises a person in the identification parade, the police officer conducting the parade must ask the witness to clearly identify the person recognised, for example, by stating the number of the person identified or describing his or her position in the parade.

Use of suitable persons in the identification parade

51. An identification parade must include the suspect and at least 11 other people of similar physical appearance and wearing similar clothing.

SCHEDULE 8 (continued)

Division 3—Identification using photographs

General requirements for identification using photographs

52. To avoid directing the attention of the witness to a particular photograph, the police officer must ensure nothing is marked on any photograph or the backing board on which the photograph is mounted.

Conducting a photoboard identification

53.(1) A police officer showing witnesses a photoboard must show the photoboard to each witness separately.

(2) Also, the police officer must ask the witness to carefully view the photoboard and to state whether the witness recognises anyone whose photo is on the photoboard.

(3) The police officer must ask the question in a way that does not suggest the identity of a person whose photograph is on the photoboard.

(4) If the witness indicates he or she recognises a person in a photo on the photoboard, the police officer must ask the witness to—

- (a) clearly state the number of the photograph the witness has identified as being that of the person alleged to be responsible for committing the relevant offence; and
- (b) write the photograph number and the date the photoboard was shown to the witness—
 - (i) on the front of an unmarked photocopy of the photoboard; or
 - (ii) on the back of the photoboard or the selected photograph; and
- (c) sign the photoboard, photocopy or photograph where the person has written on it.

SCHEDULE 8 (continued)

PART 7—THE REGISTER**Searches of persons**

54. The following information about an enforcement act consisting of a search of a person must be included in the register of enforcement acts—

- (a) if known, the name of the person;
- (b) when and where the person was searched;
- (c) the purpose of the search;
- (d) whether the search involved the removal of outer clothing in circumstances requiring the search to be conducted out of public view;
- (e) for a search because of a reasonable suspicion—how long the person was detained for the search;
- (f) a description of anything seized because of the search;
- (g) information about the return, destruction or disposal of anything seized.

Searches of vehicles

55. The following information about an enforcement act consisting of a search of a vehicle must be included in the register of enforcement acts—

- (a) if known, the name of the person in possession of the vehicle and anyone detained;
- (b) the registration number or a description of the vehicle;
- (c) when and where the search took place;
- (d) the purpose of the search;
- (e) how long the vehicle was detained for the search;
- (f) a description of anything seized because of the search;
- (g) whether anything was damaged because of the search;

SCHEDULE 8 (continued)

- (h) information about the return, destruction or disposal of anything seized.

Searches of places other than vehicles

56. The following information about an enforcement act consisting of a search of a place other than a vehicle must be included in the register of enforcement acts—

- (a) if known, the name of the person in possession of the place and anyone detained;
- (b) when and where the search took place;
- (c) the purpose of the search;
- (d) a description of anything seized because of the search;
- (e) whether anything was damaged because of the search;
- (f) information about the return, destruction or disposal of anything seized.

Arrests and detentions

57. The following information about an enforcement act consisting of an arrest, the detention of a person detained for investigations or questioning⁵⁶ or a relevant person under section 246,⁵⁷ must be included in the register of enforcement acts—

- (a) if known, the name of the person;
- (b) when the person was arrested or detained;
- (c) for an arrest, where a person is held;
- (d) for a person detained, each place to which the person is taken to or held for the investigation or questioning, and when;

⁵⁶ Section 234 (Initial period of detention for investigation or questioning)

⁵⁷ See the Act, section 246 (When does this part apply to a person).

SCHEDULE 8 (continued)

- (e) any significant event affecting the time for which questioning was suspended or delayed, for example, because of a time out period and the purpose of the time out;
- (f) any apparent injury the person received during the arrest or detention.

Search warrants

58. The following details about search warrants must be included in the register of enforcement acts—

- (a) when and where the warrant was issued;
- (b) if known, the name of the person mentioned in the application as the person suspected of being involved in the offence or suspected offence mentioned in the application;
- (c) the type of offence or forfeiture proceeding to which the warrant related;
- (d) the benefits derived from the warrant, including, for example, anything seized during the search and any proceeding started after the search;
- (e) information about the return, destruction or disposal of anything seized.

