

Queensland



**POLICE POWERS AND  
RESPONSIBILITIES ACT  
1997**

**Act No. 67 of 1997**



Queensland



**POLICE POWERS AND  
RESPONSIBILITIES ACT 1997**

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**DICTIONARY**



Queensland



## **Police Powers and Responsibilities Act 1997**

**Act No. 67 of 1997**

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**An Act about the powers and responsibilities of police officers**

*[Assented to 1 December 1997]*

**The Parliament of Queensland enacts—**

## **PART 1—PRELIMINARY**

### *Division 1—Preliminary*

#### **Short title**

1. This Act may be cited as the *Police Powers and Responsibilities Act 1997*.

#### **Commencement**

2. This Act commences on a day to be fixed by proclamation or 6 April 1998, whichever happens first.

#### **Dictionary**

3. The dictionary in schedule 3 defines words used in this Act.

#### **Purposes of Act**

4. The purposes of this Act are as follows—

- (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- (b) to provide additional powers necessary for effective modern policing and law enforcement;
- (c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;
- (d) to standardise the way the powers and responsibilities of police officers are to be exercised;
- (e) to ensure fairness to, and protect the rights of, persons against

whom police officers exercise powers under this Act;

- (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

### **Compliance with Act by police officers**

**5.(1)** It is Parliament's intention that police officers should comply with this Act in exercising powers and performing responsibilities under it.

**(2)** For ensuring compliance with Parliament's intention, a police officer who contravenes this Act may be dealt with as provided by law.

*Examples—*

1. A minor contravention, such as, for example, forgetting to fill in a register, may be dealt with by correction by way of counselling under the *Police Service (Discipline) Regulation 1990*, section 11.

2. A breach may amount to misconduct under the *Police Service Administration Act 1990* because, for example, a police officer maliciously strip-searches a suspect in a public place.

3. A breach may amount to official misconduct under the *Criminal Justice Act 1989* because, for example, a police officer improperly discloses to a criminal information obtained through the use of a listening device.

4. A breach may amount to an offence of deprivation of liberty under the Criminal Code, section 355, because a police officer deliberately holds a person in custody for questioning several hours after the end of a detention period and has no intention of applying for an extension of the period under this Act.

### ***Division 2—Act does not affect certain laws***

#### **Act does not affect constable's common law powers etc.**

- 6.** Unless this Act otherwise provides, this Act does not affect—
- (a) the powers, obligations and liabilities a constable has at common law; or
  - (b) the powers a police officer may lawfully exercise as an individual, including for example, powers for protecting property.

**Act does not affect court's common law discretion to exclude evidence**

7. This Act does not affect the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

***Division 3—Act's relationship to other Acts*****Relationship to other Acts**

8.(1) This Act does not affect the powers or responsibilities a police officer has under an Act included in schedule 1.

(2) However, subsection (1) does not prevent a police officer from exercising a power or performing a responsibility under this Act the police officer does not have under an Act included in schedule 1.

***Example—***

The police officer may use reasonable force under this Act to enter a place to detain a person without warrant under the *Mental Health Act 1984* because that Act does not include a provision allowing the police officer to use reasonable force to enter the place.

(3) Also, this Act does not affect the powers or responsibilities a police officer has under an Act prescribed under a regulation for this section.

(4) Subsection (2) also applies to an Act prescribed under a regulation under subsection (3).

(5) Subsections (3) and (4) and this subsection expire 2 years after the commencement of this section.

**Inconsistency**

9.(1) This section applies to a provision of another Act that confers powers or imposes responsibilities on a police officer.

(2) To the extent of any inconsistency, this Act prevails over the other Act, whether enacted before or after this Act.

(3) This section applies subject to section 8.

### ***Division 4—Public official appointment powers in other Acts***

#### **Appointment of police officers as public officials for other Acts**

**10.(1)** This section applies if an Act (the “**authorising law**”) authorises someone (the “**appointer**”) to appoint public officials for enforcing the authorising law.

**(2)** Despite the authorising law, the appointer may appoint a police officer as a public official under the authorising law only with the commissioner’s written approval to the proposed appointment.

**(3)** The commissioner may approve the proposed appointment only if the commissioner is satisfied the police officer proposed to be appointed has the necessary experience or expertise to be a public official for the authorising law.

**(4)** A police officer may exercise powers as a public official under an authorising law only if the commissioner approves the police officer’s appointment under this section.

**(5)** If, under the authorising law, the commissioner is the appointer for police officers, this section does not prevent the commissioner from appointing a police officer as a public official under the authorising law.

#### **Exercise of powers under other Acts**

**11.(1)** This section applies if an Act (the “**authorising law**”) authorises a public official to perform functions in relation to a person or thing.

**(2)** However, this section only applies to a police officer who is not a public official for the authorising law.

**(3)** If a public official asks, a police officer may help the public official perform the public official’s functions under the authorising law.

**(4)** Before the police officer helps the public official, the public official must explain to the police officer the powers the public official has under the authorising law.

**(5)** A police officer has, while helping a public official, the same powers and protection under the authorising law as the public official has.

**Authorising provisions of other Acts of no effect**

**12.** Sections 10 and 11 apply to the exclusion of a provision of any other Act passed before the commencement of sections 10 and 11 that authorised a police officer to perform a function of a public official.

**PART 2—POWERS FOR ENTRY, INSPECTION,  
INQUIRIES, ARREST AND CRIME SCENES****General power to enter to make inquiries, investigations or serve documents**

**13.(1)** This section does not authorise entry to a private place if a provision of this Act or another Act provides for entry under a search warrant in the particular circumstances.

*Example for subsection (1)—*

The entry may be to a public area of a place such as a nightclub.

**(2)** The purpose of this section is to ensure a police officer performing a function of the police service may enter and stay on a place in circumstances that may otherwise constitute trespass.

**(3)** A police officer may enter a place and stay for a reasonable time on the place to inquire into or investigate a matter.<sup>1</sup>

*Examples for subsection (3)—*

1. The entry may be for finding out if an offence is being or has been committed on the place.

2. The entry may be for finding out if a person reasonably suspected of being involved in the commission of an offence is at the place.

3. The entry may be for finding out if a missing person is in the place.

**(4)** Also, a police officer may enter and stay for a reasonable time on a place to serve a document.

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<sup>1</sup> For safeguards for this section, see section 112 (Supplying police officer's details etc.)



(5) However, if the place is premises used exclusively for residential purposes, a police officer may enter the premises exclusively used for residential purposes only with the consent of the occupier.

(6) Also, the police officer may use minimal force to enter the place.

*Example for subsection (6)—*

Turning a door handle to open an unlocked door and opening the door.

### **Power to enter etc. for relevant Acts**

**14.(1)** A police officer may, for a relevant Act, do any of the following—

- (a) at any reasonable time, enter and stay on a place used for a purpose under a licence under the relevant Act;
- (b) inspect, photograph or copy anything required to be kept under the relevant Act;
- (c) take possession of a thing to which the relevant Act applies, if the thing is evidence of the commission of an offence against the Act or another Act;
- (d) require the licence holder or someone else apparently in possession of documents or things the person is required or permitted to keep under the relevant Act to produce stated documents or things for inspection;
- (e) inspect security measures the person must maintain under the relevant Act;
- (f) require the licence holder or person apparently in possession of a place mentioned in paragraph (a) to give to the police officer reasonable help.<sup>2</sup>

(2) A person must comply with a requirement made under subsection (1)(d) or (f), unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(3) Also, a police officer may only enter a part of a place not used for the

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<sup>2</sup> For safeguards for this section, see part 12 (Standard safeguards), particularly division 4 (Safeguards for things seized during searches) and division 5 (Other safeguards).

purpose for which entry is made but only to get to the place used for the purpose.

(4) In this section—

“**licence**” includes authority, exemption and permit.

“**place**” includes land on which there is a dwelling and any part of a dwelling used as a place of business or for another purpose under the relevant Act.

“**relevant Act**” means an Act prescribed under a regulation for this section.

### **Power to enter to arrest or detain someone or execute warrant**

**15.(1)** A police officer may enter and stay for a reasonable time on a place to arrest a person, or detain a person under another Act, or arrest a person named in a warrant.<sup>3</sup>

(2) However, the police officer may enter a dwelling to arrest or detain a person only if the police officer reasonably suspects the person to be arrested or detained is at the dwelling.

(3) A police officer who enters a place under this section may search the place for the person.

(4) In this section—

“**arrest**”, in relation to a person named in a warrant, includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

### **Gaining access to crime scenes**

**16.** It is lawful for a police officer—

- (a) to enter a place to reach another place that the police officer reasonably suspects is a crime scene; and
- (b) to enter a place that the police officer reasonably suspects is a

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<sup>3</sup> For safeguards for this section, see sections 112 (Supplying police officer’s details etc.) and 113 (Information to be given to arrested person).

crime scene and stay on the place for the time reasonably necessary to decide whether or not to establish a crime scene.

### **Initial establishment of crime scene**

**17.(1)** If a police officer enters a place that may be a crime scene, or is lawfully at a place, and decides the place is a crime scene, the police officer (the “**responsible officer**”) may establish a crime scene and exercise the powers in section 20.

**(2)** As soon as reasonably practicable after the responsible officer establishes the crime scene, a police officer must apply under section 18 for a crime scene warrant.

**(3)** If the judge or magistrate refuses to issue a crime scene warrant, subsection (1) stops having effect.<sup>4</sup>

### **Crime scene warrant**

**18.(1)** A police officer may apply to a magistrate for a warrant (a “**crime scene warrant**”) to establish a crime scene on a place.

**(2)** However, if it is intended to do something that may cause structural damage to a building, the thing must not be done unless an application is made to a Supreme Court judge for a crime scene warrant.

**(3)** Subsection (2) applies whether or not a magistrate has issued a crime scene warrant for the place.

**(4)** The application must be sworn and state the grounds on which it is sought.

**(5)** The occupier of the place—

- (a)** must, if reasonably practicable, be given notice of the making of the application, unless the police officer reasonably suspects giving the notice would frustrate or otherwise hinder the investigation of the offence to which the application relates; and
- (b)** if present when the application is made—is entitled to be heard on

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<sup>4</sup> For safeguards for this section, see section 112 (Supplying police officer’s details etc.).

the application.

(6) The judge or magistrate (the “**issuer**”) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

*Example—*

The issuer may require additional information supporting the application to be given by statutory declaration.

(7) The issuer may issue the warrant only if the issuer has considered the following and is reasonably satisfied the place is a crime scene—

- (a) the time, of not more than 7 days, for which it is reasonable to maintain a crime scene;
- (b) the nature and seriousness of the suspected offence;
- (c) the likely extent of interference to be caused to the occupier of the place;
- (d) any submissions made by the occupier.

(8) The warrant must state—

- (a) that a stated police officer may establish a crime scene at the place and exercise the powers in section 20; and
- (b) that a police officer may enter and stay on the place for a stated period, of up to 7 days or, if the period is extended under subsection (10), for the extended period.

(9) The warrant stops having effect on the day fixed under the warrant or a later time fixed under subsection (10).

(10) The issuer may, on application of a police officer made before a crime scene warrant stops having effect, extend the warrant for a stated reasonable time of not more than 7 days.

(11) However, if the application for the warrant was made in the absence and without the knowledge of the occupier of the place or the occupier had a genuine reason for not being present, the occupier may apply to the issuer for an order revoking the warrant.

(12) The issuer may revoke or refuse to revoke the warrant.

(13) The making of an application under subsection (11) or the *Judicial*

*Review Act 1991* for review of the warrant's issue does not stay the effect of the warrant.

### **Way of establishing a crime scene**

**19.** A police officer may establish a crime scene in any way that gives the public enough notice that the place is a crime scene.

*Examples—*

1. A police officer may stand at a door to stop people entering a building and tell them they can not enter the building.
2. A police officer may put around a place barricades or tapes indicating the place is a crime scene.
3. A police officer may display a written notice stating the place is a crime scene and unauthorised entry is prohibited.

### **Powers at crime scene**

**20.(1)** The responsible officer or a police officer acting under the direction of the responsible officer may, at a crime scene, do any of the following<sup>5</sup>—

- (a) enter the crime scene;
- (b) direct a person to leave the crime scene or remove a vehicle from the crime scene;
- (c) remove from the crime scene a person who fails to comply with a direction to leave the crime scene or a vehicle a person fails to remove from the crime scene;
- (d) direct a person not to enter the crime scene;
- (e) prevent a person from entering the crime scene;
- (f) prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and for that purpose, detain and search the person;
- (g) perform any necessary investigation, including for example,

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<sup>5</sup> For safeguards for this section, see part 12 (Standard safeguards), division 4 (Safeguards for things seized during searches) and division 5 (Other safeguards).

inspect the crime scene and anything in it to obtain evidence of the commission of an offence;

- (h) take electricity for use at the crime scene;
- (i) direct the occupier of the place or a person apparently involved in the management or control of the place to maintain a continuous supply of electricity at the place;
- (j) photograph the crime scene and anything in it;
- (k) seize all or part of a thing that may provide evidence of the commission of an offence;
- (l) dig up anything at the crime scene;
- (m) remove wall or ceiling linings or floors of a building, or panels of a vehicle;
- (n) remove or cause to be removed an obstruction from the crime scene.

*Example for paragraph (k)—*

It may be necessary to seize and remove a vehicle for scientific examination to obtain evidence that may be in the vehicle.

(2) If it is necessary for a police officer to enter another place to gain access to the crime scene, the police officer may enter the other place.

(3) Also, if it is necessary for a police officer to do anything at the place that may cause structural damage to a building, the police officer must not do the thing unless a Supreme Court judge issues a crime scene warrant for the place before the thing is done.

(4) An authorised person at a crime scene may also perform a function mentioned in subsection (1)(g), (h), (j), (k), (l), (m) or (n).

### **Copy of crime scene warrant to be given to occupier**

**21.** If a police officer exercises powers under a crime scene warrant for a place that is occupied, the police officer must give to the occupier a copy of the warrant and a statement summarising the person's rights and obligations under the warrant.

(2) If the occupier is not present, the police officer must leave the copy in a conspicuous place.

**Exercise of crime scene powers in public place**

**22.(1)** It is lawful for a police officer to exercise powers under section 20(1) in a public place without a crime scene warrant.

