

Queensland



POLICE POWERS AND RESPONSIBILITIES ACT 2000

Act No. 5 of 2000

Queensland



POLICE POWERS AND RESPONSIBILITIES ACT 2000

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Queensland



Police Powers and Responsibilities Act 2000

Act No. 5 of 2000

An Act about the powers and responsibilities of police officers, and for other purposes

[Assented to 23 March 2000]

The Parliament of Queensland enacts—

CHAPTER 1—PRELIMINARY

PART 1—GENERAL

Short title

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

Commencement

2.(1) This Act, other than sections 373, 374, 375, 376 and 377 and schedules 2 and 3,¹ commences on a day to be fixed by proclamation or 1 July 2000, whichever happens first.

(2) Sections 373, 374, 375, 376 and 377 and schedule 2 commence on the date of assent.

(3) Schedule 3 commences on a day to be fixed by proclamation.

Dictionary

3. The dictionary in schedule 4 defines words used in this Act.

Purposes of Act

4. The purposes of this Act are as follows—

¹ Sections 373 (Acts amended), 374 (Definitions for div 1), 375 (Continued operation of 1997 Act, s 8), 376 (Continued operation of 1997 Act, s 136) and 377 (Expiry of division). Schedules 2 (Acts amended on assent) and 3 (Acts amended after assent).

- (a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- (b) to provide 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, for example, forgetting to make an entry in a register, may amount to a breach of discipline under the *Police Service Administration Act 1990* for which a police officer may be dealt with under that Act, including by correction by way of counselling.

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

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

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

Act does not affect certain principles

6.(1) This Act does not prevent a police officer from speaking to anyone or doing anything a police officer may lawfully do apart from this Act when performing the police officer's duties, whether or not in relation to an offence, without exercising a power under this Act or using any form of compulsion.

(2) Also, it is not the purpose of this Act to affect the principle that everyone in the community has a social responsibility to help police officers prevent crime and discover offenders.

PART 2—EFFECT OF ACT ON OTHER LAWS**Act does not affect constable's common law powers etc.**

7. 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

8. 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.

Inconsistency

9.(1) The object of this section is to allow police officers to rely generally on this Act, as opposed to a multiplicity of Acts, for their powers and responsibilities.

(2) This section applies to a provision of another Act that confers a power or imposes a responsibility on a police officer.

(3) To the extent of any inconsistency, this Act prevails over the

provision, whether enacted before or after this Act, unless the provision makes express provision to the contrary.

(4) This section applies subject to section 10.

Relationship to other Acts

10.(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 for giving effect to an Act included in schedule 1.

Example—

It may be necessary for a police officer to use reasonable force under this Act to enter a place to detain a person without warrant under a provision of another Act because that Act does not include a provision allowing the police officer to use reasonable force to enter the place.

(3) Also, it is lawful for a police officer to exercise a power in accordance with this Act for giving effect to an Act included in schedule 1 even though the other Act specifies the way the power may or must be exercised.

PART 3—APPOINTMENT AS, AND HELPING, PUBLIC OFFICIALS

Division 1—Provisions about appointments

Appointment of police officers as public officials for other Acts

11.(1) This section applies if—

- (a) an Act (“**authorising law**”) authorises someone (“**appointer**”) to appoint public officials for giving effect to the authorising law; and
- (b) a police officer may be appointed as a public official under the authorising law.

(2) Despite the authorising law, the appointer may appoint a police officer as a public official for 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—

- (a) has the necessary experience or expertise to be a public official for the authorising law; or
- (b) has satisfactorily completed a course of training approved by the commissioner.

(4) A police officer may exercise powers as a public official under an authorising law only if and to the extent 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.

Declaration of police officers as public officials

12.(1) This section applies if, under an express provision of an Act (“**authorising law**”), a police officer is a public official.

(2) Despite the authorising law, the police officer may exercise the powers of the public official only to the extent that the commissioner first approves the exercise of the powers.

(3) The commissioner may approve the exercise of the powers only if the commissioner is satisfied the police officer proposed to be appointed—

- (a) has the necessary experience or expertise to be a public official for the authorising law; or
- (b) has satisfactorily completed a course of training approved by the commissioner.

Example for subsection (3)—

The commissioner may decide to approve the exercise of powers of a public official under the *Stock Act 1915* or the *Brands Act 1915* only by police officers who are members of the unit of the police service known as the stock investigation squad.

Authorising provisions of other Acts apply subject to ss 11-12

13. A provision of another Act that expressly or impliedly authorises the appointment of a police officer as a public official or authorises a police officer to perform the functions of a public official applies subject to sections 11 and 12.

Division 2—Helping public officials**Helping public officials exercise powers under other Acts**

14.(1) This section applies if an Act (“**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) If the public official is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied giving the help in the public official’s absence is reasonably necessary in the particular circumstances.

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

(7) Subsection (6) is in addition to, and does not limit, the powers and protection a police officer has under this or any other Act.

Steps police officer may take for failure to give name and address etc. to public official

15.(1) This section applies if a police officer reasonably suspects a person required by a public official under another Act to state the person’s name and address or date of birth has failed to comply with the requirement.

(2) The police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, ask for details or further details of the excuse.

(3) If the person does not answer the question or gives an excuse that the police officer reasonably suspects is not a reasonable excuse, the police officer may, under chapter 2, part 3², require the person to state the following—

- (a) the person's name and address;
- (b) the person's date of birth.³

(4) This section does not apply if the public official is a police officer.

Steps police officer may take for obstruction of public official

16.(1) This section applies if a public official claims to have been obstructed by a person in the exercise of the public official's powers and a police officer reasonably suspects the obstruction has happened.

(2) The police officer may ask the person whether the person has a reasonable excuse for the conduct and, if the person gives an excuse, ask for details or further details of the excuse.

(3) If the person does not answer the question or gives an excuse the police officer reasonably suspects is not a reasonable excuse, the police officer may require the person to stop, or not repeat, the conduct.

(4) This section does not apply if the public official is a police officer.

² Chapter 2 (General enforcement powers), part 3 (Power to require name, address or age)

³ Under section 358 it is an offence to contravene a direction or requirement of a police officer.

CHAPTER 2—GENERAL ENFORCEMENT POWERS

PART 1—ENTRY, INQUIRIES AND INSPECTION

General power to enter to make inquiries, investigations or serve documents

17.(1) 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 be trespass.

(2) However, this section does not authorise entry to a private place if a provision of this Act or another Act provides for entry in the particular circumstances only under a search warrant or other stated authority.⁴

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

Examples for subsection (3)—

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

(5) However, if the place contains a dwelling, the only part of the place a police officer may enter without the consent of the occupier is the part of the place that is not a dwelling.

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

Example for subsection (6)—

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

⁴ See, for example, the *Prostitution Act 1999*, section 59.

What is a reasonable time to stay on a place

18.(1) What is a reasonable time to stay on a place a police officer enters to investigate a matter, make an inquiry or serve a document must be decided according to the particular circumstances.

(2) If the entry is for investigating a matter or making an inquiry, a reasonable time for a police officer to stay on a place is the time reasonably necessary for the police officer to do the following for deciding whether any other action is necessary to fulfil a function of the police service—

- (a) ask questions of anyone present at the place;
- (b) make any reasonable investigation or observation.⁵

(3) If the entry is for serving a document, a reasonable time for a police officer to stay on a place is the time reasonably necessary for the police officer to ask questions for serving the document and to serve the document according to law.

General power to enter to arrest or detain someone or enforce warrant

19.(1) A police officer may enter a place⁶ and stay for a reasonable time on the place—

- (a) to arrest a person without warrant; or
- (b) to arrest a person named in a warrant; or
- (c) to detain a person under another Act.

(2) If the place contains a dwelling, a police officer may enter the dwelling without the consent of the occupier 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) If the place is a vehicle, a police officer may stop and detain the vehicle and enter it to arrest or detain the person.

(4) A police officer who enters a place under this section may search the

⁵ For the functions of the police service, see the *Police Service Administration Act 1990*, section 2.3 (Functions of Service).

⁶ See section 328 (Use of force likely to cause damage to enter places) for relevant safeguards.

place for the person.

(5) In this section—

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

Power to enter etc. for relevant laws

20.(1) For ensuring compliance with a relevant law, a police officer may 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 law;
- (b) inspect, photograph or copy a prescribed item there or at a place with appropriate facilities for photographing or copying the item;
- (c) seize a thing to which the relevant law applies, if the thing is evidence of the commission of an offence against the relevant law or another Act;
- (d) require a licence holder or someone else apparently in possession of prescribed items to produce stated prescribed items for inspection;
- (e) inspect security measures a person must maintain under the relevant law;
- (f) require a licence holder or person apparently in possession or in charge of the place to give to the police officer reasonable help to do something mentioned in paragraph (b) or (e).

(2) A police officer may enter a part of a place not used for the purpose for which entry is made, but only to get to the place used for the purpose.

(3) If a police officer takes a prescribed item to a place with facilities for photographing or copying the item, the police officer must—

- (a) give the person from whom it is taken a receipt for the item as if it had been seized under this Act; and
- (b) return the item to the place from which it was taken—
 - (i) as soon as practicable, but no later than the end of the next

day the place is open for business; or

- (ii) if a later time is agreed in writing between the police officer and the person from whom it was taken, no later than the later time.

(4) For this section, a person who is required under—

- (a) the *Drugs Misuse Act 1986*, section 43D;⁷ or
- (b) the Road Use Management Act, section 133;⁸

to keep a register is taken to be a licence holder, and the place the person uses to carry out activities for which entries must be made in the register is taken to be a place used under a licence, under a relevant law.

(5) In this section—

“inspect” includes examine and test.

“prescribed item” means—

- (a) a document or thing that is required or permitted to be kept under a relevant law; or
- (b) a thing declared under a regulation to be a prescribed item for this section.

What is a reasonable time for entry etc. for a relevant law

21.(1) A reasonable time for a police officer to enter a place for exercising a power in relation to a relevant law includes—

- (a) when the place is open to or used by the public; or
- (b) when the police officer may reasonably expect that someone will be present at the place; or
- (c) when someone is present at the place.

(2) However, if no-one is at a building on a place a police officer enters under subsection (1)(b), the time stops being a reasonable time for the entry.

⁷ *Drugs Misuse Act 1986*, section 43D (Requirements for supply of controlled substance under relevant transactions)

⁸ Road Use Management Act, section 133 (Occupiers of garages etc. to keep register of repairs)

Requirement by a police officer for a relevant law

22.(1) This section applies if a police officer requires a licence holder or person apparently in possession or in charge of a place used for a purpose under a licence under a relevant law to give the police officer reasonable help.

(2) What is reasonable help must be decided according to the particular circumstances.

Examples for subsection (2)—

1. It may be reasonable for a person who can operate a computer to help a police officer to gain access to a document on the computer so it can be inspected.

2. It may be reasonable for a person to open a safe or strong room where prescribed items are kept.

Power to demand production of licence etc. for weapons

23.(1) This section applies if a person is required under the *Weapons Act 1990*—

- (a) to be the holder of a licence or permit to acquire under that Act; or
- (b) to have the approval of any person; or
- (c) to keep a register or record.

(2) A police officer may require the person to produce to a police officer for inspection at a stated reasonable place and time, within 48 hours, any of the following documents—

- (a) the photo licence or permit to acquire;
- (b) a certificate or other evidence of approval;
- (c) the register or record.

(3) A police officer may also require the individual to produce for inspection at a stated reasonable place and time, within 48 hours, any weapon still in the individual's possession and mentioned in any of the documents.

(4) However, if an individual has physical possession of a weapon, a police officer may require the individual to produce immediately to the police officer for inspection the weapon and the photo licence authorising

possession of the weapon.

(5) This section is in addition to, and does not limit, section 20.

PART 2—SEARCHING PERSONS, VEHICLES AND PLACES WITHOUT WARRANT

Division 1—Roadblocks

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 seven year imprisonment offence; or
- (b) may be unlawfully depriving someone else of liberty;⁹ 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) In deciding whether to establish a roadblock, 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.

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

⁹ For what is unlawful deprivation of liberty, see the Criminal Code, section 355.

Procedure for establishing roadblocks

25. Before a police officer decides where to establish a roadblock, the senior police officer present must consider—

- (a) the effect the roadblock may have on road safety and public safety; and
- (b) the likelihood of a dangerous situation happening if a person sought is located at the roadblock; and
- (c) any other relevant safety considerations.

Example—

If the person sought is believed to be armed and dangerous, the police officer establishing the roadblock may decide not to establish it in a populated location.

Record of roadblock to be made

26. The senior police officer present at a roadblock must ensure—

- (a) a record is made of relevant details of the roadblock including, for example, the reasons for establishing it, when and where it was established, for how long, and whether the roadblock led to a person sought being located or arrested; and
- (b) a copy of the record is given to a person nominated by the commissioner for the purpose.

Division 2—Searching persons without warrant**Searching persons without warrant**

27.(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant exist may, without a warrant, do any of the following—

- (a) stop and detain a person;
- (b) search the person and anything in the person's possession for anything relevant to the circumstances for which the person is detained.

(2) The police officer may seize all or part of a thing—

- (a) that may provide evidence of the commission of an offence; or
- (b) that the person intends to use to cause harm to himself, herself or someone else; or
- (c) if section 28(b) applies, that is an antique firearm.

Prescribed circumstances for searching persons without warrant

28. The prescribed circumstances for searching a person without a warrant are as follows—

- (a) the person has something that may be—
 - (i) a weapon, knife or explosive 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 seven year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed;
- (b) the person possesses an antique firearm and is not a fit and proper person to be in possession of the firearm—
 - (i) because of the person's mental and physical fitness; or
 - (ii) because a domestic violence order has been made against the person; or
 - (iii) because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;
- (c) 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, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug;
- (d) the person has something the person intends to use to cause harm

- to himself, herself or someone else;
- (e) the person is at a casino and may have contravened, or attempted to contravene, the *Casino Control Act 1982*, section 103 or 104;¹⁰
 - (f) the person has committed, is committing, or is about to commit—
 - (i) an offence against the *Racing and Betting Act 1980*; or
 - (ii) an offence against the *Corrective Services Act 1988*, section 104;¹¹ or
 - (iii) an offence that may threaten the security or management of a prison or the security of a prisoner.

Division 3—Searching vehicles without warrant

Searching vehicles without warrant

29.(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without a warrant exist may, without warrant, do any of the following—

- (a) stop a vehicle;
- (b) detain a vehicle and the occupants of the vehicle;
- (c) search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.

(2) Also, a police officer may stop, detain and search a vehicle and anything in it if the police officer reasonably suspects—

- (a) the vehicle is being used unlawfully; or
- (b) a person in the vehicle may be arrested without warrant under

¹⁰ *Casino Control Act 1982*, section 103 (Cheating) or 104 (Unlawful use of certain equipment etc.)

¹¹ *Corrective Services Act 1988*, section 104 (Offences by persons other than prisoners)

section 163¹² or under a warrant under the *Corrective Services Act 1988*.

(3) 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.

(4) 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 and search the vehicle at that place.

(5) The police officer may seize all or part of a thing—

- (a) that may provide evidence of the commission of an offence; or
- (b) that the person intends to use to cause harm to himself, herself or someone else; or
- (c) if section 30(b) applies, that is an antique firearm.

(6) Power under this section to search a vehicle includes power to enter the vehicle, stay in it and re-enter it as often as necessary to remove from it a thing seized under subsection (5).

Prescribed circumstances for searching vehicle without warrant

30. The prescribed circumstances for searching a vehicle without a warrant are that the vehicle may have in it something that—

- (a) may be a weapon or explosive a person may not lawfully possess; or
- (b) may be an antique firearm that a person possesses and the person is not a fit and proper person to possess the firearm—
 - (i) because of the person's mental and physical fitness; or
 - (ii) because a domestic violence order has been made against the person; or
 - (iii) because the person has been found guilty of an offence

¹² Section 163 (Arrest of escapees etc.)

involving the use, carriage, discharge or possession of a weapon; or

- (c) may be an unlawful dangerous drug; or
- (d) may be stolen property; or
- (e) may be unlawfully obtained property; or
- (f) may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug; or
- (g) may be evidence of the commission of an offence against any of the following—
 - the *Racing and Betting Act 1980*
 - the *Corrective Services Act 1988*, section 104¹³
 - the *Nature Conservation Act 1992*; or
- (h) may have been used, is being used, or is intended to be used, to commit an offence that may threaten the security or management of a prison or the security of a prisoner; or
- (i) may be tainted property; or
- (j) may be evidence of the commission of a seven year imprisonment offence the police officer reasonably suspects may be concealed or destroyed; or
- (k) may be something the person intends to use to cause harm to himself, herself or someone else.

Division 4—Searching public places without warrant

Searching public places without warrant

31.(1) It is lawful for a police officer to exercise the following powers in a public place without a search warrant—

¹³ *Corrective Services Act 1988*, section 104 (Offences by persons other than prisoners)

- (a) power to enter the public place and to stay on it for the time reasonably necessary to exercise powers mentioned in paragraphs (b) to (f);
- (b) power to search the public place for anything that may be evidence of the commission of an offence;
- (c) power to seize a thing found at the public place, or on a person found at the public place, that a police officer reasonably suspects may be evidence of the commission of an offence;
- (d) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence;
- (e) power to dig up land;
- (f) power to open anything that is locked.