Production notices

59. The following information about a production notice⁵⁸ must be included in the register of enforcement acts—

- (a) when and where the notice was issued;
- (b) if known, the name of the person mentioned in the application as the person suspected of being involved in the offence or suspected offence mentioned in the application;

⁵⁸ See the Act, section 97 (Production notices).

SCHEDULE 8 (continued)

- (c) the type of offence or forfeiture proceeding to which the production notice related;
- (d) the benefits derived from the production notice, including, for example, any document produced under the notice and any proceeding started after the document was produced;
- (e) information about the return of any document produced.

Production orders

60. The following information about a production order⁵⁹ must be included in the register of enforcement acts—

- (a) when and where the order was issued;
- (b) if known, the name of the person mentioned in the application as the person suspected of being involved in the offence or suspected offence mentioned in the application;
- (c) the type of offence or forfeiture proceeding to which the production order related;
- (d) the benefits derived from the production order, including, for example, any document produced under the order and any proceeding started after the document was produced;
- (e) information about the return of any document produced.

Monitoring orders

61. The following information about application for monitoring orders⁶⁰ must be recorded in the register of covert acts—

- (a) when and where the application for the order was made;
- (b) the name of the financial institution mentioned in the application;

⁵⁹ See the Act, section 106 (Production order applications).

⁶⁰ See the Act, section 116 (Monitoring order applications).

SCHEDULE 8 (continued)

- (c) the name of the person in relation to whom the application was made;
- (d) whether or not the order was issued;
- (e) if the order was issued—
 - (i) the type of information the financial institution was required to give; and
 - (ii) how long the order was in force;
- (f) the benefits derived from the order, including, for example—
 - (i) any proceeding started; and
 - (ii) a brief description of how using the order helped in the investigation of the offence in relation to which it was issued.

Surveillance warrants

62. The following information about surveillance warrant applications⁶¹ and surveillance warrants must be recorded in the register of covert acts—

- (a) when and where the application for the warrant was made;
- (b) the name of the suspect and the description of the place mentioned in the application;
- (c) whether or not the warrant was issued;
- (d) if a warrant was issued, how long the warrant was in force;
- (e) if and when powers were exercised under the warrant;
- (f) if a surveillance device was not installed under the warrant, why it was not installed;
- (g) the benefits derived from the warrant, including, for example—
 - (i) any proceeding started; and

⁶¹ See the Act, sections 124 and 138 (Surveillance warrant applications).

SCHEDULE 8 (continued)

- (ii) a brief description of how using a surveillance device helped in the investigation of the offence or another indictable offence or helped prevent, detect or provide evidence of an offence.

Disclosure of information about covert acts

63. The following information about covert acts consisting of the disclosure of information under the Act, section 146(2)(d) or (e)⁶² must be recorded in the register of covert acts—

- (a) the name of—
 - (i) the person who disclosed the information or authorised its disclosure; and
 - (ii) the person to whom the information was disclosed;
- (b) brief particulars of the information disclosed and the reason for disclosing it;
- (c) when the information was disclosed.

Things seized other than during a search

64. The following information about things seized other than during a search must be included in the register of enforcement acts—

- (a) if known, the name of the person from whom the thing was seized;
- (b) when and where it was seized;
- (c) the reason it was seized;
- (d) a description of the thing seized;
- (e) information about the return, destruction or disposal of the thing.

⁶² Section 146 (Disclosure of information obtained using surveillance warrant)

SCHEDULE 8 (continued)

Directions given

65. The following information about a direction given to a person under the Act, section 39⁶³ must be included in the register of enforcement acts—

- (a) when the direction was given;
- (b) the location of the person when given the direction;
- (c) the name of the person given the direction, if known;
- (d) the reason for giving the direction;
- (e) the apparent demographic category of the person.

**PART 8—DEALING WITH THINGS IN THE
POSSESSION OF POLICE SERVICE**

Receipt for seized property

66. A receipt given for a thing seized⁶⁴ must include the following—

- (a) the date and time the thing was seized;
- (b) if taken from a person—the name, address and telephone contact number of the person, if known;
- (c) if taken from an occupied place—the name, address and telephone contact number of the occupier of the place, if known;
- (d) a description of the thing seized;
- (e) the name, rank, station and telephone contact number of the police officer who seized the thing;

⁶³ Section 39 (Direction may be given to person)

⁶⁴ See the Act, section 380 (Receipt for seized property).