**(2)** However, if it is necessary for a police officer to do anything at the public place that may cause structural damage to a building, the police officer must not do the thing unless a Supreme Court judge issues a crime scene warrant for the place before the thing is done.

**(3)** An authorised person at a crime scene may also perform a function mentioned in section 20(1)(g), (h), (j), (k), (l), (m) or (n) in a public place.

**Power to require name and address**

**23.(1)** This section applies if a police officer—

- (a) finds a person committing an offence; or
- (b) reasonably suspects a person has committed an offence; or
- (c) reasonably suspects a person may be able to help in the investigation of an alleged indictable offence because the person was near the place where the alleged offence happened before, when, or soon after it happened; or
- (d) is attempting to execute a warrant or serve a summons or other court document on a person.<sup>6</sup>

**(2)** The police officer may require the person to state the person's correct name and address.

**(3)** Also, the police officer may require the person to give evidence of the correctness of the stated name or address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name and address or to otherwise be able to give the evidence.

**(4)** When making the requirement, the police officer must warn the person it is an offence to fail to state the person's correct name or address or fail to provide evidence of the correctness of the stated name or address,

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<sup>6</sup> For safeguards for this section, see section 112 (Supplying police officer's details etc.).

unless the person has a reasonable excuse.

(5) A person must comply with a requirement under subsection (2) or (3), unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

(6) A person does not commit an offence against subsection (5) if the person was required to state the person's name and address by a police officer because of subsection (1) and the person is not proved—

- (a) for subsection (1)(a) or (b)—to have committed the offence; or
- (b) for subsection (1)(c)—to have been able to help in the investigation; or
- (c) for subsection (1)(d)—to be the person named in the warrant, summons or other court document.

## **PART 3—ROADBLOCKS AND TRAFFIC RELATED POWERS**

### **Roadblocks**

**24.(1)** A police officer may establish a roadblock if the police officer reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle who—

- (a) has committed a 7 year imprisonment offence; or
- (b) may be unlawfully depriving someone else of liberty;<sup>7</sup> or
- (c) is being unlawfully deprived of liberty; or
- (d) has escaped from lawful custody; or
- (e) may be endangering the life or safety of someone else.

(2) A police officer may stop all vehicles or any vehicle at the roadblock and detain each vehicle stopped for the time reasonably necessary to search

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<sup>7</sup> For what is unlawful deprivation of liberty, see the Criminal Code, section 355.



it to find out if a person mentioned in subsection (1) is in it.

(3) In deciding whether the police officer has the reasonable suspicion for subsection (1), the police officer must have regard to the following—

- (a) when and where the relevant circumstances happened;
- (b) information the police officer has about where the person sought may be travelling in a vehicle.

### **Powers relating to roads and traffic**

**25.(1)** A police officer may give to a driver of a vehicle or animal or to a pedestrian on or about to enter a road, or to a passenger in a vehicle, any direction, signal or order the police officer reasonably considers necessary for the safe and effective regulation of traffic on the road.

(2) Also, if an emergency exists, a police officer may give to a driver of or passenger in a train any direction, signal or order the police officer reasonably considers necessary.

(3) If a police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic, the police officer may take any measure and give or cause to be given any direction, signal or order the police officer reasonably considers necessary or desirable to control traffic and pedestrians on a road.

*Examples for subsection (3)—*

1. A siege where firearms are being discharged and members of the public may be hurt.
2. A serious or fatal road accident requiring treatment of injured persons, removal of bodies, wreckage to be cleared or evidence to be gathered for investigating the cause of the accident.

## **PART 4—SEARCHING PEOPLE AND VEHICLES WITHOUT A WARRANT**

### **Searching persons without warrant**

**26.(1)** A police officer who reasonably suspects any of the circumstances mentioned in subsection (2) exist may, without a warrant, stop, detain and search a person and anything in the person's possession.<sup>8</sup>

**(2)** The circumstances for subsection (1) are as follows—

- (a) that the person has something that may be—
  - (i) a weapon the person may not lawfully possess; or
  - (ii) an unlawful dangerous drug; or
  - (iii) stolen property; or
  - (iv) unlawfully obtained property; or
  - (v) tainted property; or
  - (vi) evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed;
- (b) that the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;
- (c) that the person has something the person intends to use to cause harm to himself, herself or someone else.

**(3)** The police officer may seize all or part of a thing that may provide evidence of the commission of an offence.

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<sup>8</sup> For safeguards for searching people, see part 12 (Standard safeguards), division 4 (Safeguards for things seized during searches), sections 111 (Protecting the dignity of persons during search) and 112 (Supplying police officer's details etc.)

**Searching vehicles without warrant**

**27.(1)** A police officer who reasonably suspects any of the circumstances mentioned in subsection (2) exist may, without warrant, stop a vehicle, detain a vehicle and any occupants of the vehicle, and search the vehicle and anything in it.

**(2)** The circumstances for subsection (1) are that the vehicle may have in it something that—

- (a) may be a weapon a person may not lawfully possess; or
- (b) may be an unlawful dangerous drug; or
- (c) may be stolen property; or
- (d) may be unlawfully obtained property; or
- (e) may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug; or
- (f) may be tainted property; or
- (g) may be evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed or destroyed; or
- (h) may be something the person intends to use to cause harm to himself, herself or someone else.

**(3)** Also, a police officer may stop, detain and search a vehicle and anything in it if the police officer reasonably suspects the vehicle is being unlawfully used.

**(4)** If the driver or a passenger in the vehicle is arrested for an offence involving something the police officer may search for under this part without a warrant, a police officer may also detain the vehicle and anyone in it and search the vehicle and anything in it.

**(5)** If it is impracticable to search for a thing that may be concealed in a vehicle at the place where the vehicle is stopped, the police officer may take the vehicle to a place with appropriate facilities for searching the vehicle.

**(6)** The police officer may seize all or part of a thing that may provide evidence of the commission of an offence.

(7) Power under this section to search a vehicle includes power to enter the vehicle, stay on it and re-enter it as often as necessary to remove from it a thing seized under subsection (6).

## PART 5—SEARCHING PEOPLE, PLACES AND VEHICLES WITH A WARRANT

### Search warrant

**28.(1)** A police officer may apply to a justice for a warrant to enter and search a place (“**search warrant**”) to obtain evidence of the commission of an offence, other than evidence that may be used in a forfeiture proceeding.<sup>9</sup>

(2) Also, a police officer may apply to a magistrate for a warrant to enter and search a place (“**search warrant**”) to obtain evidence that may be used in a forfeiture proceeding.

*Example—*

The search may be for evidence for which an application for a restraining order may be made under the *Crimes (Confiscation) Act 1989*, section 40.

(3) If it is intended to do anything that may cause structural damage to a building, the application must be made to a Supreme Court judge.

(4) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information specified in the responsibilities code about any warrants issued within 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 relates.

(5) The justice, magistrate or judge (the “**issuer**”) may refuse to consider the application until the police officer gives the issuer all the information the

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<sup>9</sup> For safeguards for this part, see part 12 (Standard safeguards), division 4 (Safeguards for things seized during searches).

issuer requires about the application in the way the issuer requires.

*Example—*

The issuer may require additional information supporting the application to be given by statutory declaration.

(6) The issuer may issue the warrant only if satisfied there are reasonable grounds for suspecting there is at the place, or is likely to be at the place within the next 72 hours, evidence of the commission of an offence.

(7) The warrant must state—

- (a) that a stated police officer, or all police officers, may enter the place and exercise the powers under section 29; and
- (b) if the warrant is issued in relation to—
  - (i) an offence—the offence for which the warrant is issued; or
  - (ii) a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised; and
- (c) any evidence that may be seized under the warrant; and
- (d) if the warrant is to be executed at night—the hours when the place may be entered; and
- (e) the warrant ends 7 days after it is issued or, if it relates to something likely to be at a place within the next 72 hours, 72 hours after it is issued.

(8) If the offence has been, is being, or may be committed on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it, the warrant may also state that a police officer may search anyone or anything in or on or about to board, or be put in or on, the vehicle.

(9) If the issuer is a magistrate, the magistrate may, in the warrant, direct the person in possession of documents at the place to give to the police officer all documents relevant to the offence.

(10) If a magistrate gives a direction under subsection (9), the warrant must also state that failure, without reasonable excuse, to comply with the direction may be dealt with as contempt of a Magistrates Court.

(11) If a justice (other than a person who is a justice of the peace because of the *Justices of the Peace and Commissioners for Declarations Act 1991*,

section 19(1) or (1A)) refuses to issue a warrant, the police officer may apply to a magistrate for the issue of the warrant.

(12) However, the police officer must tell the magistrate that the application is made because a justice refused to issue a warrant.

(13) In this section—

“**place**” does not include a public place.

“**transport vehicle**” means—

- (a) an aircraft; or
- (b) a boat; or
- (c) a bus; or
- (d) a train.

### **Powers under search warrants**

29. A police officer has the following powers under a search warrant—

- (a) power to enter the place specified in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers mentioned in this paragraphs (b) to (m);
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;
- (e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;
- (f) if the police officer reasonably suspects a person on the relevant place has been involved in the commission of the offence—power to detain the person for the time taken to search the place;
- (g) power to dig up land;
- (h) if authorised under the warrant—power to search anyone found at

the relevant place for anything sought under the warrant that can be concealed on the person;

- (i) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably suspects may be evidence of the commission of an offence to which the warrant relates;
- (j) power to muster, hold and inspect any animal the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (k) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (l) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle to search for evidence of the commission of an offence;
- (m) if authorised under the warrant—power to do whichever of the following is authorised—
  - (i) to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;
  - (ii) 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.

### **Copy of warrant to be given to occupier**

**30.(1)** If a police officer executes a search warrant for a place that is occupied, the police officer must give to the occupier of the place a copy of the warrant and a statement summarising the person's rights and obligations under the warrant.

**(2)** If the occupier is not present, the police officer must leave the copy in a conspicuous place.

**Search to prevent loss of evidence**

**31.(1)** This section applies if a police officer reasonably suspects a thing at or about a place, or in the possession of a person at or about a place is evidence of the commission of an offence and the evidence may be concealed or destroyed unless the place is immediately entered and searched.

**(2)** The police officer may enter the place and exercise the powers under section 29 (other than power to do something that may cause structural damage to a building) as if they were conferred under a search warrant.

**(3)** As soon as reasonably practicable after exercising the powers, the police officer must apply to a magistrate for an order approving the search.

**(4)** The magistrate may make an order approving the search only if satisfied—

(a) in the circumstances existing before the search—

- (i) the police officer, before exercising the powers, had a reasonable suspicion for exercising the powers; and
- (ii) there was a reasonable likelihood that the evidence would be concealed or destroyed; or

(b) having regard to the nature of the evidence found during the search it is in the public interest to make the order.

**(5)** If the magistrate refuses to make an order under this section, the magistrate may order that the police officer retain, dispose of, return or destroy anything seized.

**(6)** Within 28 days after a magistrate orders the disposal, return or destruction of a thing, a police officer may appeal against the order to the Supreme Court.

**(7)** If the police officer appeals, the police officer must retain the thing seized until the appeal is decided.

**(8)** The court may order the retention, disposal, return or destruction of the thing.

**(9)** In this section—

**“offence”** means an indictable offence, an offence involving gaming or betting, or an offence against any of the following Acts—



- *Animals Protection Act 1925*
- *Crimes (Confiscation) Act 1989*
- *Nature Conservation Act 1992*
- *Weapons Act 1990.*

### **Notice to produce documents**

**32.(1)** This section applies if a police officer reasonably suspects a financial institution holds documents that may be evidence of the commission of an offence by someone else.

**(2)** The police officer may, instead of applying for a search warrant, apply to a magistrate for the issue of a notice (a “**notice to produce**”) requiring the financial institution to produce stated documents to a police officer.

**(3)** The application must—

- (a) be sworn and state the grounds on which the notice to produce is sought; and
- (b) include information specified in the responsibilities code about any notices to produce 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 relates.

**(4)** The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

**(5)** The magistrate may issue the notice to produce only if satisfied there are reasonable grounds for suspecting—

- (a) documents the financial institution holds may be evidence of the commission of an offence; and
- (b) the financial institution is not a party to the offence.

**(6)** The magistrate may, in the notice to produce, require the documents

to be produced to a police officer within a stated time and at a stated place.

(7) A police officer must give the notice to produce to the financial institution named in the notice as soon as reasonably practicable after it is issued.

### **Procedural requirements—notice to produce**

**33.(1)** A financial institution given a notice to produce must comply with the notice.

(2) The financial institution is not subject to any liability for complying with, or producing something in the honest belief that it was complying with, a notice to produce.

(3) If, under the notice, the financial institution produces documents the financial institution claims contain privileged communications between the financial institution and someone else, the police officer must as soon as reasonably practicable apply to a magistrate for an order for access to the documents.

(4) The police officer may retain the documents but must not inspect them until the application is decided.

(5) The magistrate, or a justice authorised in writing by the magistrate, may order—

- (a) that the police officer be given access to the documents; or
- (b) that the documents be copied by the police officer and the original documents returned to the financial institution; or
- (c) that the documents be returned to the financial institution.

(6) An order under subsection (5)(b) in relation to a document in electronic form authorises the police officer to produce a hard-copy of the information contained in the document.

(7) Also, an order under subsection (5)(b) may include a condition that if a police officer asks, the document must again be produced to a court hearing a proceeding for an offence for which the document is to be used as evidence.

(8) A document produced under this section is taken to have been seized under this Act.

(9) The Criminal Code, section 205,<sup>10</sup> and section 120 of this Act does not apply to this section.

## **PART 6—POWER TO SEIZE EVIDENCE**

### **Power to seize evidence**

**34.(1)** This section applies if a police officer lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence.<sup>11</sup>

(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if under a warrant, whether or not the offence is one in relation to which the warrant is issued.

(3) Also, the police officer may photograph the thing seized or the place from which the thing was seized.

(4) The police officer may stay on the place and re-enter it for the time reasonably necessary to remove the thing from the place.