(2) However, if this section applies to a place because it is a public place while it is ordinarily open to the public, the police officer may search the place only—

- (a) with the consent of the occupier of the place; or
- (b) under a search warrant; or
- (c) under chapter 3, part 2.¹⁴

(3) If the occupier consents, the police officer may exercise search warrant powers at the place.

¹⁴ Chapter 3 (Search warrants, obtaining documents, and crime scenes), part 2 (Search of place to prevent loss of evidence)

PART 3—POWER TO REQUIRE NAME, ADDRESS OR AGE

Division 1—Powers relating to name and address

Person may be required to state name and address

32.(1) A police officer may require a person to state the person's correct name and address in prescribed circumstances.

(2) Also, the police officer may require the person to give evidence of the correctness of the stated name and 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 or address or to otherwise be able to give the evidence.

(3) A person does not commit an offence against section 357¹⁵ if the person was required by a police officer to state the person's name and address and the person is not proved—

- (a) for section 33(a) or (b)—to have committed the offence; or
- (b) for section 33(e)—to be the person named in the warrant, summons or court document; or
- (c) for section 33(g)—to have been involved or to be about to be involved in an act of domestic violence or associated domestic violence; or
- (d) for section 33(h) or (i)—to have been able to help in the investigation.

(4) Also, a person does not commit an offence against section 357 if—

- (a) the person was required by a police officer to state the person's name and address for enforcing the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998* in relation to the supply of a tobacco product to a child; and
- (b) no one is proved to have committed an offence against that Act.

¹⁵ Section 357 (Offence to contravene direction or requirement of police officer)

(5) In this section—

“address” means current place of residence.

Prescribed circumstances for requiring name and address

33. The prescribed circumstances for requiring a person to state the person’s name and address are as follows—

- (a) a police officer finds the person committing an offence;
- (b) a police officer reasonably suspects the person has committed an offence;
- (c) a police officer is about to take the person’s identifying particulars under an identifying particulars notice or an order under section 236¹⁶;
- (d) a police officer is about to give, is giving, or has given someone a noise abatement direction, an initial nuisance direction or a final nuisance direction;
- (e) a police officer is attempting to enforce a warrant or serve a summons or other court document on a person;
- (f) a police officer reasonably believes obtaining the person’s name and address is necessary for the administration or enforcement of an Act prescribed under a regulation for this section;
- (g) a police officer reasonably suspects the person has been or is about to be involved in an act of domestic violence or associated domestic violence;
- (h) a police officer reasonably suspects the person may be able to help in the investigation of—
 - (i) an act of domestic violence or associated domestic violence; or
 - (ii) a relevant vehicle incident;
- (i) a police officer reasonably suspects the person may be able to help in the investigation of an alleged indictable offence because

¹⁶ Section 236 (Court may order taking of identifying particulars)

the person was near the place where the alleged offence happened before, when, or soon after it happened;

- (j) the person is the person in control of a vehicle that is stationary on a road or has been stopped under section 51.¹⁷

Division 2—Powers relating to age

Power for age-related offences

34.(1) This section applies if—

- (a) a person is at a place and the age of the person is relevant to the person's entitlement to be at the place; or
- (b) a person is engaging in an activity and the age of the person is relevant to the person's entitlement to engage in the activity.

Examples for subsection (1)—

1. The age of a person is relevant to a person's entitlement to be on licensed premises.

2. The age of a person is relevant to a person's entitlement to play a gaming machine at a casino or a club.

(2) A police officer may require a person to state the person's correct date of birth, whether or not when requiring 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 date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.

(4) If a police officer asks a person to give evidence of the person's date of birth and is not satisfied the person is old enough to be at the place or to engage in the activity, the police officer may direct the person—

- (a) to immediately leave the place, or the part of the place in which the person's age is relevant, and not re-enter it; or

¹⁷ Section 51 (Stopping vehicles for prescribed purposes)

- (b) not to engage in the activity.

Example for subsection (4)—

The police officer may not be satisfied the person is old enough to be at a place because of the person's apparent age if—

- (a) the person fails to provide evidence of the stated date of birth; or
- (b) the police officer reasonably suspects a document purporting to establish the person's identity and stating a date of birth does not belong to the person.

Unlawful supply of smoking products to children

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

- (a) observes a person being supplied a thing that the police officer reasonably suspects is a smoking product; and
- (b) reasonably suspects the person is a child.

(2) A police officer may—

- (a) ask the person to show acceptable evidence of age of the person; and
- (b) require the person to produce the thing supplied to the person.

(3) The police officer may seize the smoking product if the person—

- (a) either—
 - (i) refuses, or is unable, to comply with the request; or
 - (ii) shows acceptable evidence of age of the person showing the person is a child; and
- (b) the police officer reasonably suspects the tobacco product is evidence of an offence against the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*.

(4) In this section—

“acceptable evidence of age” has the meaning given to it by the *Tobacco and Other Smoking Products (Prevention of Supply to Children) Act 1998*, section 6.

“smoking product” has the meaning given to it by the *Tobacco and Other*

Smoking Products (Prevention of Supply to Children) Act 1998, schedule.

PART 4—DIRECTIONS TO MOVE-ON

Part does not apply to authorised public assemblies

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

When power applies to behaviour

37.(1) A police officer may exercise a power under section 39 in relation to a person at or near a prescribed place if a police officer reasonably suspects the person's behaviour is or has been—

- (a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or
- (b) interfering with trade or business at the 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 person's behaviour.

(3) This part also applies to a person in a prescribed place if a police officer reasonably suspects that, because of the person's behaviour, the person is soliciting for prostitution.

(4) For this part, the person's behaviour is a “**relevant act**”.

When power applies to a person's presence

38.(1) A police officer may exercise a power under section 39 in relation to a person 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 person entering, at, or leaving the place, reasonably arising in all the circumstances; or
- (b) interfering with trade or business at the 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) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.

(3) For this part, the person's presence is a **“relevant act”**.

Direction may be given to person

39.(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.

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 near a school 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.

(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.

Examples of rights and freedoms for subsection (2)(c)—

1. The rights and freedoms of the public to enjoy the place.
2. The rights of persons to carry on lawful business in or in association with the place.

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

- (a) leave the prescribed place 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.

Proposal for notified area

40.(1) A government entity or a local government 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 for this section have been complied with.

Declaration of notified areas

41. The Governor in Council may, by regulation, declare a stated area to be a notified area for this Act.

PART 5—BREACHES OF THE PEACE, RIOTS AND PREVENTION OF OFFENCES

Dealing with breach of the peace

42.(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 that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Examples for subsection (2)—

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 breach.

(3) It is lawful for a police officer—

- (a) to receive into custody from a person the police officer reasonably believes has witnessed a breach of the peace, a person who has been lawfully detained under the Criminal Code, section 260;¹⁸ and
- (b) to detain the person in custody for a reasonable time.

Prevention of riot

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

¹⁸ Criminal Code, section 260 (Preventing a breach of the peace)

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

Prevention of offences

44.(1) This section applies if a police officer reasonably suspects an offence has been committed, is being committed, or is about to be committed.

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence.

Example of preventing the commission of an offence—

A police officer who reasonably suspects the way a person in the vicinity of a prisoner is acting threatens or is likely to threaten the security of the prisoner or the security or good order of the place where the prisoner is detained may require the person to leave the vicinity of the prisoner or the place of detention.

Examples of continuation of an offence—

1. A police officer may direct a person who is obstructing an ambulance officer acting under the authority of the *Ambulance Service Act 1991* to leave the place where the person is and, if the person fails to leave, may use reasonably necessary force to remove the person.

2. A police officer may remove or deface an obscene or indecent placard, picture, writing or advertisement attached to a place or thing if it contravenes an Act because it is visible to members of the public.

PART 6—POWERS RELATING TO VEHICLES, TRAFFIC AND ANIMALS

Division 1—Inquiry and investigation powers

Power of inquiry into road use contraventions

45.(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing

whether or not an offence against the Road Use Management Act has been committed.

(2) Also, it is lawful for a police officer to arrange for someone else to make any reasonably necessary inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed.

Power to require information about identity of drivers of vehicles etc.

46.(1) This section applies if a person alleges to a police officer or a police officer reasonably suspects a contravention of the Road Use Management Act involving a vehicle, tram, or animal has been committed.

(2) A police officer may require any of the following to give to the police officer information that will identify or help identify the person who was in control of the vehicle, tram, or animal when the contravention happened—

- (a) an owner of the vehicle, tram, or animal;
- (b) a person in possession of the vehicle, tram, or animal;
- (c) a person in whose name the vehicle is registered;
- (d) a person who may reasonably be expected to be able to give the information.

(3) Also, a police officer may require the driver of the vehicle, tram, or animal to give to the police officer information about the identity of the owner of the vehicle, tram, or animal.¹⁹

Additional power of inquiry for relevant vehicle incidents

47.(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination or test—

- (a) to obtain information about a vehicle, train, tram, animal or other property involved in a relevant vehicle incident; or
- (b) to obtain information about the cause of a relevant vehicle incident and the circumstances in which it happened.

¹⁹ Failure to comply with the requirement is an offence against section 357 (Offence to contravene direction or requirement of police officer).

(2) Also, it is lawful for a police officer to make any reasonably necessary inquiry or investigation to obtain information about a person involved in a relevant vehicle incident.

(3) For subsection (1) or (2), a police officer may require a person to answer any question put to the person by the police officer or provide information relevant to the incident.

(4) A person who is required by a police officer to provide information relevant to the incident must not provide any information the person knows to be false.

Maximum penalty for subsection (4)—40 penalty units or 6 months imprisonment.

Power of entry for ss 45-47

48.(1) For sections 45 to 47, a police officer may enter a place and stay on the place for the time reasonably necessary for the purpose of the entry.

(2) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

Production of driver licence

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

- (a) finds a person committing an offence against the Road Use Management Act; or
- (b) reasonably suspects a person has committed an offence against the Road Use Management Act; or
- (c) is making inquiries or investigations for establishing whether or not a person has committed an offence against the Road Use Management Act; or
- (d) reasonably suspects a person who was present at the scene of a relevant vehicle incident may be able to give information or evidence about the incident; or
- (e) reasonably considers it is necessary for enforcing the Road Use Management Act in relation to a heavy vehicle.

(2) The police officer may require the person to produce the person's driver licence for inspection.²⁰

(3) A person who holds an open driver licence issued under the Road Use Management Act but is unable to comply with the requirement immediately may comply with the requirement by producing the licence to the officer in charge of a nominated police establishment within 48 hours after the requirement is made.

(4) The police establishment nominated under subsection (3) must be reasonable in the circumstances.

(5) Subsection (3) does not apply to a person in control of a heavy vehicle.

Power for regulating traffic

50.(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 action 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.

(4) A direction under subsection (1) or (3) may include a direction to the

²⁰ Failure to comply with the requirement is an offence against section 357 (Offence to contravene direction or requirement of police officer).

owner or driver of a parked vehicle to move the vehicle as soon as practicable.

(5) A regulation may prescribe the way a police officer may give directions under this section.

Stopping vehicles for prescribed purposes

51.(1) A police officer may require the person in control of a vehicle, other than an aircraft or train, to stop the vehicle for a prescribed purpose.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

Example of a reasonable excuse for subsection (2)—

It is a reasonable excuse for a person not to comply with a requirement if—

- (a) the person reasonably believes that to immediately comply would endanger the person or someone else; and
- (b) the person complies with the requirement at the first reasonable opportunity.

(3) The prescribed purposes are as follows—

- (a) for enforcing a transport Act;
- (b) to check whether the vehicle or person is complying with a transport Act;
- (c) for enforcing a contravention of law involving putting, dropping and leaving litter on a public place from a vehicle;
- (d) to conduct a breath test.

(4) For conducting a breath test, the police officer may enter the vehicle and remain in or on it for the time reasonably necessary for the purpose.

Examples for subsection (4)—

1. The police officer may hold a breath testing device in or through an open window of a car so the driver can provide a specimen of breath.

2. The police officer may board a boat so the driver of the boat can provide a specimen of breath.

Power to require vehicles to be moved

52.(1) This section applies to a motor vehicle that is stationary on a road or has been stopped under section 51.

(2) To enable a police officer to exercise a power for a prescribed purpose, the police officer may require the person in control of the vehicle to move the vehicle to a stated reasonable place.

Example for subsection (2)—

The officer may require the person to move the vehicle onto a weighing or testing device.

(3) However, the place must not be more than—

- (a) for a private vehicle—5 km from where the vehicle was stopped;
or
- (b) for a heavy vehicle—25 km from where the vehicle was stopped.

(4) Despite subsection (3), a stated reasonable place for a heavy vehicle may be any place along the vehicle's route to its destination or within 25 km of the route.

(5) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

(6) For a heavy vehicle, if the person does not comply with the requirement, the police officer may move the vehicle to the required place.

Requirement to remain at a place

53. This section applies if the person in control of a vehicle is required—

- (a) to stop the vehicle under section 51; or
- (b) to move the vehicle to a place under section 52.

(2) The person must ensure the vehicle remains at the place where it is stopped or moved to, for the time reasonably necessary to enable the police officer to perform a function or exercise a power under those sections.

Maximum penalty—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—80 penalty units.

Power to inspect vehicles

54.(1) This section applies to a motor vehicle that—

- (a) is stationary on a road; or
- (b) has been stopped under section 51; or
- (c) is at a place to which it has been moved under section 52.

(2) To check whether the vehicle complies with a transport Act, a police officer may inspect or test it.

(3) To enable the police officer to inspect or test the vehicle, the police officer may do anything reasonable to be done for the inspection or test.

Examples of what may be reasonable for an inspection or test—

The police officer may—

- (a) enter the vehicle; or
- (b) unlock, unfasten, open or remove any part of it; or
- (c) move its load.

Power to enter vehicles etc. other than for vehicle inspection

55.(1) This section applies to a police officer who reasonably suspects—

- (a) a vehicle at a place the police officer has entered under this Act is used, or is being used, to transport dangerous goods; or
- (b) a heavy vehicle is being, or has just been, used to transport dangerous goods; or
- (c) a vehicle is being, or has just been, used to commit an offence against a transport Act; or

- (d) a vehicle, or a thing in or on it, may provide evidence of the commission of an offence against a transport Act; or
 - (e) the driver of a heavy vehicle is required under a transport Act to keep a document relating to driving hours.
- (2) The police officer may, for enforcing a transport Act—
- (a) enter the vehicle; or
 - (b) search any part of the vehicle; or
 - (c) inspect, measure, test, photograph or film the vehicle or anything in or on it; or
 - (d) take samples of the vehicle or anything in it; or
 - (e) copy a document in the vehicle; or
 - (f) move the vehicle's load.

Power to require vehicle inspections

56.(1) If a police officer reasonably suspects a vehicle may not comply with a transport Act, the police officer may require its owner to have it inspected at a stated reasonable time and place.

- (2) The requirement—
- (a) must be made by notice in the approved form; or
 - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—60 penalty units.

Power to prohibit use of vehicles

57.(1) If a police officer reasonably suspects a vehicle is unsafe or defective, the police officer may, by notice in the approved form, require its owner not to use it, or permit it to be used, on a road until—

- (a) it is inspected at a stated reasonable place and found to comply

with the Road Use Management Act; or

- (b) stated reasonable action is taken in relation to the vehicle to ensure it complies with the Road Use Management Act.

Examples of action that may be reasonable under paragraph (b)—

1. The vehicle's load be adjusted or moved.
2. Stated repairs be carried out to the vehicle and the vehicle be inspected at a stated place and found to comply with the Road Use Management Act.

(2) Without limiting subsection (1), the police officer may issue a defect notice for the vehicle or attach a defective vehicle label to the vehicle.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

(4) It is a reasonable excuse for subsection (3) if—

- (a) the vehicle's registration is cancelled and the person gives the police officer who issued the defect notice written notice of that fact within 7 days after the cancellation; or
- (b) the vehicle is disposed of to a motor dealer and the person gives the chief executive of the department within which the Road Use Management Act is administered written notice of the name and address of the motor dealer within 7 days after the disposal.

(5) If the driver to whom a defect notice is given is not the owner, the driver must immediately give the defect notice to the owner, unless the driver has a reasonable excuse.

Maximum penalty—30 penalty units.

(6) A person must not remove a defective vehicle label attached to a vehicle from the vehicle, unless the person has a reasonable excuse.

Maximum penalty—30 penalty units.

(7) However, a police officer may remove the label if the police officer is reasonably satisfied the vehicle is no longer defective.

(8) In this section—

“**defective vehicle label**” has the meaning given under the Road Use Management Act.

“**defect notice**” has the meaning given under the Road Use Management Act.

“**motor dealer**” means a motor dealer under the *Auctioneers and Agents Act 1971*.