SCHEDULE 8 (continued)

- (f) where the thing will be taken, if known;
- (g) the date the receipt is issued.

Functions of property officer

67.(1) A property officer has the following functions—

- (a) to receive anything seized by a police officer under the Act;
- (b) to keep records of anything received at the property point or by the property officer, including—
 - (i) the date the thing was received; and
 - (ii) the particulars of the police officer who seized the thing; and
 - (iii) a description of the thing seized; and
 - (iv) if it is removed from the property officer's custody—when and why it left the property officer's custody and when it was returned;
- (c) to ensure the safe and secure storage at the property point of the thing seized;
- (d) if appropriate, to transfer or arrange the transfer of the thing seized to—
 - (i) another property point for its safe and secure storage; or
 - (ii) another place for destruction or disposal; or
 - (iii) a declared law enforcement agency;
- (e) if required under the Act or any other Act—to destroy or dispose of the thing seized in the way decided by the commissioner;
- (f) if the thing is money other than money that must be retained so it can be used as an exhibit in a court—depositing the money in a financial institution account operated by the police service.

SCHEDULE 8 (continued)

(2) Also, as soon as reasonably practicable after the property officer receives a seized thing, the property officer must ensure the thing is capable of being easily identified.

Example for subsection (2)—

The thing may have attached to it a label or tag with a number or other identifier identical to the number or identifier the property officer has assigned to the thing in the record.

Order after property seized

68. An application under the Act, section 425 or 426⁶⁵ for an order relating to a seized thing must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the thing;
- (c) the circumstances of the seizure, including, for example, if the thing was seized under a search warrant;
- (d) relevant information about the thing, including, for example, the following—
 - (i) the nature of any interest a person has in the thing;
 - (ii) the approximate value of the thing;
 - (iii) whether the thing may be needed as evidence in a proceeding and the type of offence or forfeiture proceeding for which it may be evidence;
- (e) the order sought;
- (f) the reasons for seeking the order.

⁶⁵ Section 425 (Application by police officer for order if ownership in dispute) or 426 (Application for order in relation to seized thing).

SCHEDULE 9

DICTIONARY

section 3

“**applicant**”, for part 2, see section 4.

“**Austrac**” means the Australian Transaction Reports and Analysis Centre under the *Financial Transaction Reports Act 1988* (Cwlth).

“**extended declaration**” see section 4(2).

“**ICAC**” means the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 1988* (NSW).

“**interceptor**” see schedule 8, section 20.

“**New South Wales Crime Commission**” means the New South Wales Crime Commission under the *Crime Commission Act 1985* (NSW).

“**Police Integrity Commission**” means the Police Integrity Commission under the *Police Integrity Commission Act 1996* (NSW).

“**suspect**”, for schedule 8, part 6, division 2—see section 46.

“**temporary declaration**” see section 5(c).

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Police Powers and Responsibilities Regulation 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

*Police Powers and Responsibilities Regulation
2000*

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
amdt	=	amendment	prov	=	provision
ch	=	chapter	pt	=	part
def	=	definition	pubd	=	published
div	=	division	R[X]	=	Reprint No.[X]
exp	=	expires/expired	RA	=	Reprints Act 1992
gaz	=	gazette	reloc	=	relocated
hdg	=	heading	renum	=	renumbered
ins	=	inserted	rep	=	repealed
lap	=	lapsed	s	=	section
notfd	=	notified	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
om	=	omitted	SIA	=	Statutory Instruments Act 1992
orig	=	original	SIR	=	Statutory Instruments Regulation 1992
p	=	page	SL	=	subordinate legislation
para	=	paragraph	sub	=	substituted
prec	=	preceding	unnum	=	unnumbered
pres	=	present			
prev	=	previous			

4 List of legislation

Police Powers and Responsibilities Regulation 2000 SL No. 175

made by the Governor in Council on 29 June 2000

notfd gaz 30 June 2000 pp 736–48

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2000 (see s 2)

exp 1 September 2010 (see SIA s 54)

5 List of annotations

PART 4—AMENDMENT OF JUSTICES REGULATION 1993

pt 4 (ss 17–18) om R1 (see RA s 40)