## **PART 7—POWERS RELATING TO ARREST**

### *Division 1—Arrest generally*

#### **Arrest without warrant**

**35.(1)** It is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following

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<sup>10</sup> Section 205 (Disobedience to lawful order issued by statutory authority)

<sup>11</sup> For safeguards for this section, see part 12 (Standard safeguards), division 4 (Safeguards for things seized during searches).

reasons—

- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
- (b) to make inquiries to establish the person's identity;
- (c) if a person contravenes a requirement made under section 57(1)(b)(ii)<sup>12</sup>—to obtain identifying particulars of the person;
- (d) to ensure the person's appearance before a court;
- (e) to obtain or preserve evidence relating to the offence;
- (f) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
- (g) to prevent the fabrication of evidence;
- (h) to preserve the safety or welfare of any person, including the person arrested;
- (i) to prevent a person fleeing from the officer or the location of the offence;
- (j) because the person has committed an offence against section 120;<sup>13</sup>
- (k) because of the nature and seriousness of the offence.<sup>14</sup>

(2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence under part 8 or investigating the offence.

(3) Subsection (1) does not apply to a child.<sup>15</sup>

<sup>12</sup> Section 57 (Power to fingerprint, photograph etc.)

<sup>13</sup> Section 120 (Assault etc. of police officer)

<sup>14</sup> For safeguards for this part, see sections 112 (Supplying police officer's details etc.), 113 (Information to be given to arrested person) and 114 (Parent and chief executive must be advised of arrest of child). Other safeguards in part 12 (Standard safeguards) may also apply.

<sup>15</sup> For provisions applying to the arrest of children, see the *Juvenile Justice Act 1992*.

**Arrest with warrant**

**36.(1)** It is lawful for a police officer acting under a warrant issued under any other Act or law to arrest the person named in the warrant.

**(2)** In this section—

“**arrest**” includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

**Power of arrest for offences committed outside the State**

**37.(1)** This section applies to an offence (an “**extradition offence**”) that—

- (a) is an offence against the law of another State; and
- (b) is an indictable offence or an offence for which the maximum penalty is at least 2 years imprisonment.

**(2)** Despite section 35, a police officer may, without warrant, arrest a person the police officer reasonably suspects has committed an extradition offence.

**(3)** The person may be detained in custody under this Act and questioned in relation to the extradition offence by either of the following, as if the offence had been committed in Queensland—

- (a) a police officer;
- (b) a member of the police force or service of the State where the offence happened.

**(4)** Unless the person is released without being charged with the extradition offence, the person must be taken before a court as soon as practicable after questioning ends.

**(5)** The *Justices Act 1886* and the *Bail Act 1980* apply to a person arrested for an extradition offence as if the offence were committed in Queensland, but only to allow a person to apply, within 7 days, for the extradition of the person to the State where the extradition offence is alleged to have been committed.

**(6)** If a proceeding for the person’s extradition is not started within 7 days—

- (a) the person, if remanded in custody, must be released from custody; and
- (b) any order for bail is discharged.

### **Arrest may be discontinued**

**38.(1)** It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer a suspect.

**(2)** Also, for an arrested person who is not a child, it is the duty of a police officer to release the person at the earliest reasonable opportunity if—

- (a) the reason for arresting the person no longer exists or is unlikely to happen again if the person is released; and
- (b) it is more appropriate to take the person before a court by notice to appear or summons and the notice to appear or summons has been served on the person.

**(3)** Further, for a child arrested under section 35(2), it is the duty of a police officer to release the child at the earliest reasonable opportunity if—

- (a) the reason for arresting the child no longer exists; and
- (b) after considering the circumstances under section 115<sup>16</sup>—it is more appropriate to deal with the child in a way provided by that section.

**(4)** Subsection (2) does not apply to a person who is arrested—

- (a) to prevent the person fleeing from the police officer or the location of the offence; or
- (b) if, because of the nature and seriousness of an offence for which the person is a suspect, it is inappropriate to release the person.

**(5)** Subsection (3) does not apply to a child who is arrested if, because of the nature and seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.

**(6)** A person suspected of having committed an indictable offence and released under this section can not be re-arrested for the offence unless—

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<sup>16</sup> Section 115 (Police officer to consider alternatives to proceeding against child)

- (a) the person is harassing or interfering with a person who may be required to give evidence relating to the offence; or
- (b) because of new evidence, a police officer forms a reasonable suspicion that the person is responsible for the offence; or
- (c) the person is likely to fail to appear before a court to answer a charge against the person for the offence.

### **Person arrested to be taken before justice**

**39.** It is the duty of a police officer who arrests a person on a charge of an offence, as soon as reasonably practicable, to take the person before a justice to be dealt with according to law unless—

- (a) the person is released under section 38 or granted bail; or
- (b) for an indictable offence—the person is being detained in custody under part 8.<sup>17</sup>

### *Division 2—Alternative to arrest*

### **Notice to appear may be issued for offence**

**40.(1)** The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against a person who is not a child that does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.<sup>18</sup>

**(2)** If a police officer reasonably suspects that a person has committed or is committing an offence, the police officer may issue and serve a notice to appear on the person.<sup>19</sup>

**(3)** A notice to appear must be personally served on a person.

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<sup>17</sup> Part 8 (Investigations and questioning)

<sup>18</sup> For starting proceedings against children by attendance notices, see the *Juvenile Justice Act 1992*.

<sup>19</sup> A notice to appear differs from a complaint and summons in requiring the police officer with the suspicions mentioned to also serve the notice.

**Notice to appear form**

**41.(1)** A notice to appear must—

- (a) state the substance of the offence alleged to have been committed; and
- (b) state the name of the person alleged to have committed the offence; and
- (c) require the person to appear before a Magistrates Court in relation to the offence at a stated time and place; and
- (d) be signed by the police officer serving the notice to appear.

**(2)** The place stated in a notice to appear for the person to appear before the court must be a place where the court will be sitting at the time stated.

**(3)** The time stated in a notice to appear for the person to appear before the court must be a time at least 7 days after the notice is served.

**Notice to appear must be filed in court without cost to person**

**42.(1)** Before the time a person is required by a notice to appear, to appear before a Magistrates Court, the notice to appear must be filed with the clerk of the court at the place where the person is required to appear.

**(2)** A person must not be ordered to pay filing costs in the proceeding for the offence.

**General particulars only are required on a notice to appear**

**43.(1)** The statement mentioned in section 41(1)(a) need only provide general particulars of the offence, for example—

- (a) the type of offence; and
- (b) time and place it is alleged to have been committed.

**(2)** If 2 or more matters are properly joined in 1 notice to appear under the *Justices Act 1886*, section 43(1), then, despite section 43(2) and (3) of that Act—

- (a) each matter need not be set out in a separate paragraph; and



- (b) objection can not be taken to the notice to appear because each matter is not set out in a separate paragraph.

### **Particulars of notice to appear offence must be given in the proceeding**

**44.(1)** Section 43 does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

(2) When a person on whom a notice to appear has been served appears before the Magistrates Court in response to the notice, the court must ensure that the person is provided promptly with proper particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

### **Notice to appear equivalent to a complaint and summons**

**45.(1)** A statement under section 41(1)(a) is taken to be a complaint under the *Justices Act 1886*.

(2) A requirement made by a police officer under section 41(1)(c) is taken to be a summons issued by a justice under the *Justices Act 1886*.

(3) Subject to this Act, the *Justices Act 1886* and any other Act applies to a notice to appear in the same way as it applies to a complaint and summons.

### **Court may order immediate arrest of person who fails to appear**

**46.(1)** Subject to section 47, if a person fails to appear before a Magistrates Court as required by a notice to appear served on the person, the court may order that a warrant issue for the arrest of the person to be brought before the court to be dealt with according to law.

(2) A court may order that a warrant issue for the arrest of a person under subsection (1) only if it is satisfied—

- (a) on oath or by deposition under the *Justices Act 1886*, section 56(3) that the person was served in time for it to be practical for the person to appear before the court; and
- (b) on oath that there is evidence substantiating the offence for which

the notice to appear was served.

(3) Any justice may issue the warrant.

### **Court must strike out notice to appear if service insufficient**

**47.(1)** If a person fails to appear before a Magistrates Court as required by a notice to appear and the court is not satisfied the person was served as required under this Act, the court must strike out the notice to appear.

(2) The striking out of a notice to appear under subsection (1) does not prevent another proceeding being started for the offence for which the notice to appear was served.

## **PART 8—INVESTIGATIONS AND QUESTIONING**

### **Application of part**

**48.(1)** This part applies only to a person questioned in relation to, or detained for investigating, an indictable offence.

(2) Also, this part applies only to a person who—

- (a) is lawfully arrested for an indictable offence; or
- (b) is refused bail; or
- (c) is in custody because bail has been revoked; or
- (d) is in custody under a sentence of imprisonment or, for a child, a detention order.

### **Removal of persons from lawful custody**

**49.(1)** This section applies to a person who is in custody under the *Corrective Services Act 1988* or the *Juvenile Justice Act 1992*—

- (a) because the person has been refused bail, or bail has been revoked; or
- (b) under a sentence of imprisonment or, for a child, a detention

order.

(2) A police officer may apply to a magistrate for an order for the removal of a person in custody to the custody of a police officer (“**police custody**”) for investigating an offence.

(3) The application must—

- (a) be made in person; and
- (b) be sworn and state the grounds on which the order is sought.

(4) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(5) The magistrate may order the removal of the person into police custody if the magistrate is satisfied the custody is reasonably necessary for the purpose of investigating an offence.

(6) The person in charge of the prison or detention centre in which the person named in the order is held must comply with the order.

(7) A police officer must return the person to lawful custody as soon as practicable after the detention period ends.

### **Initial period of detention for investigation or questioning**

**50.(1)** A police officer may detain a person mentioned in section 48(2) for a reasonable time to investigate, or question the person about—

- (a) if the person is in custody following an arrest for an indictable offence—the offence for which the person was arrested; or
- (b) in any case—any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody.

(2) However, the person must not be detained for more than 8 hours, unless the person is charged with an indictable offence or is lawfully held in custody.

**(3)** In the 8 hours mentioned in subsection (2) (the “**detention period**”)—

- (a) the person may be questioned for not more than 4 hours; and
- (b) the time-out period may be more than 4 hours.

**(4)** The detention period starts when the person is—

- (a) arrested; or
- (b) taken into police custody under section 49;<sup>20</sup> or
- (c) taken from a watch house; or
- (d) otherwise in the company of a police officer for the purpose of questioning the person as a suspect about his or her involvement in an offence.

### **Extension of detention period**

**51.(1)** Subject to section 52, a police officer may apply for an extension of the detention period before the period ends.

**(2)** The application must be made to—

- (a) a magistrate; or
- (b) a justice of the peace (magistrates court); or
- (c) if there is no magistrate or justice of the peace (magistrates court) available—another justice of the peace other than a justice of the peace (commissioner for declarations).

**(3)** When making the application, the police officer must give to the justice or magistrate the information about any time out the police officer reasonably anticipates will be necessary.

**(4)** The person or the person’s lawyer may make submissions to the magistrate or justice about the application but not submissions that unduly delay the consideration of the application.

**(5)** The justice or magistrate may extend the detention period for a reasonable time if satisfied—

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<sup>20</sup> Section 49 (Removal of persons from lawful custody)

- (a) the nature and seriousness of the offence require the extension; and
- (b) further detention of the person is necessary—
  - (i) to preserve or obtain evidence of the offence or another indictable offence; or
  - (ii) to complete the investigation into the offence or another indictable offence; or
  - (iii) to continue questioning the person about the offence or another indictable offence; and
- (c) the investigation is being conducted properly and without unreasonable delay; and
- (d) the person, or the person's lawyer, has been given the opportunity to make submissions about the application.

**(6)** The justice or magistrate must state, in the order—

- (a) how much time is to be allowed as time out; and
- (b) the time, of not more than 8 hours, for which the person may be questioned.

**(7)** The person may continue to be detained for the total of the periods decided under subsection (6).

**(8)** However, if the total questioning period since the detention began is more than 12 hours, only a magistrate may grant an extension or extensions of the questioning for a reasonable time, of not more than 8 hours on each occasion.

*Example—*

A magistrate may grant an extension of 8 hours for questioning and a further 12 hours for reasonable time out, requiring a further application to be made within 20 hours after extending the period of detention.

**(9)** If an application for an extension of the detention period is made before the detention period ends, the detention of a person does not end, unless the justice or magistrate refuses to extend the detention period.

**Effect of unforeseen delays on detention**

**52.(1)** If, because of reasonably unforeseen time out, a delay happens in making an application for an extension of the initial period of detention of a person, the detention of the person continues to be lawful but only for the time necessary to enable the application to be made and decided.

**(2)** If, because of reasonably unforeseen time out—

- (a) questioning of a person during an extended detention period is suspended or delayed; or
- (b) a delay happens in making an application for an extension of the detention of the person;

the detention of the person beyond the end of the detention period continues to be lawful and the time allowed for questioning is not affected.

*Example of unforeseen time out—*

A police car used to transport a suspect from Burketown to Mount Isa breaks down or can not get through because of impassable roads and the magistrate can not be contacted by phone or radio.

**Effect of another arrest on questioning period**

**53.** If a person is detained for questioning under this part more than once in any period of 24 hours and questioned for a total of more than 4 hours in the 24 hours, a police officer must not continue to question the person unless the detention period is extended under section 51.<sup>21</sup>

*Example—*

If a person who has been arrested for a stealing offence, questioned for 3 hours is again arrested within a 24 hour period for a break and enter offence, a police officer can only question the person for 1 hour before being required to apply for an extension of the detention period.

**When does detention period start for offenders arrested outside Queensland**

**54.(1)** This section applies if, because of the *Service and Execution of Process Act 1992* (Cwlth), a person—

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<sup>21</sup> Section 51 (Extension of detention period)

- (a) has been arrested in another State for an indictable offence committed in Queensland; or
  - (b) has appeared before a magistrate in another State for an indictable offence committed in Queensland.
- (2) For this part, the detention period for the person starts—
- (a) if, under the law of the other State, a Queensland police officer may question the person in the other State—when the Queensland police officer starts to question the person for the offence; or
  - (b) when the person arrives in Queensland in the company of a Queensland police officer for the purpose of being questioned for the offence.