“**owner**”, of a motor vehicle, has the meaning given under the Road Use Management Act.

Power to prohibit persons driving

58.(1) This section applies to the driver of a motor vehicle that is stationary on a road or has been stopped under section 51.

(2) If a police officer reasonably suspects the driver would contravene the Road Use Management Act by driving a vehicle, the officer may, by notice in the approved form, require the driver not to drive a vehicle in contravention of that Act.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

Power to enable effective and safe exercise of other powers

59.(1) A police officer may require the person in control of a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this division in relation to the vehicle.

Examples of requirements for effectively exercising powers—

1. Requiring the vehicle to be held stationary on a weighing device to enable the vehicle to be weighed.
2. Requiring the vehicle’s bonnet to be opened to enable the engine to be

inspected.

(2) A police officer may require the person in control of a vehicle, or a person who is in or has just left the vehicle, to do or not to do anything the police officer reasonably believes is necessary—

- (a) to enable the police officer to safely exercise a power under a transport Act in relation to the vehicle; or
- (b) to preserve the safety of the police officer, the person or other persons.

Examples of safety requirements—

1. Requiring the persons in a vehicle to get out of the vehicle while the police officer inspects the vehicle's undercarriage.

2. Requiring a person who has just left the vehicle to stand back from the road.

3. Requiring a person to remain in control of a vehicle for a reasonable time.

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

Maximum penalty for subsection (3)—

- (a) for a private vehicle—60 penalty units; or
- (b) for a heavy vehicle—120 penalty units.

Division 2—Removal powers

Removal of vehicles and animals from roads and other places

60.(1) A police officer may, in prescribed circumstances, seize and move a vehicle or animal, or arrange for it to be moved, to another place for safe keeping.

(2) In the prescribed circumstances mentioned in section 61(c), (d) or (e), the police officer may instead move the vehicle or animal, or arrange for it to be moved, to another place where it can be located by its driver.

(3) Subsections (1) and (2) do not prevent the person in control of the vehicle or animal taking possession of it, with the consent of the police officer, before or while it is being moved.

Prescribed circumstances for removing vehicles and animals

61. The prescribed circumstances for removal of vehicles and animals are as follows—

- (a) the person in control of a vehicle or animal has been arrested;
- (b) a police officer reasonably suspects the person who was last in control of a vehicle or animal has abandoned it;
- (c) a police officer—
 - (i) reasonably suspects a vehicle or animal has been involved in a relevant vehicle incident; and
 - (ii) reasonably believes it is necessary to detain the vehicle or animal for completing inquiries and investigations into the incident;
- (d) a police officer reasonably suspects a vehicle or animal has been left on a road unattended, temporarily or otherwise, and because of the time for which it has been left unattended, the way it has been left unattended, or the place, condition, or circumstances in which it has been left unattended, its presence on the road—
 - (i) may be dangerous to others; or
 - (ii) may prevent or hinder the lawful use by others of the road or a part of the road;
- (e) a police officer reasonably suspects a vehicle or animal has been left in circumstances that are an offence against any of the following Acts and the person in control of the vehicle or animal can not be easily located or fails to comply with a direction of the police officer to move the vehicle or animal immediately—
 - the Road Use Management Act
 - the *Brisbane Forest Park Act 1977*
 - the *Recreation Areas Management Act 1988*
 - the *Nature Conservation Act 1992*;
- (f) a police officer reasonably suspects—
 - (i) a contravention of an Act has happened; and

- (ii) the contravention involves an animal; and
- (iii) it is necessary to take steps to protect the animal.

Police officer may authorise tow

62.(1) This section applies if—

- (a) a police officer seizes a vehicle under this or another Act; or
- (b) the owner of a damaged vehicle, or the owner's agent, is away from the vehicle or incapacitated.

(2) A police officer may sign a towing authority under the *Tow Truck Act 1973* for the vehicle.

(3) The driver of a tow truck towing the vehicle under the towing authority must tow the vehicle to—

- (a) the nearest holding yard available to the driver; or
- (b) if directed by a police officer, the nearest police establishment or other place directed by the police officer.

(4) A person must not unlawfully remove a vehicle from the place to which it is towed under subsection (3).

Maximum penalty for subsection (4)—40 penalty units.

Steps after seizing vehicle or animal

63.(1) As soon as practicable, but within 14 days after seizing and moving a vehicle or animal under this division, the police officer who seized it must give or arrange for another police officer to give to the owner, if known, a notice stating—

- (a) how the owner may recover the vehicle or animal; and
- (b) that, before the vehicle or animal may be recovered, the person—
 - (i) may be required to produce satisfactory evidence of the ownership of the vehicle or animal; and
 - (ii) must pay the costs of removing and keeping the vehicle or animal; and
- (c) the penalty for unlawfully removing the vehicle from the place at

which it is held.

(2) If practicable, the notice must be given to the owner personally.

(3) If it is not practicable to comply with subsection (2), the notice may be given by advertisement in a newspaper circulating generally in the locality in which the vehicle or animal was found.

(4) A requirement under this Act to return the vehicle or animal applies subject to section 64.

Recovery of seized vehicle or animal

64.(1) If, within 1 month after notice of the seizure of a vehicle or animal under this division is given, the owner does not recover the vehicle or animal, the commissioner may sell the vehicle or animal and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.

(2) Notice of the proposed sale must be given by advertisement in a newspaper circulating in the locality where the vehicle or animal was found.

Application of proceeds of sale

65.(1) The proceeds of the sale of a vehicle or animal under section 64 must be applied in the following order—

- (a) in payment of the expenses of the sale;
- (b) in payment of the cost of seizing and keeping the vehicle or animal and giving notice of its seizure;
- (c) in payment of any balance to the owner.

(2) Compensation is not recoverable against the State for a payment under this section.

Division 3—Other provisions about animals

Power in relation to offences involving animals

66.(1) This section applies if a police officer reasonably suspects an

offence involving an animal has been, is being or is about to be committed at or involving a place.

(2) The police officer may enter the place and do any of the following—

- (a) search for and inspect—
 - (i) any animal; or
 - (ii) any brand, mark, branding instrument, pliers or other device used to identify an animal;
- (b) open anything in the relevant place that is locked;
- (c) seize anything the officer reasonably suspects is evidence of the commission of an offence involving an animal;
- (d) muster, yard, detain, clip or otherwise deal with the animal.

(3) Also, the police officer may, for exercising powers under subsection (2), stop—

- (a) travelling livestock; and
- (b) a vehicle apparently being used to transport animals; and
- (c) a vehicle apparently being used by someone accompanying the animals.

(4) In this section—

“**animal**” includes livestock.

Offence to interfere with seized animals

67.(1) This section applies if an animal is seized under this Act.

(2) A person, other than a police officer or a person authorised by a police officer for the purpose, must not—

- (a) interfere with the animal; or
- (b) enter or be on the place where the animal is being kept; or
- (c) move the animal from where it is being kept; or
- (d) attempt to do anything mentioned in paragraph (a), (b) or (c); or

- (e) have the animal in the person's possession or under the person's control.

Maximum penalty—20 penalty units or 6 months imprisonment.

CHAPTER 3—SEARCH WARRANTS, OBTAINING DOCUMENTS, AND CRIME SCENES

PART 1—SEARCHING PLACES WITH WARRANTS

Search warrant application

68.(1) A police officer may apply for a warrant to enter and search a place (“**search warrant**”) to obtain evidence of the commission of an offence.

(2) The application may be made to any justice, unless the application must be made to a magistrate or Supreme Court judge under subsection (3) or (4).

(3) Unless the application must be made to a Supreme Court judge under subsection (4), the application must be made to a magistrate if the thing to be sought under the proposed warrant is—

- (a) evidence of the commission of an offence only because—
- (i) it is a thing that may be liable to forfeiture or is forfeited; or
 - (ii) it may be used in evidence for a forfeiture proceeding; or
 - (iii) it is a property-tracking document; or
- (b) evidence of the commission of an indictable offence committed in another State that, if it were committed in Queensland, would be an indictable offence in Queensland.

Example for paragraph (a)(ii)—

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.

(4) The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

(5) An application under this section must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information required under the responsibilities code about any search 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.

(6) Subsection (5)(b) applies only to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the officer otherwise actually knows.

(7) The justice, magistrate or judge (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.

Issue of search warrant

69. The issuer may issue a search warrant only if satisfied there are reasonable grounds for suspecting evidence of the commission of an offence—

- (a) is at the place; or
- (b) is likely to be taken to the place within the next 72 hours.

If justice refuses application for search warrant

70.(1) If a justice refuses to issue a warrant, the police officer may apply

to a magistrate or a judge for the issue of the warrant.

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

(3) Subsection (1) does not apply if the justice who refuses the warrant is or has been a Supreme Court judge, a District Court judge or a magistrate.

Order in search warrants about documents

71. If the issuer is a magistrate, the issuer may, in a search warrant, order the person in possession of documents at the place to give to the police officer all documents of a type stated in the warrant.

When search warrant ends

72.(1) A search warrant issued because there are reasonable grounds for suspecting there is evidence of the commission of an offence at a place ends 7 days after it is issued.

(2) A search warrant issued because there are reasonable grounds for suspecting evidence of the commission of an offence is likely to be taken to a place within the next 72 hours ends 72 hours after it is issued.

What search warrant must state

73.(1) A search warrant must state—

- (a) that a police officer may enter the place and exercise search warrant powers at the place; and
- (b) if the warrant is issued in relation to—
 - (i) an offence—brief particulars of 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 day and time the warrant ends.

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

(3) If a magistrate makes an order under section 71, the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under the Criminal Code, section 205.²¹

Power under search warrants

74.(1) A police officer has the following powers under a search warrant (“**search warrant powers**”)—

- (a) power to enter the place stated in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;
- (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) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably

²¹ Criminal Code, section 205 (Disobedience to lawful order issued by statutory authority)

suspects may be evidence of the commission of an offence to which the warrant relates;

- (i) 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;
- (j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (k) 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.

(2) Also, a police officer has the following powers if authorised under a search warrant (also “**search warrant powers**”)—

- (a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;
- (b) 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.

(3) Power to do anything at the relevant place that may cause structural damage to a building, may be exercised only if the warrant—

- (a) authorises the exercise of the power; and
- (b) is issued by a Supreme Court judge.

Copy of search warrant to be given to occupier

75.(1) If a police officer executes a search warrant for a place that is occupied, the police officer must—

- (a) if the occupier is present at the place—give to the occupier a copy of the warrant and a statement in the approved form summarising the person’s rights and obligations under the warrant; or

(b) if the occupier is not present—leave the copy in a conspicuous place.

(2) If the police officer reasonably suspects giving the person the copy may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (1), but only for so long as—

- (a) the police officer continues to have the reasonable suspicion; and
- (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep the place under observation.

PART 2—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE

Application of pt 2

76. This part applies only in relation to the following offences (a “**part 2 offence**”)—

- (a) an indictable offence;
- (b) an offence involving gaming or betting;
- (c) an offence against any of the following Acts—
 - *Crimes (Confiscation) Act 1989*
 - *Explosives Act 1999*
 - *Nature Conservation Act 1992*
 - *Weapons Act 1990.*

Search to prevent loss of evidence

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

- (a) 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 a part 2 offence;

and

- (b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.

(2) This section also applies if a police officer reasonably suspects a part 2 offence has been, is being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it.

(3) A police officer may enter the place and exercise search warrant powers, other than power to do something that may cause structural damage to a building, at the place as if they were conferred under a search warrant.

Post-search approval

78.(1) As soon as reasonably practicable after exercising powers under section 77, the police officer must apply to a magistrate in writing for an order approving the search (“**post-search approval order**”).

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

(3) The applicant need not appear at the consideration of the application, unless the magistrate otherwise requires.

(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.

Making of post-search approval order

79.(1) The magistrate may make a post-search approval order 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 may have caused injury to a person; or
 - (b) having regard to the nature of the evidence found during the search it is in the public interest to make the order.
- (2) The magistrate may also make an order under section 315,²² whether or not a post-search approval order is made.

Appeal

80.(1) Within 28 days after either of the following happens, the commissioner may appeal against the order to the Supreme Court—

- (a) a magistrate refuses to make a post-search approval order;
- (b) a magistrate makes an order under section 79(2).

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

(3) The court may make an order under section 315 whether or not the appeal is upheld.

PART 3—CRIME SCENES

Division 1—Establishment of crime scenes

Gaining access to crime scenes

81.(1) 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

²² Section 315 (Order issuer may make in relation to seized thing)

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

(2) What is a reasonable time for subsection (1)(b) will depend on the particular circumstances including—

- (a) the nature of any information obtained or any observation made that suggests the place is a crime scene; and
- (b) visible evidence that will help decide whether it is a primary or secondary crime scene; and
- (c) any preliminary inspection of the place.

Initial establishment of crime scene

82.(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 crime scene powers at the place.²³

(2) If another police officer assumes control of the crime scene, that police officer becomes the responsible officer instead of the other officer.

(3) The responsible officer may establish the crime scene in any way that gives anyone wanting to enter the place 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.

Responsibility after establishing crime scene

83.(1) As soon as reasonably practicable after the responsible officer establishes the crime scene, a police officer must apply to a Supreme Court

²³ For crime scene powers, see division 3.

judge or magistrate for a crime scene warrant.²⁴

(2) Subsection (1) does not apply if the place is a public place.

(3) However, if the place is a public place only while it is ordinarily open to the public and the occupier of the place requires a police officer at the place to leave the place, the police officer may apply under division 2 for a crime scene warrant.

(4) The application must be made to a Supreme Court judge for a crime scene warrant if it is intended to do something that may cause structural damage to a building.

(5) Subsection (4) applies whether or not a magistrate has issued a crime scene warrant for the place.

(6) If a judge or magistrate refuses to issue a crime scene warrant for the place, the place stops being a crime scene.

Deciding limits of crime scene

84. The responsible officer at a crime scene must—

- (a) identify what is the crime scene; and
- (b) decide the boundaries necessary to protect the crime scene; and
- (c) mark the limits of the crime scene in a way that sufficiently identifies it to the public as a crime scene.

Example for paragraph (b)—

It may be necessary to establish a buffer zone around the crime scene.

Restricting access to crime scene

85.(1) The responsible officer must immediately take the steps he or she considers to be reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed, including for example, steps necessary—

- (a) to ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene; and

²⁴ For provisions about crime scene warrants, see division 2.

- (b) to prevent unnecessary movement inside the boundaries of the crime scene; and
- (c) to establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be on the place.

(2) Also, a person, other than the responsible officer, must not enter a crime scene unless—

- (a) the person has a special reason, associated with the investigation, for entering the crime scene; or
- (b) the person is a police officer who is asked to enter the crime scene by the responsible officer or an investigating police officer; or
- (c) the person is an authorised assistant; or
- (d) the presence of the person is necessary to preserve life or property at a crime scene; or
- (e) the person is authorised to enter by the responsible officer.

Examples for subsection (2)(a)—

1. A police officer removing someone from the crime scene who should not be there.
2. A police officer investigating the offence.
3. A person accompanying a police officer to assist in the investigation or who has special knowledge of the place that is relevant to the investigation.

(3) For subsection (2)(e), the responsible officer may authorise the entry subject to stated requirements.

(4) The responsible officer must ensure a record is made of the name of each person who is present when the crime scene is established or enters it after it is established, when each person entered the place after it is established, and the purpose of the entry.

Preserving evidence at crime scene

86. The responsible officer at a crime scene must ensure that nothing in the crime scene is unnecessarily touched or moved—

- (a) until all necessary forensic and technical examinations are finished; or

- (b) unless there is a possibility that the thing could be damaged, interfered with or destroyed if it is not moved.

Examples of when evidence may be damaged or destroyed if a thing is not moved—

1. If the arrival of the investigator, or an authorised assistant or specialist officer will be delayed and the scene is exposed to the weather.
2. If falling or threatened rain may damage fingerprints that may be on a knife left on the ground.

Division 2—Crime scene warrants

Application for crime scene warrant

87.(1) A police officer may apply to a Supreme Court judge or a magistrate for a warrant (a “**crime scene warrant**”) to establish a crime scene at a place.

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

(3) The occupier of the place must, if reasonably practicable, be given notice of the making of the application.

(4) Subsection (3) does not apply if the police officer reasonably suspects giving the notice would frustrate or otherwise hinder the investigation of the offence to which the application relates.

(5) If present when the application is made, the occupier may make submissions to the judge or magistrate (the “**issuer**”), but not submissions that will unduly delay the consideration of the application.

(6) 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.

Consideration of application and issue of crime scene warrant

88.(1) Before issuing a crime scene warrant, the issuer must have regard to the following—

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

(2) The issuer may issue a crime scene warrant only if reasonably satisfied the place is a crime scene.

(3) If before the application is considered, the place stops being a crime scene, the issuer may issue a crime scene warrant that has effect only for the time the place was a crime scene.

What crime scene warrant must state

89.(1) A crime scene warrant must state—

- (a) that a stated police officer may establish a crime scene at the place and exercise crime scene powers at the place; and
- (b) the day, not more than 7 days after the warrant is issued, the warrant ends, unless extended under section 90(2).

(2) If the issuer is a Supreme Court judge, the warrant must state whether or not a police officer may, under the warrant, do something that may cause structural damage to a building.

Duration, extension and review of crime scene warrant

90.(1) A crime scene warrant stops having effect on the day fixed under the warrant or a later time fixed under subsection (2).

(2) The issuer may, on the 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.

Review of crime scene warrant

91.(1) If an application for a crime scene 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.

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

(3) The making of an application under subsection (1) or the *Judicial Review Act 1991* for review of the warrant's issue does not stay the effect of the warrant.

Copy of crime scene warrant to be given to occupier

92.(1) 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 in the approved form 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.

Division 3—Powers at crime scenes**Powers at crime scene**

93.(1) The responsible officer at a crime scene, or a police officer acting under the direction of the responsible officer, may do any of the following in relation to the crime scene—

- (a) enter the crime scene;
- (b) if reasonably necessary, enter another place to gain access to the crime scene;
- (c) perform any necessary investigation, including, for example, a search and inspection of the crime scene and anything in it to obtain evidence of the commission of an offence;
- (d) open anything at the crime scene that is locked;
- (e) take electricity for use at the crime scene;

- (f) dig up anything at the crime scene;
- (g) remove wall or ceiling linings or floors of a building, or panels or fittings of a vehicle;
- (h) remove or cause to be removed an obstruction from the crime scene;
- (i) photograph the crime scene and anything in it;
- (j) seize all or part of a thing that may provide evidence of the commission of an offence.

Example for paragraph (j)—

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

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

(3) An authorised assistant at a crime scene may also do a thing mentioned in subsection (1).

(4) However, the authorised assistant may do either of the following only if asked by a responsible officer to do something at the crime scene—

- (a) enter the crime scene;
- (b) if reasonably necessary, enter another place to gain access to the crime scene.

Powers of direction etc. at crime scene

94. 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—

- (a) direct a person to leave the crime scene or remove a vehicle or animal from the crime scene;
- (b) remove or cause to be removed from the crime scene—
 - (i) a person who fails to comply with a direction to leave the crime scene; or
 - (ii) a vehicle or animal a person fails to remove from the crime

scene;

- (c) direct a person not to enter the crime scene;
- (d) prevent a person from entering the crime scene;
- (e) 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;
- (f) direct the occupier of the place or a person apparently in charge of the place to maintain a continuous supply of electricity at the place.

Exercise of crime scene powers in public place

95.(1) It is lawful for a police officer to exercise powers under sections 93 and 94 at a public place without a crime scene warrant.

(2) However, if—

- (a) the place is a public place only while it is ordinarily open to the public; and
- (b) the occupier of the place asks a police officer or an authorised assistant to leave the place;

the police officer or authorised assistant may, despite the request, continue to act under subsection (1) for the time reasonably necessary for an application for a crime scene warrant for the place to be made and decided.

(3) An authorised assistant at a crime scene may also do a thing mentioned in section 93(1).

(4) However, the authorised assistant may do either of the following only if asked by a responsible officer to do something at the crime scene—

- (a) enter the crime scene;
- (b) if reasonable necessary, enter another place to gain access to the crime scene.

Division 4—General**Alternative accommodation to be provided in some cases**

96.(1) This section applies to the occupier of a dwelling if—

- (a) the occupier can not continue to live in the dwelling while the crime scene is established because of a direction given at a crime scene; or
- (b) the occupier can not continue to live in the dwelling because of damage caused to the dwelling in the exercise of powers under this part.

(2) The commissioner must, if the occupier asks, arrange suitable alternative accommodation for the occupier for the time the occupier can not live in the dwelling.

(3) The accommodation must, if reasonably practicable, be in the same locality as, and of at least a similar standard to, the occupier’s dwelling.

(4) This section does not apply to an occupier who is detained in lawful custody.

PART 4—PRODUCTION NOTICES**Production notices**

97.(1) This section applies if a police officer reasonably suspects a cash dealer 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 (“**production notice**”) requiring the cash dealer to produce documents stated in the production notice to a police officer.

(3) The application must—

- (a) be sworn and state the grounds on which the production notice is sought; and

- (b) include information required under the responsibilities code about any production notices 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) Subsection (3)(b) applies only to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

(5) 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.

Issue of production notice

98.(1) The magistrate may issue a production notice only if satisfied there are reasonable grounds for suspecting—

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

(2) The magistrate may, in the production notice, require the documents to be produced to a police officer within a stated time and at a stated place.

Copy of production notice to be given to cash dealer

99. A police officer must give a copy of a production notice to the cash dealer named in the notice as soon as reasonably practicable after it is issued.

Procedural requirements—production notice

100.(1) A cash dealer given a production notice must comply with the notice.

(2) The cash dealer is not subject to any liability for complying with, or producing something in the honest belief that the dealer was complying with, a production notice.

(3) It is not an offence to fail to comply with a production notice.

Power under production notice

101.(1) A police officer has the following powers in relation to a document produced under a production notice—

- (a) power to inspect the document;
- (b) power to take extracts from the document;
- (c) power to make copies of the document;
- (d) power to seize the document if the officer reasonably suspects it is evidence of the commission of an offence.

(2) Subsection (1) applies subject to section 102.

If cash dealer claims documents contain privileged communications

102.(1) If, under a production notice, a cash dealer produces a document the cash dealer claims contains privileged communications between the cash dealer and someone else, the police officer receiving the document—

- (a) must as soon as reasonably practicable apply to a magistrate for an order for access to the document (“**access order**”); and
- (b) may retain the document, but must not inspect it until the application is decided.

(2) Before making the application, the police officer must ask for whom and on what ground the claim is made and record the answers given.

(3) Also, the police officer must—

- (a) place the document in a container or envelope; and
- (b) seal the container or envelope; and
- (c) sign the seal on the container or envelope; and
- (d) ask the person producing the document for the cash dealer to sign the seal; and

- (e) tell the person producing the document for the cash dealer the document will be retained and an application will be made for an order for access to the document.

Making of access order

103.(1) A magistrate, or a justice authorised in writing by the magistrate, may make an access order for a document a cash dealer claims contains privileged communications between the cash dealer and someone else only if reasonably satisfied that in the particular circumstances the police officer should be allowed access to the document.

(2) If the magistrate or justice refuses to make the access order, the magistrate or justice may order that the document be returned to the cash dealer as soon as reasonably practicable.

Provisions about access order

104.(1) An access order may state that a police officer may, in relation to documents to which it relates—

- (a) exercise the powers in section 101; or
- (b) copy the document and return the original document to the cash dealer.

(2) An access order that authorises copying of a document and its return to a cash dealer may order that the document be again produced to a court hearing a proceeding for an offence for which the document is to be used as evidence, if a police officer asks.

(3) If an access order authorises the copying of a document that is in electronic form, the order authorises the police officer to produce a hard-copy of the information contained in the document.

PART 5—PRODUCTION ORDERS

Application of pt 5

105.(1) This part applies to—

- (a) a serious offence within the meaning of the Confiscation Act; and
- (b) an interstate serious offence within the meaning of the Confiscation Act.

(2) For this part, the question whether a person has been charged with or found guilty of an interstate serious offence is to be decided in accordance with the law of the State in which the person is charged or found guilty.

Production order applications

106.(1) This section applies if a police officer reasonably suspects a person possesses a document that may be a property tracking document relating to either of the following—

- (a) a serious offence of which a person has been found guilty;
- (b) a serious offence a police officer reasonably suspects a person has committed.

(2) A police officer may apply to a Supreme Court judge for an order (“**production order**”) requiring a person named in the application to produce the document to a police officer.

(3) The application must—

- (a) be sworn and state the grounds on which the production order is sought; and
- (b) include information specified in the responsibilities code about any production orders issued within the previous year in relation to the named person.

(4) Subsection (3)(b) applies only to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

(5) 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.

Making of production orders

107.(1) The Supreme Court judge may make a production order only if satisfied there are reasonable grounds for suspecting the person possesses a document that may be a property tracking document relating to the serious offence mentioned in the application.

(2) If the application includes information that the police officer reasonably suspects that—

- (a) the person who was found guilty of the offence, or who is believed to have committed the offence, derived a benefit from the commission of the offence; and
- (b) property specified in the information is subject to the effective control of the person;

the judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for this section.

(3) In deciding whether to treat a document as a property-tracking document in relation to an offence, the judge may have regard to the matters mentioned in the Confiscation Act, section 37.²⁵

What production order must state

108.(1) The production order must—

- (a) order a stated person—
 - (i) to produce to a police officer any documents, other than a financial institution's books, of the kind mentioned in section

²⁵ *Crimes (Confiscation) Act 1989*, section 37 (Assessment of benefits)

106(1) that are in the person's possession; or

- (ii) to make available to a police officer, for inspection, any documents of that kind that are in the person's possession; and
- (b) state when and the place where—
 - (i) documents that must be produced are to be produced; or
 - (ii) documents that must be made available for inspection are to be made available; and
- (c) state that a police officer may enter the place and exercise the powers under section 109.

(2) In this section—

“financial institution's books” means accounting records used in the ordinary business of a financial institution, including ledgers, daybooks, cashbooks and account books.

Powers under production order

109. A police officer has the following powers in relation to a document produced or made available under the production order—

- (a) power to inspect the document;
- (b) power to take extracts from the document;
- (c) power to make copies of the document;
- (d) power to seize the document if the officer reasonably suspects it is evidence of the commission of an offence.

Variation of production order

110.(1) If a Supreme Court judge makes a production order requiring a person to produce a document to a police officer, the person may apply to a Supreme Court judge for a variation of the order.

(2) If the judge is satisfied the document is essential to the business activities of the person, the judge may vary the production order so it requires the person to make the document available to a police officer.

Offence to contravene production order

111.(1) A person must not contravene a production order, unless the person has a reasonable excuse.

(2) A person must not produce or make available a document under a production order that the person knows is false or misleading in a material particular without—

- (a) indicating to the police officer to whom the document is produced or made available how the document is false or misleading; and
- (b) giving correct information to the police officer, if the person has, or can reasonably obtain, the correct information.

(3) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

Effect of compliance with production order

112.(1) A person is not excused from producing a document or making a document available when required to do so by a production order on the ground that—

- (a) producing or making the document available might tend to incriminate the person or make the person liable to a penalty; or
- (b) producing or making the document available would be in breach of an obligation, whether imposed by any law or otherwise, of the person not to disclose the existence or contents of the document.

(2) Subsection (3) applies if a person produces a document or makes a document available under a production order.

(3) The following are not admissible against the person in any criminal proceeding, other than a proceeding for an offence against section 111 in relation to producing the document or making the document available—

- (a) the fact that the person produced the document;
- (b) the fact that the person made the document available;
- (c) any information, document or thing directly or indirectly obtained because the document was produced or made available.

PART 6—POWER TO SEIZE EVIDENCE AND ABANDONED AND ILLEGALLY PLACED PROPERTY

Power to seize evidence generally

113.(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.

(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if the police officer is acting 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.

Power to remove property unlawfully on a place

114.(1) This section applies if a police officer lawfully enters a place or is at a public place and finds on the place a thing the police officer reasonably suspects is on the place in contravention of an Act.

(2) The police officer may seize the thing if the person in charge of the thing can not immediately be found.

(3) Also, the police officer may seize the thing if the person in charge of the thing can be found and the police officer reasonably suspects the person is unwilling or unable to move the thing immediately.

(4) The police officer may take the thing to a place where the presence of the thing does not contravene the relevant Act or another Act.

(5) This section does not apply to a vehicle or an animal.

CHAPTER 4—COVERT EVIDENCE GATHERING POWERS

PART 1—MONITORING ORDERS

Meaning of “financial institution” for pt 1

115. In this part—

“**financial institution**” includes—

- (a) a corporation that is (or that, if it had been incorporated in Australia, would be) a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx); and
- (d) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

Monitoring order applications

116.(1) A police officer may apply to a Supreme Court judge for an order (“**monitoring order**”) directing a financial institution to give information to a police officer about a named person.

(2) The application must—

- (a) be sworn and state the grounds on which the order is sought; and
- (b) include information required under the responsibilities code about any monitoring orders issued within the previous year in relation to an account held with the financial institution by the named person.

(3) Subsection (2)(b) applies only to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

(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.

Making of monitoring order

117. The Supreme Court judge may make the monitoring order only if satisfied there are reasonable grounds for suspecting that the person named in the application—

- (a) has committed, or is about to commit, a serious offence; or
- (b) was involved in the commission, or is about to be involved in the commission, of a serious offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a serious offence.

What monitoring order must state

118.(1) The monitoring order must order a financial institution to give information obtained by the institution about transactions conducted through an account held by the named person with the institution and state—

- (a) the name or names in which the account is believed to be held; and
- (b) the type of information the institution is required to give; and
- (c) the period, of not more than 3 months from the date of its making, the order is in force; and
- (d) that the order applies to transactions conducted during the period stated in the order; and
- (e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.

(2) In this section—

“transaction conducted through an account” includes—

- (a) the making of a fixed term deposit; and
- (b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

When period stated in monitoring order starts

119. A monitoring order has effect from the start of the day notice of the order is given to the financial institution.

Offence to contravene monitoring order

120. A financial institution that has been given notice of a monitoring order must not knowingly—

- (a) contravene the order; or
- (b) provide false or misleading information in purported compliance with the order.

Maximum penalty—1 000 penalty units.

Existence and operation of monitoring order not to be disclosed

121.(1) A financial institution that is or has been subject to a monitoring order must not disclose the existence or the operation of the order to any person other than—

- (a) a police officer; or
- (b) an officer or agent of the institution (“**an institution officer**”), for ensuring the order is complied with; or
- (c) a lawyer, for obtaining legal advice or representation in relation to the order.

(2) A person to whom the existence or operation of a monitoring order has been disclosed, whether under subsection (1) or under the provision as originally made or remade or otherwise, must not—

- (a) while the person is a police officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

- (i) if the person is a police officer—performing the person’s duties; or
 - (ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or
 - (iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or
- (b) when the person is no longer a police officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a police officer disclosing the existence or operation of a monitoring order—

- (a) for, or in relation to, a legal proceeding; or
- (b) in a proceeding before a court.

(4) A police officer can not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

(6) For this section, a person must not be taken to be a director within the meaning of the *Crimes (Confiscation) Act 1989*, section 4, definition “**director**”, paragraph (c) only because the directors act on advice given by the person in the proper performance of the functions attaching to—

- (a) his or her professional capacity; or
- (b) his or her business relationship with the directors of the financial institution or the corporation.

(7) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(8) In this section—

“**agent**” has the meaning given by the *Crimes (Confiscation) Act 1989*, section 4.

“**officer**”, of a financial institution, has the meaning given by the *Crimes (Confiscation) Act 1989*, section 4.

PART 2—SURVEILLANCE POWERS

Division 1—Preliminary

Certain Acts do not apply to this part

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

Certain acts not prevented by divs 2–3

123. Nothing in divisions 2 and 3 prevents a police officer from using a visual surveillance device in a place where the presence of the police officer does not constitute an offence.

Example—

The police officer may use a visual surveillance device to record activities in a public place or, with the occupier’s consent, install the device in a private place.

Division 2—Use of surveillance devices under warrant of Supreme Court judge

Surveillance warrant applications

124.(1) This section applies if a police officer reasonably believes a person has been, is, or is likely to be, involved in the commission of an indictable offence.

(2) A police officer of at least the rank of inspector may apply to a Supreme Court judge for a warrant (“**surveillance warrant**”) authorising the use of a class A or class B surveillance device or both.

(3) The police officer may apply for a surveillance warrant for a class A

surveillance device only if the offence is a serious indictable offence.

(4) The application must—

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

(5) Subsection (4)(b) only applies to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

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

(7) The judge may refuse to consider the application until the applicant 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.

Who may be present at consideration of application for surveillance warrant

125.(1) The judge must hear an application for a surveillance warrant 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).

(2) Also, the judge must hear the application—

- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform

- the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

Consideration of application for surveillance warrant

126. Before deciding an application for a surveillance warrant, the judge must, in particular, and being mindful of the highly intrusive nature of a surveillance warrant, consider the following—

- (a) the nature and seriousness of the suspected offence;
- (b) for a class A surveillance device, if the warrant is issued, the likely extent of interference with the privacy of—
 - (i) the relevant person; 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 relevant person;
- (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.

Issue of surveillance warrant

127.(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be involved in the commission of an

indictable offence or, for a class A surveillance device, a serious indictable offence; and

(b) is likely to be—

(i) at a place, including a public place, mentioned in the application; or

(ii) at a class of place mentioned in the application.

(2) The judge may issue a warrant for the use of a class A surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in a serious indictable offence.

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

(a) a condition requiring regular reporting to a judge on activities under the warrant; and

(b) a condition requiring that, if a listening device is to be used in a public place or a class of place, the police officer, before installing or using the device, must have a reasonable belief that the relevant person is or will be in the place where the device is to be used.