### **Persons helping in covert investigations not under arrest**

**55.(1)** This section applies to covert investigations conducted by a police officer into whether a person other than a person who is in custody following an arrest has been involved in the commission of an offence or suspected offence.

(2) For this part, if the person in custody following an arrest agrees voluntarily to take part in the covert investigation, the person stops being under arrest for the offence.

(3) However, subsection (2) does not prevent the person from being rearrested for the offence.

## **PART 9—POWERS IN RELATION TO PERSONS IN CUSTODY**

### *Division 1—Search of persons in custody*

#### **Search of persons in custody**

**56.(1)** This section applies if a person—

- (a) is lawfully arrested, refused bail, or is in custody because bail has been revoked; or
- (b) is in custody under a sentence of imprisonment or, for a child, a detention order; or
- (c) is otherwise lawfully detained under another Act.

(2) A police officer may search and re-search a person to whom this section applies.

(3) A police officer may seize from the person anything found on the search that the police officer reasonably suspects may provide evidence of the commission of an offence.

(4) Also, the police officer may take and retain, while the person is in custody, anything that—

- (a) may endanger anyone's safety; or
- (b) may be used for an escape; or
- (c) the police officer reasonably considers should be kept in safe custody while the person is in custody.

### *Division 2—Taking identifying particulars*

#### **Power to fingerprint, photograph etc.**

**57.(1)** If a police officer starts a proceeding against a person for a relevant offence—

- (a) if the person is in custody in relation to the offence—any police officer may, as soon as is reasonably practicable, take or photograph all or any of the person's identifying particulars; or
- (b) if a police officer decides to start the proceeding by notice to appear or complaint and summons—the police officer may—
  - (i) before or when serving the notice to appear or complaint and summons—detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars and take or photograph those particulars; or



(ii) by written notice, require the person to attend at a stated police station within 48 hours to enable a police officer to take or photograph all or any of the person's identifying particulars; or

(c) if the person is to be released after arrest for the offence—a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars and take or photograph those particulars.

(2) A notice under subsection (1)(b)(ii) must be given to the person with the notice to appear or complaint and summons and may be proved on oath or by deposition under the *Justices Act 1886*, section 56(3).

(3) A police officer must warn the person it is an offence to contravene a requirement under subsection (1)(b)(ii).

(4) A person must comply with a requirement under subsection (1)(b)(ii).<sup>22</sup>

(5) If, in a proceeding for a charge of a relevant offence against a person—

(a) a police officer applies to a magistrate for an order for taking identifying particulars of the person; and

(b) the magistrate is satisfied it is necessary to take or photograph the person's identifying particulars to assist in—

(i) identifying the person in relation to the offence or another offence the person is suspected to have committed; or

(ii) confirming the person's identity; or

(iii) finding out the person's criminal history; or

(iv) keeping criminal records;

the magistrate may order that the particulars be taken and the person charged be held in custody for up to 1 hour to enable them to be taken.

(6) If a person attends at a police station as required under a notice under subsection (1)(b)(ii), a police officer may take or photograph all or any of the person's identifying particulars.

<sup>22</sup> For the offence, see section 120 (Assault etc. of police officer).

(7) A police officer may use reasonable force other than for obtaining identifying particulars that are handwriting or voice prints.

(8) Subsections (1)(b) and (5) do not apply to a proceeding started against a child for a relevant offence.<sup>23</sup>

(9) In this section—

**“relevant offence”** means—

- (a) an offence for which the maximum penalty is at least 1 year’s imprisonment; or
- (b) an offence against this Act or any of the following Acts—
  - (i) the *Regulatory Offences Act 1985*;
  - (ii) the *Vagrants, Gaming and Other Offences Act 1931*;
  - (iii) the *Weapons Act 1990*.

### **Destruction of identifying particulars**

**58.** If a person is found not guilty of a relevant offence or is not further proceeded against, any identifying particulars taken in relation to the offence must be destroyed within a reasonable time in the presence of a justice, unless—

- (a) the person has been proceeded against on a charge of another relevant offence that has not been decided; or
- (b) the person has been found guilty of another relevant offence; or
- (c) the identifying particulars are required as evidence in relation to another relevant offence alleged to have been committed by the person; or
- (d) the person is not proceeded against because he or she has been found incapable of standing trial because of mental illness.

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<sup>23</sup> For fingerprinting etc. of children see the *Juvenile Justice Act 1992*, sections 10, 10A, 10B, 10C and 194A.

**Identification of suspects**

**59.(1)** It is lawful for a police officer to use 1 or more of the following procedures to help gather evidence of the identity of a person suspected of having committed an offence—

- (a) an identification parade;
- (b) a photo board containing at least 12 photos of people of similar appearance, 1 of whom is the suspect;
- (c) videotape;
- (d) computer generated images.

**(2)** The police officer must comply with the procedures in the responsibilities code for identifying suspects.

*Example—*

The responsibilities code may include procedures for electronic recording of identifying particulars.

**(3)** The police officer may ask a person to take part in an identification parade.

**(4)** The person may refuse to take part in the parade.

**(5)** This section does not limit the procedures a police officer may use to help gather evidence of the identity of a person suspected of having committed an offence.

***Division 3—Medical and dental procedures*****Consent or approval needed for performing medical or dental procedure**

**60.(1)** Before a doctor or dentist performs a medical or dental procedure under this part, a police officer must tell the person on whom it is to be performed—

- (a) that the act can not be done without the person's consent<sup>24</sup> or a

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<sup>24</sup> Under section 62(2) (Performing medical and dental procedures with consent), the consent must be written or electronically recorded.

magistrate's approval;<sup>25</sup> and

- (b) that the person has the right to have 2 people of his or her choice present while it is being done.

(2) If the person is a child, the consent must be given in the presence of 1 of the following—

- (a) the child's parent or guardian;
- (b) the child's lawyer;
- (c) for an Aborigine or Torres Strait Islander child whose parent, guardian or lawyer is not available—an adult Aborigine or Torres Strait Islander, acceptable to the child, who is a friend of the child or does not have an interest in the matter to which the charge relates;
- (d) for a child (other than an Aborigine or Torres Strait Islander) whose parent, guardian or lawyer is not available—an adult, acceptable to the child, who is a friend of the child or does not have an interest in the matter to which the charge relates; or
- (e) if no-one mentioned in paragraphs (a) to (d) is available—an independent person who is a justice.

(3) Also, if the act is to be done under a magistrate's approval under this division, the police officer must give to the person and the doctor or dentist a copy of the order.

### **Presence of independent person required**

**61.(1)** If a person gives to a police officer the name of someone the person wishes to have present as an independent person while a medical or dental procedure is being performed on the person, the police officer must take reasonable steps to advise the person named of the wish.

(2) The person must pay the cost of the independent person's attendance.

(3) Also, the medical or dental procedure can not be performed in the absence of the independent person, unless a reasonable time has been

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<sup>25</sup> The approval is given under section 63 (Magistrate may approve performance of medical or dental procedure).

allowed for the independent person to arrive at the place where it is to be done.

(4) The lawfulness of the detention in custody of a person or of the performance of a medical or dental procedure is not affected by the absence, while the procedure is being performed, of an independent person the person in custody wishes to have present if—

- (a) after having indicated that he or she is willing and able to attend—the person fails to attend within a reasonable time; or
- (b) evidence is likely to be lost or destroyed if the medical or dental procedure is delayed to allow the independent person to attend.

### **Performing medical and dental procedures with consent**

**62.(1)** This section applies if a person suspected of committing an indictable offence consents to the performance of a medical or dental procedure on the person under this section.

(2) The consent must be written or electronically recorded.

(3) A doctor may do any of the following that may provide evidence of the commission of the offence—

- (a) examine the person's body, including the orifices of the person's body;
- (b) take samples of the person's blood, saliva or hair;
- (c) if a police officer requires the person to provide a sample of the person's urine—ask the person to provide the sample;
- (d) collect from the person's body, including the orifices of the person's body, any substance or thing.

(4) A dentist may do any of the following that may provide evidence of the commission of the offence—

- (a) examine the person's mouth;
- (b) take samples of the person's saliva;
- (c) take dental impressions of the person's mouth;
- (d) examine any bite mark on the person.

(5) The doctor or dentist may also photograph anything relevant to the examination.

(6) If help is needed to perform the relevant procedure, the person performing the procedure may, subject to subsection (8), ask other persons to give reasonably necessary help.

(7) The person must not perform a procedure under subsection (3) with another person's help, unless the person helping is someone mentioned in subsection (8).

(8) The persons for subsection (7) are—

- (a) a person of the same sex as the detainee; or
- (b) a doctor; or
- (c) if a person mentioned in paragraph (a) or (b) can not reasonably be called on to give the necessary help—anyone else who is asked to help and acts at the doctor's direction.

(9) It is lawful for a person helping someone under this section to use reasonably necessary force for the purpose.

(10) The person performing the procedure must immediately stop performing the procedure if the person withdraws the person's consent.

(11) However, withdrawal of consent does not affect the admissibility in evidence of anything observed, taken or collected before the consent was withdrawn.

### **Magistrate may approve performance of medical or dental procedure**

**63.(1)** If a person is in custody for an indictable offence, a police officer may apply to a magistrate for an order approving the performance of a medical or dental procedure on the person whether or not the person has consented to the procedure.

(2) The application must be sworn and state the grounds on which it is made.

(3) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate must not approve the performance of a medical or dental procedure unless satisfied—

- (a) the person is in lawful custody for an indictable offence; and
- (b) there are reasonable grounds for believing performing the procedure may provide evidence of the commission of the offence.

(5) The magistrate may order that the person be taken to a stated appropriate place for the performance of the procedure.

(6) A magistrate must make the order in the approved form.

### **Performing medical and dental procedures without consent**

**64.(1)** This section applies if—

- (a) a person (the “**detainee**”) is in custody for an indictable offence; and
- (b) a magistrate approves the performance of the procedures; and
- (c) a police officer asks a doctor or dentist to perform the procedures.

(2) A doctor acting in good faith may do any of the following that may provide evidence of the commission of the offence—

- (a) examine the detainee’s body, including the orifices of the person’s body;
- (b) take samples of the detainee’s blood, saliva or hair;
- (c) require the person to provide a sample of the detainee’s urine;
- (d) collect from the detainee’s body, including the orifices of the detainee’s body, any substance or thing if collecting it would be unlikely to cause grievous bodily harm to the detainee if the detainee cooperates with the doctor.

(3) A dentist acting in good faith may do any of the following that may provide evidence of the commission of the offence—

- (a) examine the detainee's mouth;
- (b) take samples of the detainee's saliva;
- (c) take dental impressions of the detainee's mouth;
- (d) examine any bite mark on the detainee.

(4) The doctor or dentist may also photograph anything relevant to the examination.

(5) If help is needed to perform the relevant procedure, the person performing the procedure may, subject to subsection (6), ask other persons to give reasonably necessary help.

(6) The person must not perform a procedure under subsection (2), unless the person helping is someone mentioned in subsection (7).

(7) The persons for subsection (6) are—

- (a) a person of the same sex as the detainee; or
- (b) a doctor; or
- (c) if a person mentioned in paragraph (a) or (b) can not reasonably be called on to give the necessary help—anyone else who is asked to help and acts at the doctor's direction.

(8) It is lawful for a person performing, or helping someone perform, a medical or dental procedure under this section to use reasonably necessary force for the purpose.

### **Power to analyse samples**

**65.(1)** It is lawful for a person to analyse any sample, substance, thing, impression or photograph taken under this Act.

(2) It is lawful for a police officer to keep the results of anything done under subsection (1) for use in a proceeding for an offence.

### **Samples and test results to be given to person**

**66.(1)** A person who takes or collects a sample or other thing from another person must, if practicable, give to the other person a part of the sample or thing or an equivalent sample or thing for the other person's own



purposes.

(2) As soon as reasonably practicable after a police officer is given the results of any test conducted using a sample or other thing taken or collected under this part, the police officer must give to the person to whom the results relate, or someone else nominated by the person, a copy of the results.

## PART 10—SURVEILLANCE POWERS

### **Certain Acts do not apply to this part**

67. The *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to activities or records under this part.

### **Surveillance warrants**

68.(1) This section applies if a police officer reasonably believes a person (the “**suspect**”) has committed, is committing or is about to commit an indictable offence.

(2) A police officer of at least the rank of inspector may apply for a warrant (“**surveillance warrant**”) authorising the use of a surveillance device.

(3) If the application is for a surveillance warrant for—

(a) a class A device or a class A and a class B device to be used together—the application must be made to a Supreme Court judge; or

(b) a class B device—the application must be made to a magistrate.

(4) The police officer may apply for a surveillance warrant for a class A device only if the offence is a serious indictable offence

(5) The application must—

(a) be sworn and state the grounds on which the warrant is sought; and

- (b) include information specified in the responsibilities code about any warrants issued within the previous year in relation to the place or suspect specified in the application.

(6) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor

(7) The judge or magistrate (the “**issuer**”) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

*Example—*

The issuer may require additional information supporting the application to be given by statutory declaration.

(8) The issuer must hear the application in the absence of anyone other than the following—

- (a) the applicant;
- (b) a monitor;
- (c) someone the issuer permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(9) Also, the issuer must hear the application—

- (a) in the absence of the suspect or anyone likely to inform the suspect of the application; and
- (b) without the suspect having been informed of the application.

(10) In particular, and being mindful of the highly intrusive nature of a surveillance warrant, the issuer must consider the following—

- (a) the nature and seriousness of the suspected offence;
- (b) for a class A device—if the warrant is issued, the likely extent of interference with the privacy of—
  - (i) the suspect; or
  - (ii) any other occupant of the place;
- (c) the extent to which issuing the warrant would help prevent, detect or provide evidence of the offence;
- (d) the benefits derived from the issue of any previous surveillance

warrants in relation to the suspect;

- (e) the extent to which police officers investigating the offence have used or can use conventional ways of investigation;
- (f) how much the use of conventional ways of investigation would be likely to help in the investigation of the offence;
- (g) how much the use of conventional ways of investigation would prejudice the investigation of the offence because of delay or for another reason;
- (h) any submissions made by a monitor.

**(11)** The issuer may issue the warrant if satisfied there are reasonable grounds for believing a person at a place, or likely to be at a public place or a class of place, mentioned in the application has been, is, or is likely to be involved in the commission of an indictable offence.

**(12)** However, if, under a surveillance warrant for a class A device, a visual surveillance device is to be installed in a dwelling, the issuer must specify in the warrant the parts of the dwelling in which the device may be installed.

**(13)** Also, the issuer must not issue a warrant for the use of a class A device in the office of a practising lawyer unless the application for the warrant relates to the lawyer's involvement in a serious indictable offence.

**(14)** The warrant must authorise a stated police officer or all police officers to exercise the powers under section 70.<sup>26</sup>

**(15)** The issuer may impose any conditions on the warrant that the issuer considers are necessary in the public interest including, but not limited to—

- (a) a condition requiring regular reporting to the issuer on activities under the warrant; and
- (b) a condition requiring that, if a listening device is to be used in a public place or class of place, the police officer, before installing or using the device, must have a reasonable belief that the suspect is or will be in the place where the device is to be used.

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<sup>26</sup> Section 70 (Powers under surveillance warrants)

*Example for subsection 15(b)—*

The warrant may be issued for any motel in a stated area because the police officer may have a reasonable belief that the person may be in a motel but not know in advance which one, but the device may only be installed if the police officer believes the person is likely to be in the place.

(16) The issuer may, after considering any report made under subsection (15)(a), require the destruction of any recordings made that are not related to the offence mentioned in the warrant, unless the recording relates to the investigation of another indictable offence.

(17) A surveillance warrant is in force for 30 days or a shorter time stated in the warrant and may be extended from time to time on application.

(18) The provisions of this section for an application for a warrant apply to an application for an extension with all necessary changes.

(19) Despite subsection (17), the warrant stops having effect before the end of the period mentioned in subsection (17) if the investigation under the warrant ends, unless, while using the surveillance device under the warrant for the original investigation, evidence is gained of another serious indictable offence or, for a tracking device, another indictable offence.

(20) Despite the *Recording of Evidence Act 1962*, a transcript of the application or any order made on it must not be made.

(21) A person must not publish a report of a proceeding on an application under subsection (2) or (17).

Maximum penalty for subsection (21)—85 penalty units or 1 year's imprisonment.

(22) A person is not entitled to search information in the custody of a court in relation to an application under subsection (2) or (17), unless a judge otherwise orders.

### **Emergency use of surveillance devices**

**69.(1)** This section applies if a police officer reasonably believes—

- (a) there is a risk of serious injury to a person; and
- (b) using a surveillance device may help reduce the risk.

(2) A police officer of at least the rank of inspector may authorise the use

of a surveillance device.

(3) For using a surveillance device under an authority under this section, a police officer may exercise any of the powers a police officer may exercise under a surveillance warrant.

(4) Within 2 working days after authorising the use of a surveillance device, the police officer who authorised its use must apply to a Supreme Court judge for approval of the exercise of the powers under subsection (2).

(5) Section 68(5) to (10) and (20) to (22) applies to the application with all necessary changes, including that a reference to a warrant is taken to be a reference to an approval.

(6) The judge may require the destruction of any recordings made that were not related to the purpose for which the surveillance device was used.

(7) After considering the application, the Supreme Court judge may approve the exercise of the powers under subsection (2).

(8) Evidence obtained because of the exercise of powers approved under subsection (7) is admissible in a proceeding for an offence.

(9) Information obtained under this section may be provided to any person or organisation involved in helping reduce the risk of serious injury to a person.

### **Powers under surveillance warrants**

**70.** A police officer who executes a surveillance warrant has the following powers under the warrant—

- (a) for a surveillance warrant—
  - (i) for a class A device—power to enter a specified place or class of place, covertly or through subterfuge, to install, maintain, replace or remove a surveillance device; or
  - (ii) for a class B device—power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (b) for a listening device or visual surveillance device—power to intercept and record conversations and monitor and record visual images even though it may otherwise constitute an offence under

the *Invasion of Privacy Act 1971*;

- (c) power to take electricity for using a surveillance device;
- (d) power to use reasonable force to install, maintain, replace or remove a surveillance device;
- (e) power to use 1 or more surveillance devices, whether of the same or a different kind, in the same place;
- (f) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

### **Disclosure of information obtained using surveillance warrant**

**71.(1)** This section applies to information that has not been disclosed in a proceeding in open court and was obtained by using a surveillance warrant (the “**relevant information**”).

**(2)** A police officer who obtained relevant information must not disclose the information to someone other than—

- (a) the judge or magistrate who issued the warrant or a judge or magistrate hearing an application for an extension of the warrant or an application under section 69 or an application for a warrant in relation to the same or a different person; or
- (b) a court taking evidence about a charge of an offence in which the information is evidence; or
- (c) the commissioner or a person authorised by the commissioner; or
- (d) another police officer involved in—
  - (i) the investigation into the relevant criminal activity for which the powers were exercised; or
  - (ii) an investigation of any indictable offence started because of information obtained under the warrant or linked to the offence under investigation; or
  - (iii) a proceeding in which the information is evidence; or
- (e) a declared law enforcement agency; or
- (f) a public prosecutor, but only for use in a proceeding in which the information is evidence or for an application for an extension of

the warrant or an application under section 69 or the issue of another surveillance warrant; or

- (g) a lawyer representing a person in a proceeding in which the information is evidence; or
- (h) a monitor; or
- (i) a person transcribing or making copies of recordings.

### **Register to be kept**

**72.(1)** The commissioner must keep a register of information disclosed under section 71(2)(d)(ii) or (e).

**(2)** The commissioner must keep the register in a secure place.

**(3)** The register must state—

- (a) the name of the person to whom the information is disclosed; and
- (b) brief particulars of the information disclosed and the reasons for disclosing it; and
- (c) when the information was disclosed.

**(4)** The register is not open to inspection by anyone other than—

- (a) the commissioner; or
- (b) a police officer or declared law enforcement agency conducting an investigation into a serious indictable offence in which the information may be relevant; or
- (c) a monitor; or
- (d) the Supreme Court judge or the magistrate who issued or extended the warrant.

**(5)** This section does not apply to information that has been used in a proceeding as evidence.

### **Destruction of records**

**73.(1)** The commissioner must keep all information obtained under a surveillance warrant and transcripts of recordings made under the warrant in a secure place.

(2) The commissioner must ensure any recording or photograph made under the powers of a surveillance warrant or a transcript or copy made from information obtained under the powers is destroyed as soon as practicable after it is no longer required.

(3) Subsection (2) does not prevent information relevant to any offence of which anyone has been convicted being preserved for any period or indefinitely if there is any possibility that an issue about the conviction may arise.

### **Covert search warrants**

**74.(1)** A police officer of at least the rank of inspector may apply to a Supreme Court judge for a warrant under this section (a “**covert search warrant**”) to enter and search a place for evidence of organised crime.

(2) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information specified in the responsibilities code about any warrants issued within the previous year in relation to the place or suspect specified in the application.

(3) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor

(4) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.

*Example—*

The judge may require additional information supporting the application to be given by statutory declaration.

(5) The judge must hear the application in the absence of anyone other than the following—

- (a) the applicant;
- (b) a monitor;
- (c) someone the judge permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).



(6) Before issuing the warrant, and being mindful of the highly intrusive nature of a covert search warrant, the judge must consider the following—

- (a) the nature and seriousness of the suspected offence;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of, the offence;
- (c) the benefits derived from any previous covert search warrants, search warrants or the use of any surveillance device in relation to the suspect or place;
- (d) the extent to which police officers investigating the offence have used or can use conventional ways of investigation;
- (e) how much the use of conventional ways of investigation would be likely to help in the investigation of the offence;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the offence;
- (g) any submissions made by a monitor.

(7) The judge may issue the warrant if satisfied there are reasonable grounds for believing there is, in or on a place, evidence of organised crime.

(8) The warrant must state—

- (a) that a stated police officer, or all police officers, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise the powers under section 75; and
- (b) the organised crime related offence for which the warrant was issued; and
- (c) any evidence or samples of evidence that may be seized under the warrant; and
- (d) that the warrant may be executed at any time of the day or night; and
- (e) that, if practicable, the search must be videotaped; and
- (f) the date when the warrant ends.

(9) Also, the issuer must hear the application—

- (a) in the absence of the suspect or anyone likely to inform the suspect of the application; and

(b) without the suspect having been informed of the application.

(10) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.

(11) A covert search warrant is in force for 30 days or a shorter period stated in the warrant, but ends immediately after the initial search is complete.

(12) However, the warrant may be extended from time to time on application.

(13) The provisions of this section for an application for a warrant apply to an application for an extension with all necessary changes.

(14) Despite the *Recording of Evidence Act 1962*, a transcript of an application for a covert search warrant and any order made on it must not be made.

(15) A person must not publish a report of a proceeding on an application under subsection (2) or (12).

Maximum penalty for subsection (15)—85 penalty units or 1 year's imprisonment.

(16) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for a covert search warrant, unless a judge otherwise orders in the interests of justice.

### **Powers under covert search warrant**

75. A police officer who executes a covert search warrant has the following powers under the warrant—

- (a) power to enter the place specified in the warrant (the “**relevant place**”), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay on it for the time reasonably necessary;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;

- (e) power to seize a thing or part of a thing found on the relevant place that the police officer reasonably believes is evidence of the commission of an offence relating to organised crime;
- (f) power to photograph anything the police officer reasonably believes may provide evidence of the commission of an offence relating to organised crime;
- (g) power to inspect or test anything found on the place.

### **Report on covert search**

**76.(1)** Within 7 days after executing a covert search warrant, a police officer must give to the Supreme Court judge who issued the warrant a report complying with the responsibilities code on the exercise of the powers under the warrant.

**(2)** The police officer must, if practicable, also take before the judge anything seized under the warrant and any photograph taken during the search.

**(3)** The judge may, in relation to a thing mentioned in subsection (2), order that—

- (a) it be held by a police officer until any proceeding in which the thing may be evidence ends; or
- (b) it be dealt with in the way the judge orders.

### **Application of the Invasion of Privacy Act**

**77.** A listening device used for the interception of private conversations under the authority of a surveillance warrant—

- (a) for the *Invasion of Privacy Act 1971*, section 45(2) or 47—is to be taken to have been used under an authorisation given under section 43(2)(c)(i) of that Act; and
- (b) for the *Invasion of Privacy Act 1971*, part 4, other than section 45(2) or 47—is not to be taken to have been used in contravention of section 43 of that Act.

**Register of surveillance and covert search warrants and applications**

**78.(1)** The commissioner must keep a register of applications for surveillance and covert search warrants in the way the commissioner considers appropriate.

**(2)** The register is not open to inspection by anyone other than the following—

- (a) the commissioner;
- (b) a police officer making an application under this part;
- (c) a monitor.

**Public interest monitor**

**79.(1)** The Governor in Council may appoint a person (the “**public interest monitor**”) to monitor applications for, and the use of, surveillance warrants and covert search warrants.

**(2)** The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

**(3)** The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

**(4)** The *Public Service Act 1996* does not apply to the appointment of a monitor.

**(5)** A monitor must not be a person who is, or is a member of, or who is employed in or by or to assist, any of the following—

- (a) the director of public prosecutions;
- (b) the office of the director of public prosecutions;
- (c) the Queensland Crime Commission;
- (d) the Criminal Justice Commission;
- (e) the police service.

**Monitor’s functions**

**80.(1)** The public interest monitor has the functions mentioned in subsection (2) for surveillance warrants and covert search warrants.

(2) The functions are—

- (a) to monitor compliance by police officers with this part in relation to matters concerning applications for surveillance warrant and covert search warrants; and
- (b) to appear at any hearing of an application to a Supreme Court judge or magistrate for a surveillance warrant or covert search warrant to test the validity of the application, and for that purpose at the hearing—
  - (i) present questions for the applicant to answer and examine or cross-examine any witness; and
  - (ii) make submissions on the appropriateness of granting the application; and
- (c) to gather statistical information about the use and effectiveness of surveillance warrants and covert search warrants; and
- (d) whenever the public interest monitor considers it appropriate—to give to the commissioner a report on noncompliance by police officers with this part.

(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b) and (c).

### **Monitor's annual report**

**81.(1)** As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of surveillance warrants and covert search warrants under this Act.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(3) The annual report must not contain information that—

- (a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or
- (b) indicates a particular investigation has been, is being, or is to be conducted.

(4) The public interest monitor's report may form part of another annual report the monitor is required to prepare under another Act.

### **Secrecy**

**82.(1)** A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information in the performance of his or her functions under this Act.

(3) A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

## **PART 11—POWER TO GIVE DIRECTIONS IN NOTIFIED AREAS AND OTHER PLACES**

### *Division 1—Directions to move-on*

#### **When part applies to behaviour**

**83.(1)** This part applies to a person's behaviour at or near a prescribed place if a police officer reasonably suspects the behaviour is or has been—

- (a) causing anxiety to a reasonable person entering, at or leaving the place; or
- (b) interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or

- (c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or
- (d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the behaviour of a person.

### **When part applies to a person's presence**

**84.(1)** This part applies to a person's presence at or near a prescribed place if a police officer reasonably suspects the person's presence is or has been—

- (a) causing anxiety to a reasonable person entering, at, or leaving the place; or
- (b) interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
- (c) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) Subsection (1)(b) only applies to premises used for trade or business if the occupier of the premises complains about the behaviour of a person.

### **Division does not apply to authorised public assemblies**

**85.** This division does not apply to an authorised public assembly under the *Peaceful Assemblies Act 1992*.

### **Proposal for notified area**

**86.(1)** A local government or a government entity may apply to the Minister for the declaration of a stated area as a notified area.

(2) Before the Governor in Council declares an area to be a notified area, the Minister must ensure any requirements prescribed under a regulation have been complied with.

**Declaration of notified areas**

**87.(1)** The Governor in Council may, by gazette notice, declare a stated area to be a notified area for this Act.

**(2)** A gazette notice under section (1)—

- (a) is subordinate legislation; and
- (b) is an exempt instrument under *Legislative Standards Act 1992*.