Example for subsection 3(b)—

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

What surveillance warrant must state

128. The surveillance warrant must state the following—

(a) that a police officer may exercise surveillance powers under the warrant;

(b) the name of the relevant person, if known;

(c) the place where the surveillance device authorised under the warrant may be used;

(d) the type of surveillance device that may be used under the warrant;

- (e) for a visual surveillance device that is to be installed in a dwelling, the parts of the dwelling in which the device may be installed;
- (f) any conditions the judge imposes under section 127(3);
- (g) the day and time the warrant starts and when the warrant ends.

Report on use of surveillance devices

129.(1) This section applies if, because of a condition of a surveillance warrant, a police officer gives to a judge a report on activities under the warrant.

(2) The judge may, after considering the report, require the destruction of any recording made that is not related to the offence mentioned in the warrant, unless the recording relates to the investigation of another indictable offence.

Duration and extension of surveillance warrants

130.(1) A surveillance warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) the day the investigation under the warrant ends.

(2) However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained—

- (a) if the device is a class A surveillance device—of another serious indictable offence; or
- (b) if the device is a class B surveillance device—of another indictable offence.

(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

(4) Despite the ending of the warrant under subsection (1) or (2), the police officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

Power under surveillance warrants

131. A police officer may lawfully exercise the following powers under a surveillance warrant (“**surveillance powers**”)—

- (a) for a class A surveillance device—power to enter a stated place or class of place, covertly or through subterfuge, to install, maintain, replace or remove a surveillance device; or
- (b) for a class B surveillance device—power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (c) for a listening device—power to install and use the device and to record private conversations;
- (d) for a visual surveillance device—power to install and use the device to monitor and record visual images;
- (e) for another surveillance device—power to install and use the device for the purpose for which the device is designed, including, for example, tracking the location of a person or moveable object;
- (f) power to take electricity for using a surveillance device;
- (g) power to use 1 or more surveillance devices, whether of the same or a different kind, in the same place;
- (h) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

Division 3—Emergency use of surveillance devices**Emergency use of surveillance devices**

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

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

Examples for subsection (1)—

1. A siege.
2. A terrorist incident.

3. An act of deprivation of liberty in which the victim's life may be in danger.
4. An act of extortion involving a threat of imminent injury to someone else.

(2) A police officer of at least the rank of inspector may authorise the use of a surveillance device.

(3) A police officer acting under an authority under subsection (2) may exercise any of the powers a police officer may exercise under a surveillance warrant.

Application for approval after emergency use of surveillance device

133.(1) Within 2 business 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.

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

(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.

Who may be present at consideration of application

134.(1) The judge must hear an application under section 133 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).

(2) Also, the judge must hear the application—

- (a) in the absence of the person who is alleged to have caused or be causing the risk or anyone likely to inform the person of the application; and
- (b) without that person having been informed of the application.

Consideration of application

135. Before deciding an application for an approval, the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature of the risk of serious injury to a person;
- (b) the extent to which issuing a surveillance warrant would have helped reduce or avoid the risk;
- (c) the extent to which police officers could have used conventional ways of investigation to help reduce or avoid the risk;
- (d) how much the use of conventional ways of investigation could have helped reduce or avoid the risk;
- (e) how much the use of conventional ways of investigation would have prejudiced the safety of the person because of delay or for another reason;
- (f) any submissions made by a monitor.

Judge may approve emergency use of powers

136.(1) After considering the application, the judge may approve the application if satisfied there were reasonable grounds to believe—

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

(2) Also, the judge may order the destruction of any recordings made that were not related to the purpose for which the surveillance device was used.

Use of evidence and information

137.(1) Evidence obtained because of the exercise of powers approved

under section 136 is admissible in a proceeding for an offence.

(2) Also, information obtained under this division may be given to any person or organisation involved in helping prevent or reduce the risk of serious injury to a person.

(3) Subsection (2) does not apply to information from recordings ordered to be destroyed by a judge.

Division 4—Use of surveillance devices under magistrate’s warrant

Surveillance warrant applications

138.(1) This section applies if a police officer reasonably believes a person has been, is, or is likely to be, involved in the commission of an indictable offence.

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

(3) The application must—

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

(4) Subsection (3)(b) only applies to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

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

(6) 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.

Who may be present at consideration of application

139.(1) The magistrate must hear an application for a surveillance warrant in the absence of anyone other than the following—

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

(2) Also, the magistrate must hear the application—

- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

Consideration of application

140. Before deciding an application for a surveillance warrant, the magistrate must, in particular, and being mindful of the highly intrusive nature of a surveillance warrant, 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 the issue of any previous surveillance warrants in relation to the relevant person;
- (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 because of delay or for another reason;
- (g) any submissions made by a monitor.

Issue of surveillance warrant

141.(1) After considering the application, the magistrate may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be involved in the commission of an indictable offence; and
- (b) is likely to be—
 - (i) at a place, including a public place, mentioned in the application; or
 - (ii) at a class of place mentioned in the application.

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

What warrant must state

142. The warrant must state the following—

- (a) that a police officer may exercise surveillance powers under the warrant using a class B surveillance device;
- (b) the name of the relevant person, if known;
- (c) the place where the surveillance device authorised under the warrant may be used;
- (d) any conditions imposed under section 141(2);
- (e) the day and time the warrant starts and when the warrant ends.

Duration and extension of surveillance warrants

143.(1) A surveillance warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) the day the investigation under the warrant ends.

(2) However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained of another indictable offence.

(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

(4) Despite the ending of the warrant under subsection (1) or (2), the police officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

Powers under surveillance warrants

144. A police officer to whom a surveillance warrant is directed may lawfully exercise the following powers under the warrant—

- (a) power to enter a place to install a tracking device without covert entry to a building;
- (b) power to pass through, over, under or along a place to get to the place where the tracking device is to be used;
- (c) power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (d) power to use reasonable force to install, maintain, replace or remove a tracking device;
- (e) power to use 1 or more tracking devices, whether of the same or a different kind, in the same place;
- (f) power to take electricity for using a tracking device.

Examples for paragraph (a)—

1. Installing a tracking device on a vehicle located in a public undercover car park where entry is gained by any member of the public by paying a fee, or on a vehicle on a street.

2. Installing a tracking device on a parcel inside a shipping container located in a storage yard, if the parcel is reasonably believed to contain unlawful drugs.

Division 5—Other provisions about surveillance devices**Restriction about records and access to surveillance warrant applications etc.**

145.(1) This section applies to the following (“**relevant proceeding**”)—

- (a) an application to a Supreme Court judge or a magistrate for—
 - (i) a surveillance warrant; or
 - (ii) the extension of a surveillance warrant;
- (b) an application to a Supreme Court judge for approval of the emergency use of a surveillance device;
- (c) an order made or approval given under an application mentioned in paragraph (a) or (b).

(2) Despite the *Recording of Evidence Act 1962*, a transcript of a relevant proceeding must not be made.

(3) A person must not publish a report of a relevant proceeding.

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

(4) A person is not entitled to search information in the custody of a court in relation to a relevant proceeding, unless a Supreme Court judge otherwise orders in the interests of justice.

Disclosure of information obtained using surveillance warrant

146.(1) This section applies to information that has not been disclosed in a proceeding in open court and was obtained under 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
- (b) a judge hearing an application for—
 - (i) an extension of the warrant; or
 - (ii) approval of the emergency use of a surveillance device; or

- (iii) a warrant in relation to the same or a different person; or
- (c) a magistrate hearing an application for an extension of the warrant or a warrant in relation to the same or a different person; or
- (d) a court taking evidence about a charge of an offence in which the information is evidence; or
- (e) the responsible chief executive officer for the surveillance warrant or a person authorised by that chief executive officer; or
- (f) 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
- (g) a declared law enforcement agency; or
- (h) a public prosecutor, but only for—
 - (i) use in a proceeding in which the information is evidence; or
 - (ii) an application for an extension of the warrant; or
 - (iii) an application under section 133; or
 - (iv) the issue of another surveillance warrant; or
- (i) a lawyer representing a person in a proceeding in which the information is evidence; or
- (j) a monitor; or
- (k) a person transcribing or making copies of recordings.

Destruction of records

147.(1) The responsible chief executive officer for a surveillance warrant must keep all information obtained under the warrant and transcripts of recordings or photographs made or taken under the warrant in a secure place.

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

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

Division 6—Covert searches

Covert search warrant applications

148.(1) A police officer of at least the rank of inspector may apply to a Supreme Court judge for a warrant (“**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 required under the responsibilities code about any warrants issued within the previous year in relation to the place or person suspected of being involved in the organised crime to which the application relates.

(3) Subsection (2)(b) applies only to—

- (a) information kept in a register that the police officer may inspect; and
- (b) information the police officer otherwise actually knows.

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

(5) The judge may refuse to consider the application until the applicant 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.

Who may be present at consideration of application

149.(1) The judge must hear an application for a covert search warrant 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).

(2) Also, the judge must hear the application—

- (a) in the absence of the person who is the subject of the application (the **“relevant person”**) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

Consideration of application

150. Before deciding the application the judge must, in particular, and being mindful of the highly intrusive nature of a covert search warrant, 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 surveillance warrants in relation to the relevant person or place;
- (d) the extent to which police officers investigating the matter 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 matter;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;
- (g) any submissions made by a monitor.

Issue of covert search warrant

151.(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing there is, in or on a place, evidence of organised crime.

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

What covert search warrant must state

152. A covert search warrant must state the following—

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

Duration and extension of covert search warrant

153.(1) A covert search warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) when the initial search is complete.

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

(3) The provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

Restriction about records and access to covert search warrant applications

154.(1) 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.

(2) A person must not publish a report of a proceeding on an application for a covert search warrant or an extension of a covert search warrant.

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

(3) 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 Supreme Court judge otherwise orders in the interests of justice.

Powers under covert search warrant

155. A police officer to whom a covert search warrant is directed may lawfully exercise the following powers under the warrant (“**covert search powers**”)—

- (a) power to enter the place stated 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 stated in the warrant;
- (f) power to photograph anything the police officer reasonably believes may provide evidence of the commission of an offence relating to organised crime stated in the warrant;
- (g) power to inspect or test anything found on the place.

Report on covert search

156.(1) Within 7 days after executing a covert search warrant, a police officer must give to the Supreme Court judge who issued the warrant and the monitor 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 it—

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

Division 7—Public interest monitor**Public interest monitor**

157.(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 who is a member of, or who is employed in or by or to help, any of the following—

- (a) the director of public prosecutions;
- (b) the office of the director of public prosecutions;
- (c) QCC;

- (d) the CJC;
- (e) the police service.

Acting monitor

158.(1) The Governor in Council may appoint a person, who is qualified for appointment as the public interest monitor, to act as the public interest monitor—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) The Governor in Council may appoint a person, who is qualified for appointment as a deputy public interest monitor, to act as a deputy public interest monitor—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when a deputy public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

Monitor's functions

159.(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 warrants 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

160.(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

161.(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.

Protection from liability

162.(1) A monitor does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

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

CHAPTER 5—ARREST AND CUSTODY POWERS

PART 1—POWERS RELATING TO ARREST AND TAKING PEOPLE INTO CUSTODY

Division 1—Arrest without warrant

Arrest without warrant

163.(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 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) to ensure the person's appearance before a court;
- (d) to obtain or preserve evidence relating to the offence;
- (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
- (f) to prevent the fabrication of evidence;
- (g) to preserve the safety or welfare of any person, including the person arrested;
- (h) to prevent a person fleeing from a police officer or the location of an offence;
- (i) because the offence is an offence against section 356 or 357;²⁶
- (j) because the offence is an offence against the *Domestic Violence (Family Protection) Act 1989*, section 80;²⁷
- (k) because of the nature and seriousness of the offence.

(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, or investigating the offence, under chapter 6.²⁸

(3) Subsection (1) does not apply to a child,²⁹ but subject to the *Juvenile Justice Act 1992*, section 20,³⁰ it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.

²⁶ Section 356 (Offence to assault or obstruct police officer), section 357 (Offence to contravene direction or requirement of police officer)

²⁷ Section 80 (Breach of order or conditions)

²⁸ Chapter 6 (Powers and responsibilities relating to investigations and questioning for indictable offences)

²⁹ For provisions applying to the arrest of children, see the *Juvenile Justice Act 1992*.

³⁰ *Juvenile Justice Act 1992*, section 20 (Arrest and ex officio indictment power preserved)

Arrest of escapees etc.

164.(1) It is lawful for a police officer to arrest, without warrant, a person the police officer reasonably suspects is escaping or has escaped from lawful custody.

(2) Also, it is lawful for a police officer to arrest, without warrant, a prisoner who—

- (a) has been released on leave of absence or to serve a period of home detention and—
 - (i) is or is preparing to become unlawfully at large; or
 - (ii) is contravening or has contravened a condition of the instrument authorising the person's release; or
- (b) because of an error, has been released as if the prisoner were eligible to be discharged under the *Corrective Services Act 1988*.

Arrest of person granted bail

165.(1) This section applies if a person has been granted bail for an offence, whether or not the person was arrested for the offence.

(2) It is lawful for a police officer to arrest the person, without warrant, if the police officer reasonably suspects—

- (a) the person has left the precincts of the court that granted bail without entering into an undertaking as required by the court; or
- (b) the person has left the precincts of the court without fulfilling any conditions the person must comply with before leaving the precincts of the court.

(3) Also, it is lawful for a police officer to arrest the person, without warrant, if—

- (a) the police officer reasonably suspects—
 - (i) the person is likely to contravene, is contravening, or has contravened, the condition for the person's appearance or another condition of the undertaking on which the person was granted bail; or
 - (ii) a surety for the person's appearance is dead; or

- (iii) for any reason, the security for the person's appearance is no longer adequate; or
- (iv) the person is likely to fail to appear before a court to answer a charge against the person for the offence; or
- (b) a surety has given to a police officer written notice stating the surety wishes to be relieved of the obligation of being a surety for the person because the surety believes the person is likely to contravene the condition for the person's appearance; or
- (c) the police officer reasonably suspects the person is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been released on bail.

(4) In this section—

“precincts” of a court, means any land or building, or the part of any land or building, used for the purposes of the court.

“undertaking” means an undertaking under the *Bail Act 1980*.

Arrest of person given notice to appear or summons

166.(1) This section applies to a person who has been given a notice to appear or a summons for an offence, whether or not the person has been arrested for the offence.

(2) It is lawful for a police officer to arrest a person, without warrant, if the police officer reasonably suspects the person—

- (a) is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been given a notice to appear or summons; or
- (b) is likely to fail to appear before a court to answer a charge against the person for the offence.

Division 2—Arrest under warrant**Arrest under warrant**

167.(1) It is lawful for a police officer acting under a warrant issued under any 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.

Arrest warrant application

168.(1) A police officer may apply to a justice for a warrant to arrest a person for an offence (“**arrest warrant**”).

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

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

Example—

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

Issue of arrest warrant

169. The justice may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting—

- (a) that the person has committed the offence; and
- (b) for an offence other than an indictable offence, proceedings by way of complaint and summons, attendance notice or notice to appear for the offence would be ineffective.

What arrest warrant must state

170.(1) An arrest warrant must state the following—

- (a) the name of the applicant for the warrant and the applicant's rank, registered number and station;
- (b) that any police officer may arrest the person named in the warrant;
- (c) the offence the person is alleged to have committed.

(2) It is sufficient to describe an offence in the words of the law defining it, or in similar words.

(3) A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.

Division 3—Other provisions about arrest

Power of arrest for offences committed outside the State

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

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

(2) It is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects is committing or has committed an extradition offence.

(3) The person may be detained in custody under chapter 6 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 police service of the State where the offence happened.

(4) 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.

(5) 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.

Police officer to consider alternatives to proceeding against child

172.(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*.

Division 4—Discontinuing arrest

When arrest may be discontinued—general rule

173.(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 reasonably suspected of committing the offence for which the person was arrested.

(2) Subsection (1) does not apply if the person—

- (a) is reasonably suspected of another offence, whether or not arising out of the circumstances of the offence for which the person was arrested; or
- (b) may be detained for another reason, for example because of a breach of a bail condition; or
- (c) is in custody for another offence.

(3) Also, it is the duty of a police officer to release an arrested person who is reasonably suspected of committing the offence for which the person was arrested if, within a reasonable time after the arrest, the police officer considers there is not enough evidence to bring the person before a court on a charge of the offence.

Additional case when arrest of adult may be discontinued

174.(1) This section applies to an arrested person who is an adult.

(2) 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) Subsection (2) does not apply to an adult who is arrested—

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

(4) Also, a police officer must release the person at the earliest reasonable opportunity if—

- (a) the police officer reasonably considers it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and

- (b) the person and any victim of the offence agree to the person being dealt with in that way.

Example for subsection (4)—

1. A person arrested for a minor assault involving pushing a person during a heated argument with a neighbour may agree to attend alternative dispute resolution.

2. A person may be released under a scheme developed by the commissioner for cautioning elderly first offenders.

Additional case when arrest of child may be discontinued

175.(1) This section applies to an arrested person who is a child.