**Direction may be given to person**

**88.(1)** A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances.

**(2)** However, a police officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—

- (a) public safety; or
- (b) public order; or
- (c) the protection of the rights and freedoms of other persons.

**(3)** Without limiting subsection (1), a direction may require a person to do either of the following—

- (a) leave the notified area and not return within a stated reasonable time, of not more than 24 hours;
- (b) move from a particular location for a stated reasonable distance, in a stated direction and not return or be within the stated distance from the place for a stated reasonable time, of not more than 24 hours.

**(4)** The police officer must tell the person or group of persons the reasons for giving the direction.

**(5)** If a person fails to comply with the direction, the police officer must warn the person it is an offence to fail to comply with the direction, unless the person has a reasonable excuse.<sup>27</sup>

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<sup>27</sup> For the offence, see section 120 (Assault etc. of police officer).



*Examples for subsection (1)—*

1. If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
2. If a group of people have been fighting in a night club car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.
3. If a person has approached a primary school child in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.

***Division 2—Breaches of the peace and riots*****Dealing with breach of the peace**

**89.(1)** This section applies if a police officer reasonably suspects—

- (a) a breach of the peace is happening or has happened; or
- (b) there is an imminent likelihood of a breach of the peace; or
- (c) there is a threatened breach of the peace.

**(2)** It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct constituting the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

*Examples—*

1. The police officer may detain a person until the need for the detention no longer exists.
2. A person who pushes in to the front of a queue may be directed to go to the end of the queue.
3. Property that may be used in or for breaching the peace may be seized to prevent the danger.

**Prevention of riot**

**90.(1)** It is lawful for a police officer to take the steps the police officer reasonably believes are necessary to suppress a riot.

(2) It is lawful for a police officer acting under reasonable orders given by a justice for suppressing a riot, to suppress a riot.

## **PART 12—STANDARD SAFEGUARDS**

### *Division 1—Application of part*

#### **Part does not apply to covert operations**

91. This part does not apply to functions of a police officer performed in a covert way, including for example, anything done under a covert search warrant.

### *Division 2—Right to remain silent not affected*

#### **Right to remain silent not affected**

92. Nothing in this Act affects the right of a person to refuse to answer questions, unless required to answer the questions by or under an Act.

### *Division 3—Safeguards ensuring rights of and fairness to persons questioned for indictable offences*

#### **Application of division**

93. This division applies only to indictable offences.

#### **When is a person “in custody” for this part**

94.(1) A person is “in custody” for this part if the person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an offence.

(2) However, a person is not in custody only because of subsection (1) if

the officer is exercising any of the following powers—

- (a) power conferred under any Act or law to detain and search the person; or
- (b) power conferred under an Act to require the person to give information or answer questions.

### **Right to communicate with friend, relative or lawyer**

**95.(1)** Before a police officer starts to question a person in custody for an indictable offence, the police officer must inform the person he or she may—

- (a) telephone or speak to a friend or relative to inform the person of his or her whereabouts and ask the person to be present during questioning; and
- (b) telephone or speak to a lawyer of the person's choice and arrange, or attempt to arrange, for the lawyer to be present during the questioning.

**(2)** The police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1).

**(3)** If the person arranges for someone to be present, the police officer must delay the questioning for a reasonable time to allow the other person to arrive.

**(4)** If the person in custody wants to speak to a friend, relative or lawyer, the investigating police officer must—

- (a) as soon as practicable, provide reasonable facilities to enable the person in custody to speak to the other person; and
- (b) if the other person is a lawyer and it is reasonably practicable—allow the person in custody to speak to the lawyer in circumstances in which the conversation will not be overheard.

**(5)** If the person in custody arranges for another person to be present during questioning, the investigating police officer must also allow the other person to be present and give advice to the person during the questioning.

**(6)** If the police officer considers the other person is unreasonably

interfering with the questioning, the police officer may exclude the person from being present during questioning.

(7) Subsections (4) to (6) do not apply to a person to whom section 96 or 97 applies.

### **Questioning of Aboriginal people and Torres Strait Islanders**

**96.(1)** This section applies if the police officer in charge of investigating an offence reasonably suspects a person in custody for the offence is an Aborigine or Torres Strait Islander who is at least 17.

(2) The police officer must comply with section 95(1), (2) and (3).

(3) Unless the police officer is aware that the person has arranged for a lawyer to be present during questioning, the police officer must—

- (a) inform the person that a representative of a legal aid organisation will be notified that the person is in custody for the offence; and
- (b) as soon as reasonably practicable, notify or attempt to notify a representative of the organisation.

(4) Subsection (3) does not apply if, having regard to the person's level of education and understanding, a police officer reasonably suspects the person is not at a disadvantage in comparison with members of the Australian community generally.

(5) The police officer must not question the person unless—

- (a) before questioning starts, the police officer has, if practicable, allowed the person to speak to the interview friend, if practicable, in circumstances in which the conversation will not be overheard; and
- (b) an interview friend is present while the person is being questioned.

(6) Subsection (5) does not apply if the person has, by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have an interview friend present.

(7) If the police officer considers the interview friend is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

### Questioning of children

**97.(1)** This section applies if—

- (a) a police officer wants to question a person in custody as a suspect; and
- (b) the police officer reasonably suspects the person is a child.

**(2)** The police officer must comply with section 95(1), (2) and (3).<sup>28</sup>

**(3)** The officer must not question the child unless—

- (a) before questioning starts, the police officer has, if practicable, allowed the child to speak to the interview friend in circumstances in which the conversation will not be overheard; and
- (b) an interview friend is present while the child is being questioned.

**(4)** If the police officer considers the interview friend is unreasonably interfering with the questioning, the police officer may exclude the person from being present during the questioning.

### Questioning of person after proceeding started

**98.(1)** Nothing in this part prevents a person in custody from helping a police officer by making a statement or answering questions in relation to the matter for which the person is charged after a proceeding for the offence has been started.

**(2)** Also, a police officer may question a person in custody to clarify any ambiguity in relation to what was previously said by the person.

**(3)** If new evidence of the offence becomes available a police officer may tell a person in custody of the evidence and invite the person to make a statement.

*Example—*

If a person has been charged with the offence of rape, and a scientific comparison such as a DNA analysis connects the person with the offence, the police officer may tell the person of the result and invite the person to make a statement.

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<sup>28</sup> Section 95 (Right to communicate with friend, relative or lawyer)

**Cautioning of persons in custody**

**99.(1)** Subject to subsection (3), a police officer must, before starting to question a person in custody, caution the person in the way required under the responsibilities code.

(2) The caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person can not hear adequately.

(3) This section does not apply if another Act requires the person to answer questions put by, or do things required by, the police officer.

**Provision of information relating to a person in custody**

**100.(1)** If a relative, friend or lawyer of a person in custody for an offence before being brought before a court asks for information about the person's whereabouts, a police officer must, if practicable, inform the person in custody of the request and, after doing so, give the information to the person who asked for it.

(2) Subsection (1) does not apply if—

- (a) the person in custody refuses, in writing, to agree to giving the information; or
- (b) the police officer reasonably suspects the person asking for the information is not a relative, friend or lawyer of the person in custody.

**Right to interpreter**

**101.(1)** This section applies if a police officer reasonably suspects a person in custody is unable, because of inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.

(2) Before starting to question the person, the police officer must arrange for the presence of an interpreter and delay the questioning or investigation until the interpreter is present.

(3) In this section—

**“investigation”** means the process of using investigative methodologies,

other than fingerprinting, searching or taking photos of the person, that involve interaction by a police officer with the person, for example, an examination or the taking of samples from the person.

### **Right of foreign national to communicate with embassy etc.**

**102.(1)** This section applies to a person in custody who is not an Australian citizen.

(2) Before a police officer starts to question the person, the police officer must inform the person that he or she may telephone, or attempt to telephone, the embassy or consular office of the country of which the person is a citizen.

(3) If the person wishes to telephone the appropriate embassy or consular office, the police officer must—

- (a) as soon as practicable, make available to the person reasonable facilities for the purpose; and
- (b) delay the questioning for a reasonable time to allow the person to telephone, or attempt to telephone, the appropriate embassy or consular office.

### **Rights of a person in custody to be electronically recorded**

**103.** A police officer who is required under this division to give to a person in custody information (including a caution) must, if practicable, electronically record the giving of the information to the person and the person's response.

### **Recording of questioning etc.**

**104.(1)** This section applies to the questioning of a person in custody.

(2) The questioning must, if practicable, be electronically recorded.

*Examples for subsection (2)—*

1. It may be impracticable to electronically record a confession or admission of a murderer who telephones police about the murder and immediately confesses to it when a police officer arrives at the scene of the murder.

2. It may be impracticable to electronically record a confession or admission of

someone who has committed an armed hold-up, is apprehended after pursuit, and makes a confession or admission immediately after being apprehended.

3. Electronically recording a confession or admission may be impracticable because the confession or admission is made to a police officer when it is not reasonably practicable to use recording facilities.

**(3)** If the person makes a confession or admission to a police officer during the questioning, the confession or admission is admissible as evidence against the person in a proceeding only if it is recorded as required by this section.

**(4)** If the confession or admission is electronically recorded, the confession or admission must be part of a recording of the questioning of the person and anything said by the person during questioning of the person.

**(5)** If the confession or admission is written, the way the written record of the confession or admission is made must comply with subsections (6) to (10).

**(6)** While questioning the person, or as soon as reasonably practicable afterwards, a police officer must make a written record in English, or cause to be made a written record in the language the person used during questioning, of the things said by or to the person during questioning.

**(7)** As soon as practicable after making the record—

- (a) it must be read to the person in English or, if the record is not in English, in the language the person used during questioning; and
- (b) the person must be given a copy of the record.

**(8)** Before reading the record to the person, an explanation, complying with the responsibilities code, must be given to the person of the procedure to be followed to comply with this section.

**(9)** The person must be given the opportunity, during and after the reading, to draw attention to any error in or omission from the record he or she claims were made in the written record.

**(10)** An electronic recording must be made of the reading mentioned in subsection (7) and everything said by or to the person during the reading, and anything else done to comply with this section.

**(11)** In relation to the questioning, confession or admission, or



confirmation of a confession or admission, of a person that is recorded under this section, a police officer must, without charge—

- (a) if the recording is—
  - (i) an audio recording only—make a copy of the recording available to the person or the person’s lawyer within 7 days after making the recording; or
  - (ii) a video recording only—make a copy of the recording available to the person or the person’s lawyer within 14 days after making the recording; or
- (b) if both audio and video recordings were made—
  - (i) make a copy of the audio recording available to the person or the person’s lawyer within 7 days after making the recording; and
  - (ii) notify the person or the person’s lawyer that, if the person asks, an opportunity will be provided to view the video recording; and
- (c) if a transcript of an audio recording is made—on request, give to the person or the person’s lawyer a copy of the transcript.

**(12)** Subsection (11) applies subject to any other Act.

**(13)** If a court considers this section has not been complied with or there is not enough evidence of compliance, the court may, despite the noncompliance, admit evidence to which this section applies if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.

### **List of interview friends and interpreters**

**105.(1)** The commissioner must keep a list of interview friends and interpreters.

**(2)** The commissioner must revise the list at the times the commissioner considers appropriate.

**(3)** The list must specify the languages that each person on the list is able to understand and speak.

**When sections 95–97, 100 and 102 do not apply**

**106.(1)** Sections 95 to 97, 100 and 102<sup>29</sup> do not apply if a police officer reasonably suspects that compliance with the sections is likely to result in—

- (a) an accomplice or accessory of the person taking steps to avoid apprehension; or
- (b) an accomplice or accessory being present during questioning; or
- (c) evidence being concealed, fabricated or destroyed; or
- (d) a witness being intimidated.

**(2)** Subsection (1) also applies to a requirement to delay questioning if, having regard to the safety of other people, questioning is so urgent that it should not be delayed.

**(3)** This section applies only for so long as the police officer has the reasonable suspicion.

***Division 4—Safeguards for things seized during searches*****Receipt for seized property**

**107.(1)** If a police officer seizes anything under this Act, the police officer must, as soon as is reasonably practicable after seizing the thing, give or cause to be given to the person from whom it is seized or the occupier of the premises from which it is taken, a receipt for the thing.

**(2)** The receipt must describe the thing seized and include any other information required under the responsibilities code.

**(3)** If the occupier of the premises is not present, the receipt must be left in a conspicuous place.

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<sup>29</sup> Sections 95 (Right to communicate with friend, relative or lawyer), 96 (Questioning of Aboriginal people and Torres Strait Islanders), 97 (Questioning of children), 100 (Provision of information relating to a person in custody) and 102 (Right of foreign national to communicate with embassy etc.)

**Requirements after property is seized**

**108.(1)** Within 28 days after a police officer seizes anything as evidence, the police officer must apply to a justice of the peace (magistrates court) or a magistrate (the “**issuer**”) for an order under subsection (4) in relation to the thing seized, unless—

- (a) a proceeding has been started with respect to the thing seized; or
- (b) consent to the continued keeping of the thing has been given by the owner or the person who had lawful possession of the thing before it was seized; or
- (c) it is destroyed because it has no intrinsic value; or
- (d) it is disposed of because it is perishable; or
- (e) it is destroyed because it is a dangerous drug or a thing used in or for manufacturing a dangerous drug; or
- (f) it is returned under section 110.

*Example for subsection (1)(c)—*

Samples of hair taken from a person but not to be used as evidence because the person is not charged with an offence.

*Example for subsection (1)(d)—*

Fruit, vegetables or meat that will not keep.

**(2)** An application for an order under subsection (4) must also be made within 28 days after either of the following happens—

- (a) a proceeding started with respect to the thing seized is discontinued without any order being made in relation to the thing;
- (b) the consent of the owner or the person who had lawful possession of the thing before it was seized is withdrawn.

**(3)** An application under subsection (1) or (2) must be accompanied by any warrant under which the thing was seized, with a record made on it under section 118.<sup>30</sup>

**(4)** The issuer may, in relation to the thing, order—

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<sup>30</sup> Section 118 (Record of execution of warrant or order)

- (a) that it be kept in the possession of a police officer until the end of any proceeding involving the thing and any appeal; or
- (b) that it be photographed and returned to its owner or the person who had lawful possession of it before it was seized on condition that the owner or person undertakes to produce it before a court in any later proceeding involving the thing; or
- (c) that it be dealt with by way of a proceeding under the *Justices Act 1886*, section 39 or a forfeiture proceeding; or
- (d) that it be disposed of or destroyed in the way the issuer orders.