(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 or is unlikely to happen again if the child is released; and
- (b) after considering the following, it is more appropriate to deal with the child in a way provided by subsection (3)—
 - (i) the circumstances of the alleged offence;
 - (ii) the child's previous history known to the police officer.

(3) For subsection (2)(b), the police officer may decide it is 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*; or
- (d) to take the child before a court by attendance notice or summons.

(4) Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.

(5) Also, subsection (2) does not apply to the arrest of a child by a police officer while the police officer reasonably believes the child is an adult.

(6) In deciding whether the police officer had the reasonable belief, a

court may have regard to the child's apparent age and the circumstances of the arrest.

Limit on re-arrest

176. A person arrested for an offence and released under this division can not be re-arrested for the offence unless, because of new evidence, a police officer forms a reasonable suspicion that the person is responsible for the offence.

Division 5—Alternative to arrest

Notice to appear may be issued for offence

177.(1) The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against an adult that does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.³¹

(2) If a police officer reasonably suspects that an adult has committed or is committing an offence, the police officer may issue and serve a notice (“**notice to appear**”) on the person.³²

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

Notice to appear form

178.(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

³¹ For starting proceedings against children by attendance notices, see the *Juvenile Justice Act 1992*.

³² A notice to appear differs from a complaint and summons in requiring the police officer with the suspicions mentioned to also serve the notice.

- (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's appearance 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's appearance must be a time at least 14 days or, with the person's written agreement, a stated shorter time after the notice is served.

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

179.(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

180.(1) The statement in the notice to appear of the substance of the offence alleged to have been committed need only provide general particulars of the offence, for example—

- (a) the type of offence; and
- (b) when and where 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)³³, 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.

³³ *Justices Act 1886*, section 43 (Matter of complaint)

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

181.(1) Section 180 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

182.(1) A statement in a notice to appear of the substance of an offence alleged to have been committed is taken to be a complaint under the *Justices Act 1886*.

(2) Also, a requirement in a notice to appear that a person appear before a Magistrates Court in relation to the offence at a stated time and place—

- (a) is taken to be a summons issued by a justice under the *Justices Act 1886*; but
- (b) is not a requirement to which section 357³⁴ applies.

(3) Subject to this division, 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

183.(1) Subject to section 184, if a person fails to appear before a Magistrates Court as required by a notice to appear served on the person, the court may—

- (a) hear and decide the complaint in the absence of the person; or
- (b) 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 document purporting to be a copy of the notice to appear signed on the day it is served by the police officer who served it, and stating when and

³⁴ Section 357 (Offence to contravene direction or requirement of police officer)

where it was served, is evidence of the service of the notice.

(3) Any justice may issue the warrant.

(4) If the person appears voluntarily before a court after the warrant is issued, any justice may revoke the warrant.

Court must strike out notice to appear if service insufficient

184.(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 purportedly served.

Division 6—Duties after arrest

Information to be given to arrested person

185.(1) A police officer who arrests a person, whether or not under a warrant, must, as soon as is reasonably practicable after the arrest, inform the person that the person is under arrest and of the nature of the offence for which the person is arrested.

(2) A police officer who arrests a person with a warrant must inform the person that the person is under arrest and of the nature of the warrant.

(3) 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

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

- (a) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (b) the chief executive (family services) or a person, nominated by

the chief executive for the purpose, who holds an office within the department.

(2) In this section—

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

Duty of police officer after arrest etc. of person

187.(1) If a police officer does any of the following, the police officer must, as soon as reasonably practicable, take the person before a court to be dealt with according to law—

- (a) arrests a person, without warrant, for an offence;
- (b) arrests a person under a warrant for an offence, whether under this or another Act;
- (c) arrests a person under section 165 or 166;³⁵
- (d) receives into custody a person who is arrested or detained by someone other than a police officer.

(2) Subsection (1) does not apply if the person—

- (a) is released under division 4³⁶; or
- (b) is being detained under chapter 6³⁷ for an indictable offence; or
- (c) is being detained under the Road Use Management Act, section 80;³⁸ or
- (d) is arrested under a warrant that requires the police officer to take the person before another body or to another place; or
- (e) is delivered into the custody of a watch-house manager or the

³⁵ Section 165 (Arrest of person granted bail) or 166 (Arrest of person given notice to appear or summons)

³⁶ Division 4 (Discontinuing arrest)

³⁷ Chapter 6 (Powers and responsibilities relating to investigations and questioning for indictable offences)

³⁸ *Transport Operations (Road Use Management) Act 1995*, section 80 (Provisions with respect to breath tests and laboratory tests)

officer-in-charge of a police establishment.

Example for subsection (2)(d)—

A warrant under the *Commissions of Inquiry Act 1950* may require that a person be apprehended to enable the person to be brought before a commission of inquiry to give evidence.

(3) Also, subsection (1) does not prevent a police officer—

- (a) if the person is a prisoner under the *Corrective Services Act 1988*—taking the person to a prison or to a watch-house until the person can be conveniently taken to a prison; or
- (b) if the person escaped from lawful custody while a prisoner of a court—taking the person to a police station or watch-house until the person can be conveniently returned to the custody of the proper officer of the relevant court.

Duty of police officer receiving custody of person arrested for offence

188.(1) This section applies if—

- (a) a person who has been arrested for an offence, whether or not under a warrant, is delivered into the custody of the officer-in-charge of a police establishment or a watch-house manager; and
- (b) the person is not being detained under chapter 6; and
- (c) it is not practicable to bring the person before a court promptly.

(2) The officer-in-charge or watch-house manager must, as soon as reasonably practicable—

- (a) decide whether or not to grant bail under the *Bail Act 1980*; or
- (b) take the person before a court to be dealt with according to law.

Duty of officer receiving custody of person arrested under warrant other than for offence

189.(1) This section applies if—

- (a) under section 167,³⁹ a police officer arrests a person named in a

³⁹ Section 167 (Arrest under warrant)

warrant issued under another Act or law; or

- (b) someone else authorised under a warrant issued under another Act or law arrests a person named in the warrant;

and the person is delivered into the custody of the officer-in-charge of a police establishment or a watch-house manager.

Examples for subsection (1)—

1. A person is arrested under a warrant issued for non-payment of an amount of a fine.

2. A person is arrested under a warrant requiring a person to be brought before a commission of inquiry.

3. A correctional officer arrests a person who has escaped from custody.

(2) The officer-in-charge or watch-house manager must, as soon as reasonably practicable, ensure compliance with the warrant.

(3) In this section—

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

CHAPTER 6—POWERS AND RESPONSIBILITIES RELATING TO INVESTIGATIONS AND QUESTIONING FOR INDICTABLE OFFENCES

PART 1—PRELIMINARY

Division 1—Application of chapter

Chapter does not apply to covert operations

190. This chapter does not apply to functions of a police officer performed in a covert way.

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

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

PART 2—INVESTIGATIONS AND QUESTIONING***Division 1—Application of part*****Application of pt 2**

192. This part applies only to a person who—

- (a) is lawfully arrested for an indictable offence; or
- (b) is in lawful custody for an offence that has not been decided; or
- (c) is in lawful custody under a sentence for a term of imprisonment or, for a child, a detention order.

Example for paragraph (b)—

1. The person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened.
2. The person is to be released on bail and may be in lawful custody pending the fulfilment of a bail condition.

Division 2—Removal of persons from lawful custody**Application for removal of person from lawful custody**

193.(1) This section applies to a person who is suspected of having committed an indictable offence and is in custody under the *Corrective Services Act 1988* or the *Juvenile Justice Act 1992*—

- (a) for an offence that has not been decided; or
- (b) under a sentence for a term of imprisonment or, for a child, a detention order.

(2) A police officer may apply to a magistrate for an order (“**removal order**”) for the removal of the person in custody in a prison or detention centre to the custody of a police officer (“**police custody**”) for—

- (a) questioning the person about the offence; or
- (b) the investigation of the offence.

(3) The application may include an application for an extension of the detention period even though the detention period has not started.

(4) The application must be—

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

(5) 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.

Chief executive must be advised of application for removal order

194. Before a police officer applies for a removal order relating to a child, the police officer must notify the chief executive (family services), or a person, nominated by the chief executive for the purpose, who holds an office within the department, of the making of the application.

When magistrate may make removal order

195. A magistrate may make a removal order only if the magistrate is satisfied the custody is reasonably necessary for—

- (a) questioning the person about the offence; or
- (b) the investigation of the offence.

What removal order must state

196. A removal order must state the following—

- (a) the name of the person the subject of the order (the “**relevant person**”) and the prison or detention centre in which the person is in custody;
- (b) that the person in charge of the prison or detention centre must release or make arrangements for the release of the relevant person into the custody of the police officer named in the order;
- (c) the name of the police officer who will have control of the relevant person while the person is absent from the prison or detention centre;
- (d) the reason for the relevant person’s removal;
- (e) the place, if known, to which the relevant person is to be removed;
- (f) that the relevant person must be returned to the prison or detention centre as soon as reasonably practicable after the detention period ends;
- (g) any other conditions the magistrate considers appropriate.

Division 3—Detention for investigation or questioning**Initial period of detention for investigation or questioning**

197.(1) A police officer may detain a person⁴⁰ 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 under this part for more

⁴⁰ For persons to whom this part applies, see section 192 (Application of pt 2).

than 8 hours, unless the detention period is extended under this division.

(3) If this part applies to the person because of section 192(b) or (c), the person must be returned to the watch-house or other place of custody as soon as reasonably practicable after the detention period ends.

(4) 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 may be more than 4 hours.

(5) The detention period starts when the person is—

- (a) arrested for the indictable offence; or
- (b) taken into police custody under a removal order; or
- (c) taken from a watch-house; or
- (d) otherwise in the company of a police officer at a watch-house, prison, or detention centre, for the purpose of questioning the person.

What is a reasonable time to detain a person for questioning or investigation

198.(1) The following must be taken into consideration when deciding what is a reasonable time to detain a person under section 197—

- (a) whether the person’s detention is necessary for the investigation of an indictable offence;
- (b) the number of indictable offences under investigation;
- (c) the seriousness and complexity of an indictable offence under investigation;
- (d) whether the person has indicated a willingness to make a statement or to answer questions;
- (e) the person’s age, physical capacity and condition, and mental capacity and condition;
- (f) for a person arrested—any time spent questioning the person before the arrest;

(g) the need to delay or suspend questioning of the person for time out purposes.

(2) If the person decides not to answer questions or not to continue answering questions, continuing the detention period may not be reasonable unless—

- (a) it is necessary to carry out further investigations; or
- (b) the person consents, or another authority requires the person, to participate in an investigative procedure.

Examples for subsection (2)(b)—

1. The person consents to taking part in an identification parade.
2. A magistrate orders a medical examination involving the person.

Application for extension of detention period

199.(1) A police officer may apply for an order extending 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) However, if the total questioning period since the detention began will, if extended, be more than 12 hours, the application must be made to a magistrate.

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

(5) 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.

(6) If the application is made before the detention period ends, the detention of the person does not end, unless the magistrate or justice refuses to extend the detention period.

When detention period may be extended

200.(1) A magistrate or justice may extend the detention period for a person if satisfied—

- (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.

(2) An order extending the detention period may authorise the questioning or further questioning of the person for a reasonable time, of not more than 8 hours, and include the time the justice or magistrate considers should be allowed as time out.

(3) A justice who is not a magistrate does not have power to make an order authorising questioning or further questioning of a person for a period that would extend the questioning period for the person to more than 12 hours.

Example for subsection (3)—

If, in the initial detention period, a person has been questioned for 4 hours and an earlier order under this section extends the questioning period to 9 hours, a justice who is not a magistrate may only extend the questioning period for another 3 hours.

What order must state

201.(1) The magistrate or justice must state in the order—

- (a) how much time is to be allowed as time out; and

- (b) the time for which the person may be questioned; and
- (c) that the person may continue to be detained for the total of the periods decided for paragraphs (a) and (b).

(2) If, under the order, time is allowed for time out, it may be used for any time out purpose, unless the magistrate or justice orders that it be used for a specific time out purpose.

Use of time out during extended detention period

202.(1) This section applies if an order extending a detention period states how much time is to be allowed as time out and the purpose for which time out is to be allowed.

(2) Unless the justice or magistrate who issued the order otherwise orders or the person in custody expressly agrees to use the time for another purpose, the time allowed as time out must be used for a purpose stated in the order.

(3) If reasonably practicable, the agreement must be electronically recorded.

Effect of unforeseen delays on detention

203.(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 reasonably 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 an extended detention period;

the detention of the person beyond the end of the extended 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

204. 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 200.⁴¹

Example—

If a person who has been arrested for a stealing offence and 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

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

- (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.

⁴¹ Section 200 (When detention period may be extended)

Division 4—Other provisions about investigations and questioning**When person detained may be taken to a place other than a police establishment**

206. A police officer may take a person to whom this part applies to a place other than a police establishment if the police officer considers it is reasonably necessary to facilitate the purpose of the detention.

Example—

A person who has been arrested and is being questioned about an indictable offence may be taken—

- (a) to the scene of the offence to identify it or re-enact the offence; or
- (b) to a doctor for medical treatment or examination.

Persons helping in covert investigations not under arrest

207.(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) The agreement must, if reasonably practicable, be electronically recorded.

(4) However, the person may refuse to consent to the electronic recording of the agreement.

(5) If the agreement is not electronically recorded, a police officer must make a written record of the circumstances of the agreement.

(6) Subsection (2) does not prevent the person from being rearrested for the offence.

PART 3—SAFEGUARDS ENSURING RIGHTS OF AND FAIRNESS TO PERSONS QUESTIONED FOR INDICTABLE OFFENCES

Division 1—Preliminary

Part applies only to indictable offences

208. This part applies only to indictable offences.

When does this part apply to a person

209.(1) This part applies to a person (“**relevant person**”) 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 indictable offence.

(2) However, this part does not apply to a person only if the police officer is exercising any of the following powers—

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

Questioning generally

210. A police officer who is questioning a relevant person must not obtain a confession by threat or promise.⁴²

Questioning of person after proceeding started

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

⁴² See also the *Criminal Law Amendment Act 1894*, section 10 (Confessions)

(2) Also, a police officer may question the person 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 the person of the evidence and invite the person to make a statement.

Example for subsection (3)—

If a relevant 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.

Division 2—Other persons may be present during questioning

Right to communicate with friend, relative or lawyer

212.(1) Before a police officer starts to question a relevant person 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) What is a reasonable time to delay questioning to allow a friend, relative or lawyer to arrive at the place of questioning will depend on the particular circumstances, including, for example—

- (a) how far the person has to travel to the place; and
- (b) when the person indicated he or she would arrive at the place.

(5) What is a reasonable time to delay questioning to allow the relevant person to speak to a friend, relative or lawyer will depend on the particular circumstances, including, for example, the number and complexity of the matters under investigation.

(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

Speaking to and presence of friend, relative or lawyer

213.(1) If the relevant person asks 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 to speak to the other person; and
- (b) if the other person is a lawyer and it is reasonably practicable—allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(2) If the relevant person 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 relevant person during the questioning.

(3) 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.

(4) This section does not apply to a person who is an aborigine, a Torres Strait islander or a child.⁴³

Division 3—Special requirements for questioning particular persons

Questioning of aboriginal people and Torres Strait islanders

214.(1) This section applies if—

- (a) a police officer wants to question a relevant person; and

⁴³ For aboriginal people and Torres Strait islanders, see section 214 and for children, see section 215.

(b) the police officer reasonably suspects the person is an adult aborigine or Torres Strait islander.

(2) 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.

(3) Subsection (2) 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.

(4) 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 support person, if practicable, in circumstances in which the conversation will not be overheard; and

(b) a support person is present while the person is being questioned.

(5) Subsection (4) does not apply if the person has, by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have a support person present.

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

Questioning of children

215.(1) This section applies if—

(a) a police officer wants to question a relevant person; and

(b) the police officer reasonably suspects the person is a child.

(2) The officer must not question the child unless—

(a) before questioning starts, the police officer has, if practicable, allowed the child to speak to a support person in circumstances in

which the conversation will not be overheard; and

(b) a support person is present while the child is being questioned.

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

Questioning of persons with impaired capacity

216.(1) This section applies if—

- (a) a police officer wants to question a relevant person; and
- (b) the police officer reasonably suspects the person is a person with impaired capacity.

(2) A police officer must not question the person unless—

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

(3) Also, the police officer must suspend questioning and comply with subsection (2) if, during questioning, it becomes apparent that the person being questioned is a person with impaired capacity.

Questioning of intoxicated persons

217.(1) This section applies if a police officer wants to question or to continue to question a relevant person who is apparently under the influence of liquor or a drug.

(2) The police officer must delay the questioning until the police officer is reasonably satisfied the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions.

Division 4—Excluding persons unreasonably interfering with questioning

What is “unreasonable interference” for divs 2–3

218.(1) The following may be unreasonable interference for divisions 2 and 3—

- (a) conduct that prevents or unreasonably obstructs—
 - (i) proper questions being put to a relevant person; or
 - (ii) the person’s response to a question being recorded;
- (b) answering questions on behalf of the relevant person;
- (c) providing written replies during the questioning for the relevant person to quote.