(5) However, if no application is to be made because subsection (1)(a), (b), (c), (d) or (e) applies to the thing, a police officer must deal with the thing in the way specified in the responsibilities code.

### **Right to inspect seized documents**

**109.** Unless a justice otherwise orders, a police officer who seizes a document must allow a person who would be entitled to the document—

- (a) to inspect it at any reasonable times and from time to time; and
- (b) to take extracts from or make copies of it.

### **Return of seized things**

**110.** Unless a justice otherwise orders, a police officer must return a seized thing to the owner or the person who had lawful possession of the thing before it was seized if the officer is satisfied—

- (a) its retention as evidence is no longer required; and
- (b) it is lawful for the person to have possession of the thing.

## *Division 5—Other safeguards*

### **Protecting the dignity of persons during search**

**111.(1)** This section applies to a search of a person under this Act.

**(2)** A police officer may require the person to remove items of clothing.

(3) However, if it is necessary for the person to remove all clothing other than underwear, or all clothing, the search must be conducted in a place providing reasonable privacy for the person.

(4) Unless an immediate search is necessary, the person conducting the search must be either—

- (a) a police officer of the same sex as the person to be searched; or
- (b) if there is no police officer of the same sex available to search the person—someone else acting at the direction of a police officer and of the same sex as the person to be searched; or
- (c) a doctor acting at the direction of a police officer.

*Example—*

An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to the body or a firearm concealed on them.

(5) If the police officer seizes clothing because of the search, the police officer must ensure the person is left with or given reasonably appropriate clothing.

*Example for subsection (5)—*

The clothing may be evidence of the commission of an offence.

(6) Also, if it is impracticable to search for a thing that may be concealed on a person where the person is, the police officer may take the person to a place with adequate facilities for conducting the search.

### **Supplying police officer's details etc.**

**112.(1)** This section applies if a police officer—

- (a) searches or arrests a person; or
- (b) searches a vehicle; or
- (c) searches a place other than a public place; or
- (d) seizes any property; or
- (e) stops or detains a person or vehicle; or
- (f) requires a person to state his or her name and address; or

- (g) gives to a person a direction under section 20 or 88;<sup>31</sup>
- (h) enters a place to make an inquiry, investigation or serve a document.

(2) The police officer must, as soon as is reasonably practicable, inform the person the subject of the power of the following—

- (a) if not in uniform—
  - (i) that he or she is a police officer; and
  - (ii) of his or her name, rank and station; or
- (b) if in uniform—state his or her name, rank and station.

(3) If the police officer is not in uniform the police officer must also produce for inspection his or her identity card.

(4) If the police officer is searching a person, vehicle or place, other than under a search warrant,<sup>32</sup> the police officer must state the purpose of the search and the reason for seizing any property.

(5) The police officer must also, if exercising a power in subsection (1)(a), (b), (c) or (d), record in the register the relevant details of the search, arrest or property seized.

(6) If 2 or more police officers are searching a vehicle or place under part 4 or 5, only the senior police officer present is required to comply with subsections (2) to (5).

(7) Subsection (5) does not apply to a search of a vehicle under part 3.

(8) However, if a person asks another police officer for the information mentioned in subsection (2) or (3), the police officer must give to the person the information requested.

### **Information to be given to arrested person**

**113.(1)** A police officer who arrests a person without warrant must, as soon as is reasonably practicable after the arrest, inform the person that the

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<sup>31</sup> Section 20 (Powers at crime scenes) or 88 (Direction may be given to person)

<sup>32</sup> The reasons for the search must be stated in the warrant under section 29 and a copy given to the occupier under section 30.

person is under arrest and of the nature of the offence for which the person is arrested.

(2) Before the person is released from police custody, a police officer must give to the person, in writing, the name, rank and station of the arresting officer.

### **Parent and chief executive must be advised of arrest of child**

**114.(1)** A police officer who arrests a child must, without unreasonable delay, advise of the arrest and whereabouts of the child—

- (a) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (b) the chief executive or a person who holds an office within the department nominated by the chief executive for the purpose.

(2) In this section—

“**chief executive**” means the chief executive of the department within which the *Family Services Act 1987* is administered.

“**parent**”, of a child, includes someone who is apparently a parent of the child.

### **Police officer to consider alternatives to proceeding against child**

**115.(1)** A police officer, before starting a proceeding against a child for an offence, other than by arrest, must first consider whether in all the circumstances it would be more appropriate—

- (a) to take no action; or
- (b) to administer a caution to the child under the *Juvenile Justice Act 1992*; or
- (c) to refer the offence to a community conference under the *Juvenile Justice Act 1992*.

(2) The circumstances to which the police officer must have regard include—

- (a) the circumstances of the alleged offence; and

(b) the child's previous history known to the police officer.

(3) If necessary the police officer must delay starting a proceeding to consider the matters mentioned in subsection (2).

(4) This section does not prevent a police officer starting a proceeding against a child for an offence by way of—

(a) complaint and summons under the *Justices Act 1886*; or

(b) attendance notice under the *Juvenile Justice Act 1992*.

### **Limitation on period of detention for search**

**116.** A police officer who detains a person for a search must not detain the person any longer than is reasonably necessary for the purpose.

### **Persons to be given copy of information in register**

**117.(1)** This section applies to information recorded in a register the commissioner must keep under this Act.

(2) If the person to whom the information relates asks, a police officer must, as soon as reasonably practicable, give to the person a copy or print-out of the information.

(3) This section does not apply to information the commissioner may not otherwise disclose under this or another Act.

### **Record of execution of warrant or order**

**118.** A police officer who executes a warrant or order must, if reasonably practicable, write the following on the back of the original warrant or order, or form of warrant or order and sign the document—

(a) the date and time of execution;

(b) the name of the person on whom it was executed;

(c) if supplied—the name of the occupier of the place;

(d) the name, rank, registered number, if any, and station of the police officer.



**Alternative accommodation to be provided in some cases**

**119.(1)** This section applies if, because of a direction given at a crime scene, the occupier of a dwelling can not continue to live in the dwelling while the place is a crime scene or because of damage caused to the place in the exercise of powers under section 20.<sup>33</sup>

(2) The commissioner must, if asked, arrange suitable alternative accommodation for the person for the time the person can not live in the place.

(3) This section does not apply to a person who is detained in lawful custody.

**PART 13—ASSAULT OR OBSTRUCTION OF POLICE OFFICERS****Assault etc. of police officer**

**120.(1)** A person must not assault or obstruct a police officer in the performance of the officer's duties.

Maximum penalty—20 penalty units or 6 months imprisonment.

(2) In this section—

“**assault**” has the meaning given by the Criminal Code.

“**obstruct**” includes contravene a requirement or direction under this Act, hinder, resist and attempt to obstruct.

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<sup>33</sup> Section 20 (Powers at crime scene)

## **PART 14—MISCELLANEOUS POWERS**

### **Prevention of offences**

**121.** It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the commission of an offence.

### **Entry of place to prevent offence or injury**

**122.(1)** It is lawful for a police officer to enter a place if the police officer reasonably suspects there is an imminent risk of injury to a person at the place or an offence involving damaging property at the place.

**(2)** The police officer may detain anyone at the place for the time reasonably necessary to establish whether the imminent risk of injury or damage exists.

**(3)** If the police officer reasonably suspects the imminent risk of injury or damage exists, the police officer may detain a person for the purpose of a search or to prevent continued acts of violence and—

- (a) search anyone detained for anything that may be, or has been, used to cause the injury or damage; and
- (b) search the place for anything that may be, or has been, used to cause the injury or damage; and
- (c) seize anything found at the place or a person on it.

**(4)** Anything seized under subsection (3)(c) must be returned to the owner of the property within 7 days after it is seized if—

- (a) it is lawful for the person to possess it; and
- (b) it is not required as an exhibit in a proceeding for the offence.

**(5)** For this section, a place that is a building, includes a vehicle in the place.

### **Police officer may use assistance in exercising certain powers**

**123.(1)** It is lawful for a police officer exercising a power under this Act at a place to take onto the place any person (the “**assistant**”), equipment or

material the officer reasonably requires for exercising the power.

(2) If the police officer takes an assistant onto the place, the police officer may authorise the assistant—

- (a) to take stated action at the place; and
- (b) to exercise stated powers the police officer is authorised to exercise.

(3) However, the police officer can not authorise the assistant to arrest a person or demand a person's name and address.

(4) The police officer must inform the assistant—

- (a) of the action the assistant is authorised to take; and
- (b) of the assistant's powers under this section.

### **Protection for assistants from liability**

**124.(1)** An assistant does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an assistant.

(2) If subsection (1) prevents a civil liability attaching to an assistant, liability attaches instead to the State.

### **Power to use force—exercise of certain powers**

**125.** It is lawful for a police officer exercising a power under this or any other Act in relation to a thing, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

*Examples—*

1. Forced entry may be necessary to execute a search warrant and seize items.
2. Forced entry may be needed for covert entry to a place to install a surveillance device.
3. Force may be used to stop vehicles.

### **Power to use force against individuals**

**126.(1)** It is lawful for a police officer exercising powers under this or

any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force for exercising the powers.

(2) Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.

(3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

### **Power to use force against individuals in critical situations**

**127.(1)** This section applies if a police officer reasonably suspects a person—

- (a) has committed, is committing, or is about to commit an offence punishable by life imprisonment; or
- (b) has committed an offence punishable by life imprisonment and is attempting to escape arrest or has escaped from arrest or custody.

(2) Also, this section applies if—

- (a) a police officer reasonably suspects a person is doing, or is about to do, something likely to cause grievous bodily harm to, or the death of, another person; and
- (b) the police officer reasonably suspects he or she can not prevent the grievous bodily harm or death other than in the way authorised under this section.

(3) It is lawful for the police officer to use the force reasonably necessary—

- (a) to prevent the continuation or repetition of the offence or the commission of another offence punishable by life imprisonment; or
- (b) to apprehend the person; or
- (c) to prevent the escape of a person from arrest or custody; or
- (d) to prevent the commission of an act mentioned in subsection (2).

(4) The force a police officer may use under this section includes force likely to cause grievous bodily harm to a person or the person's death.

(5) If the police officer reasonably believes it is necessary to use force

likely to cause grievous bodily harm to a person or the person's death, the police officer must, if practicable, first call on the person to stop doing the unlawful act.

## **PART 15—GENERAL**

### **Performance of duty**

**128.** A police officer performing a function of the police service is performing a duty of a police officer even if the function could be performed by someone other than a police officer.

### **Obtaining warrants, orders and authorities, etc., by telephone or similar facility**

**129.(1)** This section applies if, under this Act, a police officer may obtain a warrant, approval, notice to produce a document or another authority (a “**prescribed authority**”) before doing a stated act.

**(2)** A police officer may apply to the person who may issue the prescribed authority (the “**issuer**”) for the prescribed authority by phone, fax, radio or another similar facility if, for any reason, it is impracticable to apply for the authority in person.

**(3)** Before making the application, the police officer must prepare an application stating the grounds on which the application is made.

**(4)** The police officer may apply for the prescribed authority before the application is sworn.

**(5)** After issuing the prescribed authority, the issuer must immediately fax a copy to the police officer if it is reasonably practicable to fax a copy.

**(6)** If it is not reasonably practicable to fax a copy to the police officer the issuer must—

- (a) tell the police officer what the terms of the prescribed authority are; and

- (b) tell the police officer the date and time the prescribed authority was issued.

(7) The prescribed authority form, or the prescribed authority form properly completed by the police officer, authorises the performance of the act for which the authority is obtained.

(8) The police officer must, at the first reasonable opportunity, send the issuer—

- (a) the sworn application; and
- (b) if the police officer completed a prescribed authority form—the completed prescribed authority form.

(9) On receiving the documents, the issuer must attach them to the prescribed authority.

(10) Subsection (11) applies to a court if—

- (a) a question arises, in a proceeding in or before the court, whether a power that may be performed under a prescribed authority under this Act was authorised by a prescribed authority under this section; and
- (b) the authority is not produced in evidence.

(11) The court may presume the exercise of the power was not authorised by a prescribed authority under this section, unless the contrary is proved.

### **Protection of methodologies**

**130.(1)** In a proceeding for an offence, a police officer can not be required to disclose information mentioned in subsection (2) unless the court is satisfied disclosure of the information is necessary—

- (a) for the fair trial of the defendant; or
- (b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or
- (c) in the public interest.

(2) The information for subsection (1) is information that could, if disclosed, reasonably be expected—

- (a) to prejudice the investigation of a contravention or possible contravention of the law; or
- (b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (c) to endanger a person's life or physical safety; or
- (d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
- (e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
- (f) to facilitate a person's escape from lawful custody.

### **Compensation**

**131.(1)** This section applies if a person suffers loss because a police officer exercises powers under this Act.

**(2)** Compensation is payable by the State to the person whose property is damaged.

**(3)** However, compensation is not payable to a person if the person is found guilty of the commission of an indictable offence because of the exercise of the powers.

**(4)** Also, compensation is not payable for the lawful seizure of a thing under this Act.

**(5)** The Minister is to decide the amount of the compensation.

**(6)** A person who is dissatisfied with the Minister's decision under subsection (5) may apply to a court, within 28 days, for compensation under this section.

**(7)** If the person applies under subsection (6), the court may decide the amount of the compensation.

**Availability of responsibilities code**

**132.** The commissioner must ensure a copy of the responsibilities code is available for inspection at any police station by anyone who asks to inspect it.

**Approved forms**

**133.** The commissioner may approve forms for use under this Act.

**Review of Act**

**134.(1)** The Minister must ensure the operation of this Act is regularly reviewed.

**(2)** The first review must start no sooner than 6 months after the commencement of this section and be completed within 3 years.

**Regulation-making power**

**135.(1)** The Governor in Council may make regulations under this Act.

**(2)** Without limiting subsection (1), a regulation may make provision with respect to the responsibilities of police officers under this Act.

**(3)** A regulation made for subsection (2) may include operational guidelines for police officers.

**(4)** However, operational guidelines are not part of the regulation.

**Transitional provision about exercise of public official's powers**

**136.(1)** Despite section 12,<sup>34</sup> any police officer may continue to exercise the powers of a public official under an authorising law to which the section applies for 1 year after the commencement of this section, unless an earlier day is declared under a regulation for the authorising law.

**(2)** A regulation may extend the period mentioned in subsection (1) by up to 1 year.

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<sup>34</sup> Section 12 (Authorising provisions of other Acts of no effect)



(3) The section expires 1 year after it commences or a later day prescribed under a regulation made under subsection (2).

**Transitional provision about noncompliance with requirements for warrants etc.**

**137.(1)** A failure within 1 year after the commencement of this section to comply with a provision of this Act that requires an application for a warrant or other document to include information about any relevant documents issued in the previous year does not invalidate the document.

(2) The section expires 1 year after it commences.

**Transitional provision about change in way powers may be exercised**

**138.(1)** This section applies if, before the commencement of this section, a police officer was authorised under any Act or law or rule of practice to exercise a power in relation to a person or thing and this Act changes the way the power may be exercised.

(2) The exercise of the power after the commencement is not unlawful only because the police officer exercises it in accordance with the Act, law or rule of practice in force immediately before the commencement.

(3) This section expires 7 days after it commences.

**Acts amended**

**139.** Schedule 2 amends the Acts mentioned in it.

**SCHEDULE 1****ACTS NOT AFFECTED BY THIS ACT**

section 8

*Bail Act 1980**Crime Commission Act 1997**Criminal Justice Act 1989**Domestic Violence (Family Protection) Act 1989**Environmental Protection Act 1994**Juvenile Justice Act 1992*, other than to the extent to which section 35 (2) and parts 8 and 12 of this Act apply to children*Mental Health Act 1974**Public Safety Preservation Act 1986**State Counter-Disaster Organisation Act 1975**Traffic Act 1949*, other than sections 35(2), 37(5) and 42.

## SCHEDULE 2

### ACTS AMENDED

section 139

### JUSTICES ACT 1886

#### 1. Section 56A—

*omit, insert—*

##### **‘Right of entry to serve summons**

**‘56A.(1)** Subject to subsection (3), a public officer, and a person acting in aid of the public officer, may enter, and stay for a reasonable time in or on a place for the purpose of serving a summons.

**(2)** The officer must produce the officer’s identification to any person requesting proof of the officer’s authority to be in or on the place.

**(3)** If the place is premises, or the part of premises, used exclusively for residential purposes, a public officer, and a person acting in aid of the public officer, may enter the place only with the consent of the occupier.’

### POLICE SERVICE ADMINISTRATION ACT 1990

#### 1. Section 1.4, definition “breach of discipline”, after ‘this Act’, first mention—

*insert—*

‘, the *Police Powers and Responsibilities Act 1997*’.

#### 2. Section 3.6—

*omit.*

## SCHEDULE 2 (continued)

**3. Section 10.20A—**

*omit.*

**TRAFFIC ACT 1949****1. Section 35(2)—**

*omit.*

**2. Section 37(5), from ‘Whenever’ to ‘officer,’—**

*omit, insert—*

‘If a superintendent (other than a police officer) or the chief executive’.

**3. Section 42—**

*omit.*

## SCHEDULE 3

### DICTIONARY

section 3

**“at”** a place, includes in or on the place.

**“authorised person”** means a person authorised under the responsibilities code for this Act.

**“authorising law”** see—

- section 10
- section 11.<sup>35</sup>

**“boat”** includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a rowing boat, hovercraft and a submersible vessel.

**“child”** means a child within the meaning of the *Juvenile Justice Act 1992*.

**“class A device”** means a surveillance device installed—

- (a) in a private place, or on a suspect’s clothing, without the suspect’s consent; or
- (b) in a public place;

but does not include a visual surveillance device installed in a public place or, with the occupier’s consent, a private place.

**“class B device”** means a tracking device installed in a vehicle or other moveable object without covert entry to a building by the person installing it.

**“commissioner”** means the commissioner of police.

**“court”** includes anyone conducting a committal proceeding.

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<sup>35</sup> Section 10 (Appointment of police officers as public officials for other Acts) and 11 (Exercise of powers under other Acts)

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 SCHEDULE 3 (continued)

**“crime scene”** means a primary or secondary crime scene.

**“crime scene warrant”** see section 18.<sup>36</sup>

**“dangerous drug”** see the *Drugs Misuse Act 1986*.

**“declared law enforcement agency”** means an entity declared under a regulation to be a law enforcement agency for this Act.

**“detention order”** see the *Juvenile Justice Act 1992*.

**“detention period”** see section 50(3).<sup>37</sup>

**“driver”** includes rider.

**“dwelling”**—

1. A “dwelling” includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the **“owner”**) as a residence for the owner, a member of the owner’s family or an employee of the owner.
2. In deciding whether a building or other structure is a dwelling, it is immaterial that the building or other structure is from time to time uninhabited.
3. A building or other structure adjacent to, and occupied with, a dwelling is part of the dwelling if it is connected to the dwelling, whether directly or by a covered and enclosed passage leading from the one to the other, but not otherwise.
4. A “dwelling” also includes a boat (other than an external deck of the boat) used or kept as a residence for the owner, a member of the owner’s family or an employee of the owner.

**“electronically recorded”** means audio recorded or video recorded.

**“enter”** a place, includes re-enter the place.

**“evidence of the commission of an offence”**, includes—

- (a) a thing or activity that is or may provide evidence of the offence;

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<sup>36</sup> Section 18 (Crime scene warrant)

<sup>37</sup> Section 50 (Initial period of detention for questioning)

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 SCHEDULE 3 (continued)

and

- (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of the offence; and
- (c) a thing that is intended to be used for the purpose of committing the offence; and
- (d) a thing that may be liable to forfeiture or may be used in evidence for a forfeiture proceeding.

**“forfeiture proceeding”** means a proceeding for the forfeiture or restraint of property under the *Crimes (Confiscation) Act 1989* or another Act.

**“government entity”** see the *Public Service Act 1996*, section 21.<sup>38</sup>

**“identifying particulars”**—

- (a) means any of the following—
  - (i) palm prints;
  - (ii) fingerprints;
  - (iii) handwriting;
  - (iv) voice prints; and
- (b) includes photographs of a person’s identifying features.

*Examples for paragraph (b)*—

1. Photographs of scars or tattoos.
2. Photographs of the person.

**“interview friend”** means—

- (a) for an Aborigine or Torres Strait Islander who is at least 17—
  - (i) a relative or another person chosen by the person; or
  - (ii) a lawyer acting for the person; or
  - (iii) a representative of a legal aid organisation; or
  - (iv) a person whose name is included in a list of interview

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<sup>38</sup> Section 21 (What is a government entity)

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 SCHEDULE 3 (continued)

friends and interpreters; or

- (b) for a child—
- (i) a parent or guardian of the child; or
  - (ii) a lawyer acting for the child; or
  - (iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
  - (iv) if no-one mentioned in subparagraphs (i) to (iii) is available—a relative or friend of the child who is acceptable to the child; or
  - (v) if the child is an Aborigine or a Torres Strait Islander and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of interview friends and interpreters; or
  - (vi) if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace other than a justice of the peace who is a member of the Queensland Police Service, or a justice of the peace (commissioner for declarations).

**“legal aid organisation”** means an organisation declared under a regulation to be an organisation that provides legal assistance to Aboriginal people and Torres Strait Islanders.

**“list of interview friends and interpreters”** means the list of interview friends and interpreters kept by the commissioner under section 105.<sup>39</sup>

**“listening device”** means any instrument, apparatus, equipment or device (other than a hearing aid for persons with an auditory impairment) capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

**“make an inquiry”** includes find out whether someone is in a place.

**“monitor”** means—

- (a) the public interest monitor appointed under section 79; or

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<sup>39</sup> Section 105 (List of interview friends and interpreters)



## SCHEDULE 3 (continued)

(b) a deputy public interest monitor.<sup>40</sup>

**“notice to appear”** means a notice to appear served under section 40.<sup>41</sup>

**“notice to produce”** see section 32.<sup>42</sup>

**“organised crime”** means an ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation.

**“photograph”** includes photocopy and videotape.

**“place”** includes—

- (a) premises; and
- (b) vacant land; and
- (c) a vehicle; and
- (d) a place in Queensland waters; and
- (e) a place held under 2 or more titles or owners.

**“police service”** means the Queensland Police Service.

**“possession”** includes—

- (a) custody; and
- (b) control.

**“premises”** includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures, is situated; and

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<sup>40</sup> Section 79 (Public interest monitor)

<sup>41</sup> Section 40 (Notice to appear may be issued for offence)

<sup>42</sup> Section 32 (Notice to produce documents)

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 SCHEDULE 3 (continued)

- (d) a vehicle and a caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

**“prescribed place”**, for part 11,<sup>43</sup> means—

- (a) a shop; or
- (b) a child-care centre; or
- (c) a pre-school centre; or
- (d) a primary, secondary or special school; or
- (e) premises licensed under the *Liquor Act 1992*; or
- (f) a railway station and any railway land around it; or
- (g) a place declared under section 87 to be a notified area.<sup>44</sup>

**“primary crime scene”** means a place—

- (a) where a 7 year imprisonment offence or an offence involving deprivation of liberty has happened; and
- (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence.

**“private conversation”** means any words spoken by one person to another person in circumstances that indicate—

- (a) that those persons desire the words to be heard or listened to only by themselves; or
- (b) that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person;

but does not include words spoken by one person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to

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<sup>43</sup> Part 11 (Power to give directions in notified areas and other places)

<sup>44</sup> Section 87 (Declaration of notified areas)

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 SCHEDULE 3 (continued)

by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

**“public official”**, for an authorising law, means a person who, under the authorising law, is authorised to perform inspection or enforcement functions.

**“public prosecutor”** means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

**“questioning period”**, means the time for which a person may be questioned under this Act in relation to an offence.

**“reasonably believe”** means believe on grounds that are reasonable in the circumstances.

**“reasonably suspects”** means suspects on grounds that are reasonable in the circumstances.

**“relevant act”** means conduct of a kind mentioned in section 83 or 84.<sup>45</sup>

**“relevant offence”**, for part 9, division 2, see section 57.<sup>46</sup>

**“responsibilities code”** means the code of responsibilities of police officers prescribed under a regulation.

**“responsible officer”**, for a crime scene—

- (a) see section 17;<sup>47</sup> and
- (b) includes another police officer who assumes control of the crime scene.

**“riot”** see the Criminal Code, section 61(4).<sup>48</sup>

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<sup>45</sup> Section 83 (When part applies to behaviour) or 84 (When part applies to person’s presence)

<sup>46</sup> Section 57 (Power to fingerprint, photograph etc.)

<sup>47</sup> Section 17 (Initial establishment of crime scene)

<sup>48</sup> The Criminal Code, section 61(4), provides as follows—

‘(4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a **“riot”**, and the persons assembled are said to be **“riotously assembled”**.’.

## SCHEDULE 3 (continued)

**“search warrant”** see section 28.<sup>49</sup>

**“secondary crime scene”** means a place—

- (a) where there may be evidence, of a significant probative value, of the commission of a serious violent offence that happened somewhere else; and
- (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence.

**“seize”** includes retain.

**“serious indictable offence”** means an indictable offence involving any of the following—

- (a) serious risk to, or actual loss of, a person’s life;
- (b) serious risk of, or actual, serious injury to a person;
- (c) serious damage to property in circumstances endangering the safety of any person;
- (d) serious fraud;
- (e) serious loss of revenue to the State;
- (f) official corruption;
- (g) serious theft;
- (h) money laundering;
- (i) conduct related to prostitution or SP bookmaking;
- (j) child abuse, including child pornography;
- (k) a drug offence punishable by at least 20 years imprisonment.

**“serious violent offence”** means—

- (a) an offence involving deprivation of liberty; or
- (b) a 7 year imprisonment offence involving violence or a threat of violence to a person.

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<sup>49</sup> Section 28 (Search warrant)

## SCHEDULE 3 (continued)

**“7 year imprisonment offence”** means an indictable offence for which the maximum penalty is at least 7 years imprisonment.

**“surveillance device”** includes—

- (a) a listening device; and
- (b) a visual surveillance device; and
- (c) a tracking device; and
- (d) a device containing any combination of the devices mentioned in paragraphs (a), (b) and (c).

**“surveillance warrant”** see section 68.<sup>50</sup>

**“tainted property”** see the *Crimes (Confiscation) Act 1989*, section 13.<sup>51</sup>

**“time out”** includes any time reasonably required—

- (a) to take the person from the place where the person is arrested to the nearest place where the investigating officer has access to facilities for complying with part 12; and
- (b) to allow the person, or someone else on the person’s behalf, to telephone or speak to a lawyer, friend, relative, parent, guardian, interpreter or other person; and
- (c) to allow a lawyer, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the person is to be questioned; and
- (d) to allow the person to receive medical attention; and
- (e) to allow the person to recover from the effects of intoxication; and
- (f) to allow the person to rest; and
- (g) to allow for the questioning of co-offenders; and
- (h) to prepare and dispose of an application under this Act for approval of the examination of the person by a doctor or dentist; and

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<sup>50</sup> Section 68 (Surveillance warrants)

<sup>51</sup> Section 13 (Meaning of “tainted property”)

## SCHEDULE 3 (continued)

- (i) to convey the person to a suitable place for medical or dental examination or treatment; and
- (j) to allow for an identification parade to be arranged and held; and
- (k) to allow for an examination of the person under this Act by a doctor or dentist; and
- (l) to allow for witnesses to be interviewed; and
- (m) to allow for investigating police to arrive; and
- (n) to allow for the person to be taken to another place for the investigation or as part of the investigation; and
- (o) to allow for the search of any place, including a crime scene examination; and
- (p) to decide the appropriate nature and content of a charge against the person and to charge the person and decide whether to release the person on bail or serve on the person a notice to appear or complaint and summons.

**“vehicle”** includes aircraft and boat.

**“weapon”** see the *Weapons Act 1990*, section 5, definition **“weapon”**.