(2) However, it is not unreasonable interference to reasonably do any of the following—

- (a) to seek clarification of a question;
- (b) to challenge an improper question put to the relevant person;
- (c) to challenge the way in which a question is put;
- (d) for a lawyer—
 - (i) to advise the relevant person not to answer any question or any further question; or
 - (ii) to say he or she wishes to give the relevant person further legal advice.

Requirements before excluding persons unreasonably interfering with questioning

219.(1) This section applies if a police officer considers a friend, relative, lawyer, support person present during the questioning of a relevant person is unreasonably interfering with the questioning.

(2) Before excluding the person from being present during questioning, the police officer must—

- (a) warn the person not to interfere with the questioning; and

- (b) give the person 1 further opportunity to stop unreasonably interfering with the questioning; and
- (c) tell the person that he or she may be excluded from being present during the questioning if he or she continues to interfere unreasonably with the questioning.

If police officer excludes person from questioning

220.(1) If a police officer excludes a person from being present during questioning, the police officer must—

- (a) if the excluded person was a friend, relative or lawyer—advise the relevant person that he or she may telephone or speak to another friend, relative or lawyer, to ask the person to be present during the questioning; and
- (b) if the relevant person arranges for another person to be present—delay the questioning for a reasonable time to allow the other person to be present during the questioning.

(2) Also, the police officer must arrange for someone else to be present during the questioning if—

- (a) the police officer must not question the relevant person without a support person being present because of a requirement under this Act; and
- (b) the relevant person has not arranged for another person to be present during the questioning.

Cautioning of persons

221.(1) A police officer must, before a relevant person is questioned, 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) If the police officer reasonably suspects the person does not understand the caution, the officer may ask the person to explain the meaning of the caution in his or her own words.

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

(5) 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 relevant person

222.(1) This section applies if a relative, friend or lawyer of a relevant person asks for information about the person's whereabouts.

(2) A police officer must, if practicable, inform the relevant person of the request and, after doing so, give the information to the person who asked for it.

(3) The police officer is not required to disclose the person's whereabouts if—

- (a) the relevant person refuses to agree to giving the information and the refusal is in writing or electronically recorded; or
- (b) the whereabouts of the relevant person—
 - (i) are not in a register that the police officer may inspect; and
 - (ii) are otherwise not actually known to the police officer.

(4) Also, the police officer is not required to inform the relevant person of the request if the police officer reasonably suspects the person asking for the information is not a relative, friend or lawyer of the relevant person.

Right to interpreter

223.(1) This section applies if a police officer reasonably suspects a relevant person 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 visiting foreign national to communicate with embassy etc.

224.(1) This section applies to a relevant person who is not—

- (a) an Australian citizen; or
- (b) a foreign national with a right of residence in Australia.

(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 to be electronically recorded

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

Division 5—Recording of questioning

Recording of questioning etc.

226.(1) This section applies to the questioning of a relevant person.

(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 in evidence against the person in a proceeding only if it is recorded as required by subsection (4) or section 227.

(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.

Requirements for written record of confession or admission

227.(1) This section applies if a record of a confession or admission is written.

(2) The way the written record of the confession or admission is made must comply with subsections (3) to (7).

(3) While questioning the relevant person, or as soon as reasonably practicable afterwards, a police officer must make a written record in English of the things said by or to the person during questioning, whether or not through an interpreter.

(4) As soon as practicable after making the record—

(a) it must be read to the person in English and, if the person used another language during questioning, the language the person used; and

(b) the person must be given a copy of the record.

(5) 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.

(6) 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.

(7) An electronic recording must be made of the reading mentioned in subsection (4) and everything said by or to the person during the reading, and anything else done to comply with this section.

Access to electronic recordings of questioning etc.

228.(1) This section applies to the electronic record of the questioning, confession or admission, or confirmation of a confession or admission, of a relevant person that is made under section 226 or 227(7).

(2) 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; or

(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.

(3) Subsection (2) applies subject to any other Act.

Admissibility of records of questioning etc.

229.(1) Despite sections 226 and 227, the court may admit a record of questioning or a record of a confession or admission (the “**record**”) in evidence even though the court considers this division has not been complied with or there is not enough evidence of compliance.

(2) However, the court may admit the record only 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.

Division 6—General**List of support persons and interpreters**

230.(1) The commissioner must keep a list of support persons and interpreters or, if an organisation provides interpreter services at a particular place, organisations providing interpreter services at the place.

(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 212–216, 222 and 224 do not apply

231.(1) Sections 212 to 216, 222 and 224⁴⁴ 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 relevant person taking steps to avoid apprehension; or

⁴⁴ Sections 212 (Right to communicate with friend, relative or lawyer), 213 (Speaking to and presence of friend, relative or lawyer), 214 (Questioning of aboriginal people and Torres Strait islanders), 215 (Questioning of children), 216 (Questioning of persons with impaired capacity), 222 (Provision of information relating to a relevant person) and 224 (Right of visiting foreign national to communicate with embassy, etc.)

- (b) an accomplice or accessory being present during questioning; or
- (c) evidence being concealed, fabricated or destroyed; or
- (d) a witness being intimidated.

(2) Also, a police officer is not required to delay questioning if, having regard to the safety of other people, the police officer reasonably suspects 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.

CHAPTER 7—POWERS IN RELATION TO PERSONS IN CUSTODY

PART 1—SEARCH OF PERSONS IN CUSTODY

Search of persons in custody

232.(1) This section applies if a person—

- (a) is lawfully arrested; or
- (b) is in lawful custody for an offence that has not been decided; or
- (c) is in custody under a sentence for a term of imprisonment or, for a child, a detention order; or
- (d) is otherwise lawfully detained under another Act.

Examples for paragraph (b)—

1. The person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened.

2. The person may be in lawful custody pending the satisfaction of a condition on which the person is to be released on bail.

(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—

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

PART 2—GATHERING INFORMATION FOR IDENTIFYING SUSPECTS

Division 1—Taking identifying particulars

Taking identifying particulars of person in custody

233.(1) If a person is in custody for an identifying particulars offence that has not been decided, a police officer may take or photograph all or any of the person's identifying particulars.

(2) Also, 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.

(3) Further, if the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking or photographing all or any of the person's identifying particulars.

Taking identifying particulars—proceedings started by notice to appear or complaint and summons

234.(1) This section applies if a police officer decides to start a proceeding against a person other than a child for an identifying particulars offence by notice to appear or complaint and summons.

(2) Before or immediately after serving the notice to appear or complaint and summons, 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.

Identifying particulars notice may be given

235.(1) This section applies if a police officer starts or continues a proceeding against a person other than a child for an identifying particulars offence by notice to appear or complaint and summons and decides it is not necessary to immediately take the particulars.

(2) A police officer may, by written notice ("**identifying particulars notice**"), require the person to report to a police officer at a stated police station between stated hours within 7 days after the issue of the notice to enable a police officer to take or photograph all or any of the person's identifying particulars.

(3) An identifying particulars notice—

(a) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the particulars are taken, the person must produce satisfactory evidence of his or her identity; and

(b) must be given to the person with the notice to appear or complaint and summons; and

(c) may be proved to have been given to the person on oath or by deposition under the *Justices Act 1886*, section 56(3).

(4) The police officer giving the notice must warn the person it is an

offence to contravene a requirement under subsection (2).⁴⁵

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

Court may order taking of identifying particulars

236.(1) This section applies if, in a proceeding for a charge of an identifying particulars offence against a person other than a child, a court is satisfied it is necessary to take or photograph the person's identifying particulars to help—

- (a) identify the person in relation to the offence or another offence the person is suspected to have committed; or
- (b) confirm the person's identity; or
- (c) find out the person's criminal history; or
- (d) keep criminal records.

(2) The court may order—

- (a) that the person charged be held in custody for up to 1 hour to enable a police officer to take or photograph all or any of the person's identifying particulars; or
- (b) that the person report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take or photograph all or any of the person's identifying particulars.

(3) Any police officer may take or photograph all or any of the person's identifying particulars.

Destruction of identifying particulars

237.(1) If a person is found not guilty of an identifying particulars 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

⁴⁵ For the offence, see section 357 (Offence to contravene direction or requirement of police officer).

presence of a justice, unless—

- (a) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided; or
- (b) the person has been found guilty of another identifying particulars offence; or
- (c) the identifying particulars are required for the investigation of another identifying particulars offence the person is reasonably suspected of having committed; or
- (d) the person is not proceeded against because he or she has been found incapable of standing trial because of mental illness.

(2) If a delay in the destruction of identifying particulars happens because of either of the following, the identifying particulars must be destroyed within a reasonable time—

- (a) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided and the person is found not guilty of the offence; or
- (b) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided and the charge of the offence is not proceeded with.

(3) However, the identifying particulars must not be destroyed under subsection (2) if subsection (1) continues to apply to the person.

Division 2—Identifying suspects

Identification of suspects

238.(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 person suspected of having committed the offence;

- (c) videotape;
- (d) computer generated images.

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

(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.

PART 3—MEDICAL AND DENTAL PROCEDURES

Division 1—Preliminary

Application of pt 3

239. This part applies to a person (“**relevant person**”) who is suspected of having committed an indictable offence, whether or not the person has been charged with the offence.

Consent or approval needed for performing medical or dental procedure under this part

240. A police officer must not require a doctor or dentist to perform a medical or dental procedure on a relevant person under this part without the consent of the person on whom it is to be performed or a magistrate’s approval.

Right to interpreter

241.(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of inadequate knowledge of the English

language or a physical disability, to speak with reasonable fluency in English.

(2) Before taking any action under this part, other than applying for an approval under division 3, the police officer must arrange for the presence of an interpreter and delay taking the action until the interpreter is present.

Person must be told of need for consent or approval

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

- (a) the act can not be done without the person's consent or a magistrate's approval; and
- (b) that the person has the right to have 2 people of his or her choice present while it is being done; and
- (c) that he or she may—
 - (i) 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 the performance of the procedure; and
 - (ii) 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 performance of the procedure.

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

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

(4) If the relevant person arranges for someone to be present, the police officer must delay the performing the procedure for a reasonable time to allow the other person to arrive.

(5) What is a reasonable time to delay the performance of the procedure to allow a friend, relative or lawyer to arrive at the place will depend on the particular circumstances, including, for example—

- (a) how far the person has to travel to the place; and

(b) when the person indicated he or she would arrive at the place.

(6) What is a reasonable time to delay the performance of the procedure to allow the person to speak to a friend, relative or lawyer will depend on the particular circumstances, including, for example, the person's age and the nature of the proposed procedure.

(7) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

(8) Nothing in this section requires—

- (a) a person in whose custody another person is to deliver the person to the place where the procedure is to be performed; or
- (b) a police officer to allow a person who the police officer reasonably suspects is an accomplice or accessory to be present while the procedure is being performed.

Speaking to and presence of friend, relative or lawyer

243.(1) If the relevant person asks 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 to speak to the other person; and
- (b) if the other person is a lawyer and it is reasonably practicable—allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(2) If the relevant person arranges for another person to be present during performance of the procedure, the investigating police officer must also allow the other person to be present and give advice to the relevant person during the performance of the procedure.

(3) If the police officer considers the other person is unreasonably interfering with the performance of the procedure, the police officer may exclude the person from being present during performance of the procedure.

Special consent requirement for children and persons with impaired capacity

244.(1) This section applies if the relevant person on whom a medical or

dental procedure is proposed to be performed is a child or a person with impaired capacity.

(2) Consent to the performance of a medical or dental procedure on the person must be given in the presence of a support person.

Absence of independent person not to affect lawfulness of custody etc.

245. The lawfulness of the detention in custody of a relevant 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 relevant person wishes to have present if—

- (a) after having indicated that he or she is willing and able to attend—the independent 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.

Requirements before excluding persons unreasonably interfering with performance of medical or dental procedure

246.(1) This section applies if a friend, relative, lawyer, or support person present while a medical or dental procedure is being performed on a relevant person unreasonably interferes with the performance of the procedure.

(2) Before excluding the person from being present while the procedure is being performed, the police officer must—

- (a) warn the person not to interfere with the performance of the procedure; and
- (b) give the person 1 further opportunity to stop unreasonably interfering; and
- (c) tell the person that he or she may be excluded from being present if he or she continues to interfere unreasonably with the performance of the procedure.

If police officer excludes person from performance of medical or dental procedure

247.(1) If a police officer excludes a person from being present while a medical or dental procedure is being performed, the police officer must—

- (a) if the person excluded is a friend, relative or lawyer—advise the relevant person that he or she may telephone or speak to another friend, relative or lawyer, to ask the person to be present while the procedure is being performed; and
- (b) if the relevant person arranges for another person to be present—delay the performance of the procedure for a reasonable time to allow the other person to be present during the performance of the procedure.

(2) Also, the police officer must arrange for someone else to be present while the procedure is being performed if—

- (a) the relevant person is a child or a person with impaired capacity; and
- (b) the relevant person has not arranged for another person to be present while the procedure is being performed.

Division 2—Performing medical or dental procedures with consent**Consent to be recorded**

248.(1) This section applies if the relevant person consents to a medical or dental procedure being performed on the person under this section.

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

Doctor's powers

249.(1) A doctor may do any of the following that may provide evidence of the commission of the relevant offence—

- (a) examine the relevant person's body, including the orifices of the person's body;
- (b) take samples of the relevant person's blood, saliva or hair;

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

(2) The doctor may, as part of anything done under subsection (1), photograph anything relevant to the examination.

(3) If help is needed to do anything mentioned in subsection (1), the doctor may ask other persons to give reasonably necessary help.

(4) However, the person helping the doctor must not do anything mentioned in subsection (1), unless the person is—

- (a) a person of the same sex as the relevant person; or
- (b) a doctor; or
- (c) if a person of the same sex as the relevant person or a doctor 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.

(5) It is lawful for a doctor and a person helping the doctor under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (1).

(6) The doctor and anyone helping the doctor must immediately stop performing a procedure if the relevant person withdraws consent.

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

Dentist's powers

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

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

(2) The dentist may, as part of anything done under subsection (1), photograph anything the dentist considers relevant for the purpose.

(3) If help is needed to do anything mentioned in subsection (1), the dentist may ask other persons to give reasonably necessary help.

(4) It is lawful for a dentist and a person helping the dentist under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (1).

(5) The dentist and anyone helping the dentist must immediately stop doing anything authorised by this section if the relevant person withdraws consent.

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

Division 3—Performing medical or dental procedures without consent

Application of div 3

251. This division applies if the relevant person is in custody for an indictable offence whether or not the person has been charged with the offence.

Examples—

1. A person arrested under section 163 for investigation of an indictable offence.
2. A person serving a period of imprisonment for an offence who is charged with another indictable offence.

Application for order for performance of medical or dental procedure

252.(1) A police officer may apply to a magistrate for an order authorising the performance of a medical or dental procedure on a relevant person in custody 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.

Making of order

253.(1) The magistrate may make an order authorising the performance of a medical or dental procedure on a relevant person only if satisfied there are reasonable grounds for believing performing the procedure may provide evidence of the commission of the offence.

(2) The order—

(a) must state—

(i) the name of the relevant person; and

(ii) whether the order authorises the performance of medical or dental procedures or both medical and dental procedures; and

(b) may state that the relevant person may be taken to a stated appropriate place for the performance of the procedure.

Copy of order to be given to person

254. If a medical or dental procedure is to be done under the magistrate's order, the police officer must give to the relevant person and the doctor or dentist a copy of the order.

Performing medical procedures without consent

255.(1) This section applies if—

(a) a magistrate authorises the performance of medical procedures on a relevant person; and

(b) a police officer asks a doctor 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 person's body, including the orifices of the person's

body;

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

(3) The doctor may, as part of the examination of the person's body, photograph anything relevant to the examination.

(4) If help is needed to perform the relevant procedure, the doctor may ask other persons to give reasonably necessary help.

(5) However, the person helping the doctor must not perform a procedure under subsection (2), unless the person is—

- (a) a person of the same sex as the relevant person; 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.

(6) It is lawful for a doctor and a person helping a doctor under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (2).

Performing dental procedures without consent

256.(1) This section applies if—

- (a) a magistrate authorises the performance of dental procedures on a relevant person; and
- (b) a police officer asks a dentist to perform the procedures.

(2) 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 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.

(3) The dentist may, as part of anything done under subsection (2), photograph anything the dentist considers relevant for the purpose.

(4) If help is needed to do anything mentioned in subsection (2), the dentist may ask other persons to give reasonably necessary help.

(5) It is lawful for a dentist and a person helping the dentist to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (2).

Division 4—Miscellaneous

Power to analyse samples

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

(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

258.(1) A person who takes or collects a sample or other thing from another person must give to the other person, or someone nominated by that person for the purpose, a part of the sample or thing or an equivalent sample or thing for the other person's own purposes.

(2) However, subsection (1) does not apply if—

- (a) it is not practicable to give an equivalent sample to the person; or
- (b) an equivalent sample for the purpose may be taken from the person's body at any time.

Example for paragraph (a)—

The size of the sample taken is too small to effectively provide the person with an equivalent sample.

Example for paragraph (b)—

A sample of blood taken for a DNA analysis of that person.

(3) Also, if a doctor takes a sample or thing and the doctor considers complying with subsection (1) may be inappropriate because, for example, the sample or thing may be used to transmit a communicable disease, the doctor may instead send, at the person's expense, the sample or thing to a doctor nominated by the person or the person's lawyer for safe custody.

(4) If the person does not nominate a doctor, the doctor taking the sample or thing need not provide the sample or thing and the sample or thing intended to be given to the person may be destroyed.

(5) 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 nominated by the person, a copy of the results.

CHAPTER 8—OTHER POWERS

PART 1—DIRECTIONS IN STATE BUILDINGS

Division 1—Screening of entrants to state buildings

Power to require reasons for entry to state building

259. A police officer may require an entrant to a state building to state the entrant's reason for being in, or about to enter, the building.

Use of electronic screening devices in state buildings

260.(1) This section applies if the system for the security of a state building involves the use of 1 or more of the following electronic screening devices—

- (a) a walk-through detector;
- (b) an X-ray machine;

(c) a hand held scanner.

(2) A police officer may ask the entrant to do 1 or more of the following—

- (a) to walk through a walk-through detector;
- (b) to pass the entrant's belongings through an X-ray machine;
- (c) to allow the police officer to pass a hand held scanner in close proximity to the entrant;
- (d) to allow the police officer to pass a hand held scanner in close proximity to the entrant's belongings.

Police officer may ask entrant to remove outer garment etc.

261.(1) This section applies if—

- (a) a police officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the entrant or belongings have been subjected to electronic screening; and
- (b) the police officer tells the entrant the reasons for making the request.

(2) The police officer may ask the person to do 1 or more of the following—

- (a) allow the police officer to inspect the entrant's belongings;
- (b) remove 1 or more outer garments worn by the entrant as specified by the police officer and allow the police officer to inspect the garments;
- (c) remove all articles from the entrant's clothing and allow the police officer to inspect them;
- (d) open an article for inspection and allow the police officer to inspect it;
- (e) open a vehicle or a part of it for inspection and allow the police officer to inspect it;
- (f) remove an article from the vehicle as specified by the police officer and allow the police officer to inspect it.

(3) A police officer may touch a garment the entrant is wearing only if the police officer is the same sex as the entrant.

(4) In this section—

“inspect”, an article, includes handle the article, open it and examine its contents.

Direction by police officer to leave building

262. A police officer may direct an entrant to leave a state building immediately, and to take the entrant’s belongings out of the building, if the entrant fails—

- (a) to state the person’s reasons for being in or about to enter the building; or
- (b) to allow a police officer to exercise a power under section 260 or 261.

Power to search person or vehicle without warrant not affected

263. This division does not affect the powers a police officer has under this Act to search a person or vehicle without a warrant.

Division 2—Miscellaneous powers for div 1

Seizure of proscribed things

264. A police officer may seize a proscribed thing found in the possession of a person in a state building, unless the person is lawfully in possession of it in the course of the person’s trade, business or calling.

Refusal of entry to and removal from building

265. If a person fails to comply with a request made or a direction given under division 1 or fails to satisfy a police officer that the person has a good and lawful reason to be in a particular state building then, unless the person

is arrested for a contravention of section 357⁴⁶—

- (a) if the person is in the state building—the police officer may remove the person from the state building; or
- (b) if the person is about to enter the state building—the police officer may prevent the person from entering the state building.

PART 2—PRESERVING SAFETY FOR SPECIAL EVENTS

Division 1—Preliminary

Application of pt 2

266. This part applies only to special events.

Purpose of pt 2

267. The purpose of this part is to state special provisions necessary for preserving public order and safety for individuals involved in special events and the safety of other individuals at special event sites.

Division 2—Declaration of special events

Declaration of special event

268.(1) A regulation may declare an event to be a special event for this part.

(2) The regulation must—

- (a) describe the event and the special event site; and
- (b) state the period for which the special event declaration is in force;

⁴⁶ Section 357 (Offence to contravene direction or requirement of police officer)

and

- (c) state the places, if any, at which an authorised person may exercise specified powers under division 5; and
- (d) state anything a person is prohibited from bringing onto the special event site (“**prohibited item**”); and
- (e) state any restrictions that apply to access to a part of the special event site; and
- (f) state any conditions, decided by the Minister, that apply to entry to the special event site or any part of it.

Requirements for declaring special events

269. Before an event is declared to be a special event, the Minister must be satisfied—

- (a) the declaration is necessary for preserving public order and the safety of individuals involved in the event and other individuals because of—
 - (i) the nature of the event; or
 - (ii) the status in the international community of persons involved in the event; or
 - (iii) the State’s obligations for holding the event; and
- (b) either—
 - (i) there is a reasonable likelihood that the event may be disrupted if the powers in division 5 are not exercised; or
 - (ii) the exercise of the powers is necessary because of the need to protect persons involved in or at the event; or
 - (iii) the exercise of the powers is required as a condition of holding the event in Queensland.

Notice of declaration to be given

270.(1) As soon as practicable, but no later than 7 days after a site is declared to be a special event site, the Minister must give notice of the

making of declaration and the effect of the declaration in a newspaper circulating generally in the State.

(2) Failure to comply with subsection (1) does not invalidate the declaration.

Division 3—Statutory conditions relating to entry to special event sites

Statutory conditions of entry

271. It is a condition of entry to a special event site that an entrant to the site—

- (a) must, if asked, permit a search to be made of his or her personal property; and
- (b) must, if asked, permit a frisk search to be made of his or her person; and
- (c) must not take into or possess on the site a prohibited item.

Statutory condition about restricted areas

272. The organiser of the special event must ensure reasonable steps are taken to inform the public of the limits of a restricted area at the site, whether by signs or otherwise.

Division 4—Appointment of authorised persons

Appointment of authorised persons

273.(1) The commissioner may appoint a person to be an authorised person for this part.

(2) The commissioner may appoint a person to be an authorised person only if—

- (a) the commissioner believes the person has the necessary expertise or experience to be an authorised person for this part; or
- (b) the person has satisfactorily completed a course of training

approved by the commissioner.

(3) The appointment—

- (a) must state the powers the authorised person may exercise under this part and when and where they may be exercised; and
- (b) may limit the powers of the authorised person by stating conditions in the instrument of appointment.

Example for subsection (3)(b)—

The commissioner may impose a condition requiring the authorised person to comply with any reasonable direction of a police officer.

Identity card

274.(1) The commissioner must give each authorised person an identity card.

(2) However, if the event is organised by someone other than the State, the commissioner may require the event organiser to issue the identity card.

(3) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person for this part; and
- (d) include an expiry date; and
- (e) state a unique number.

(4) A person who ceases to be an authorised person must return the person's identity card to the commissioner or, if the identity card is issued by an event organiser, the event organiser, as soon as practicable (but within 21 days) after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—10 penalty units.

Production or display of authorised person's identity card

275.(1) An authorised person may exercise a power in relation to someone else only if—

- (a) the authorised person first produces his or her identity card for the person's inspection; or
- (b) the authorised person has the officer's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for inspection by the person as soon as it is practicable.

Division 5—Powers for special event sites

Power to require reasons for entry to special event site

276.(1) A police officer or an authorised person may ask an entrant to a special event site to state the person's reason for being in, or about to enter, the site.

(2) If the person fails to comply with the request, the police officer or authorised person must warn the entrant the entrant may be prevented from entering the site or removed from the site, unless the entrant has a reasonable excuse.

(3) This section applies to an authorised person only if a condition of the person's appointment states this section applies to the person.

Use of electronic screening devices at special event site

277.(1) This section applies if the security system for a special event site involves the use of 1 or more of the following electronic screening devices—

- (a) a walk-through detector;
- (b) an X-ray machine;
- (c) a hand held scanner.

(2) A police officer or an authorised person may ask an entrant to the site to do 1 or more of the following—

- (a) to walk through a walk-through detector;

- (b) to pass the entrant's belongings through an X-ray machine;
- (c) to allow the police officer or authorised person to pass a hand held scanner in close proximity to the entrant;
- (d) to allow the police officer or authorised person to pass a hand held scanner in close proximity to the entrant's belongings.

Police officer or authorised person may ask entrant to remove outer garment etc.

278.(1) This section applies if—

- (a) a police officer or authorised person (“**security official**”) reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the entrant or belongings have been subjected to electronic screening; and
- (b) the security official tells the entrant the reason for making the request.

(2) The security official may ask the person to do 1 or more of the following—

- (a) allow the official person to inspect the entrant's belongings;
- (b) remove 1 or more outer garments worn by the entrant as specified by the official and allow the official to inspect the garments;
- (c) remove all articles from the entrant's clothing and allow the official to inspect them;
- (d) open an article for inspection and allow the official to inspect it;
- (e) open a vehicle or a part of it for inspection and allow the official to inspect it;
- (f) remove an article from the vehicle as specified by the official and allow the official to inspect it.

(3) An official may touch a garment the entrant is wearing only if the official is the same sex as the entrant.

(4) This section applies to an authorised person only if a condition of the person's appointment states this section applies to the person.

(5) In this section—

“**inspect**”, an article, includes handle the article, open it and examine its contents.

Frisk search of persons

279. A police officer may ask an entrant to a special event site to permit a frisk search to be made of his or her person.⁴⁷

Refusal of entry to and removal from site

280.(1) This section applies if—

- (a) an entrant fails to comply with a request made under this division; or
- (b) an entrant fails to satisfy a police officer or an authorised person that the entrant has a good and lawful reason to be at the special event site or a particular part of it; or
- (c) a police officer or an authorised person reasonably suspects an entrant has contravened a provision of division 6.

(2) Unless the entrant is arrested for a contravention of division 6 or section 357⁴⁸—

- (a) if the entrant has entered the special event site—a police officer or an authorised person may remove the entrant from the site; or
- (b) if the person is about to enter the special event site—a police officer or an authorised person may prevent the person from entering the site.

⁴⁷ See section 319 (General provision about searches of persons)

⁴⁸ Section 357 (Offence to contravene direction or requirement of police officer)

Division 6—Offences**Unauthorised entry to a special event site**

281. A person must not enter or remain in a special event site unless the person—

- (a) has paid any entry fee; or
- (b) has the consent of the event organiser; or
- (c) is otherwise authorised to enter or remain at the site.

Maximum penalty—10 penalty units.

Unauthorised entry to a restricted area

282. A person must not enter or remain in a restricted area at a special event site, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Interference with a special event

283. A person must not, at a special event site—

- (a) disrupt, interfere with, delay or obstruct the conduct of the special event or an activity associated with the special event; or
- (b) interfere with the reasonable enjoyment of the special event or an activity associated with the special event.

Maximum penalty—40 penalty units.

Prohibited items

284. A person must not take a prohibited item onto, or possess a prohibited item on, a special event site, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

Assault etc. of authorised person

285.(1) A person must not assault or obstruct an authorised person exercising a power under this part.

Maximum penalty—40 penalty units.

(2) In this section—

“**assault**” has the meaning given by the Criminal Code, section 245.

“**obstruct**” includes hinder, resist and attempt to obstruct.

PART 3—POWERS RELATING TO NOISE**Application of pt 3**

286.(1) This part applies to the abatement of environmental nuisance caused by excessive noise that—

- (a) is emitted from a place by—
 - (i) a musical instrument; or
 - (ii) an appliance for electrically producing or amplifying music or other sounds; or
 - (iii) a motor vehicle, other than a motor vehicle on a road; or
 - (iv) a gathering of people for a meeting, party, celebration or similar occasion; and
- (b) is audible in any residential or commercial premises.

(2) However, this part does not apply to the abatement of excessive noise emitted from a place—

- (a) while being used for an open-air concert or commercial entertainment; or
- (b) by a public meeting under a permit under any Act or law authorising the amplification or reproduction of sound by—
 - (i) any electrical or mechanical appliance, apparatus or device;

or

- (ii) another way.

Complaint about noise

287.(1) If a person reasonably believes noise emitted from a place is excessive noise, the person may make a complaint to a police officer about the noise.

(2) As soon as practicable after the complaint is made, a police officer must investigate the complaint, or cause the complaint to be investigated, unless the officer believes the complaint is frivolous or vexatious.

Powers of police officers on investigation of complaint

288.(1) This section applies if a police officer is reasonably satisfied—

- (a) the noise complained of is clearly audible at or near the complainant's residential or commercial premises; and
- (b) the noise is excessive noise in the circumstances.

(2) In deciding whether noise is excessive noise in the circumstances, a police officer may have regard to—

- (a) the degree of interference the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the neighbourhood of the place from which the noise is being emitted; and
- (b) the nature of the lawful uses permitted for premises in the neighbourhood of the place from which the noise is being emitted.

(3) A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) direct the occupier of the place, and the other persons who appear to the officer to be responsible for causing the noise or permitting the noise to be caused, to immediately abate the excessive noise from the place (a **“noise abatement direction”**).

(4) A noise abatement direction may be given orally or by written notice.

Compliance with noise abatement direction

289.(1) A person to whom a noise abatement direction is given must—

- (a) immediately comply with the direction; and
- (b) refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(2) A person who knows a noise abatement direction has been given must refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(3) For applying subsection (1) or (2), it does not matter that noise emitted from a place in contravention of the subsection is not of the same level or nature of the excessive noise for which the noise abatement direction was given.

Additional powers of police officers on later investigation

290.(1) This section applies if—

- (a) a noise abatement direction has been given about a place; and
- (b) within 12 hours after the direction is given, a police officer is satisfied on further investigation the police officer is entitled to exercise the powers mentioned in section 289 about the same place.

(2) A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) in relation to the property that is or was being used to produce or contribute to the production of the noise—
 - (i) lock, seal or otherwise deal with it in a way to prevent its further use; or
 - (ii) seize and remove it from the place; or

- (iii) make it inoperable by removing any part or parts and seize and remove the part or parts from the place.

(3) However, in exercising or attempting to exercise the powers, the police officer must take all reasonable steps to ensure the officer does as little damage as is practicable in the circumstances.

Offence to interfere with locked etc. property

291.(1) This section applies if a police officer locks, seals or otherwise deals with property under section 290(2)(b)(i).

(2) A person must not unlock, unseal or use the property within 24 hours after the noise abatement direction was given about the place where the property is found.

Maximum penalty for subsection (2)—100 penalty units.

Recovery of seized property

292.(1) Property seized by a police officer may be claimed by—

- (a) the owner of the property or a person acting for the owner; or
- (b) the person from whose possession the property was seized or someone acting for the person.

(2) The claim may be made only during stated hours on a business day not earlier than 24 hours after the seizure of the property.

(3) A police officer must not give seized property to a person claiming it unless the police officer is satisfied the claimant is—

- (a) the owner of the property or the person from whose possession the property was seized; or
- (b) a person acting for a person mentioned in paragraph (a).

(4) Nothing in this section prevents a police officer retaining seized property if the police officer reasonably suspects the property is evidence of the commission of an offence.

Recovery of costs of seizure etc.

293. The State may recover as a debt owing to it the reasonable costs incurred by a police officer exercising powers under section 290.

General powers and role of certain police officers

294. An Aboriginal or Island police officer may exercise powers under this part only in the aboriginal or Torres Strait islander local government area for which the officer is appointed.

Power to require answers to questions

295.(1) This section applies if a police officer reasonably suspects that—

- (a) an offence against this part has been committed; and
- (b) a person may be able to give information about the offence.

(2) The police officer may require the person to answer a question about the offence.

**PART 4—POWERS RELATING TO NUISANCE IN
MOVEABLE DWELLING PARKS****Behaviour in moveable dwelling park causing serious nuisance**

296. A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.

Example of serious nuisance—

1. A person assaults a resident or someone else.
2. A person uses threatening or abusive language towards a resident or someone else.
3. A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.
4. A person causes substantial, unreasonable annoyance to a resident or someone

else.

5. A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.

6. A person wilfully damages property of a resident or someone else.

Power to enter moveable dwellings

297. A police officer may, without a warrant, enter a moveable dwelling in a moveable dwelling park if the officer reasonably suspects there is a person in the dwelling—

- (a) causing a serious nuisance in the park; or
- (b) who has just caused a serious nuisance in the park.

Initial direction about serious nuisance

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

- (a) finds a person causing a serious nuisance in a moveable dwelling park; or
- (b) reasonably suspects a person has just caused a serious nuisance in a moveable dwelling park.

(2) The police officer may—

- (a) if subsection (1)(a) applies—direct the person to immediately stop causing the nuisance and also direct the person not to cause another serious nuisance in the park; or
- (b) if subsection (1)(b) applies—direct the person not to cause another serious nuisance.

(3) The direction under subsection (2) (“**initial nuisance direction**”) may be given orally or by written notice.

Direction to leave park

299.(1) This section applies if—

- (a) an initial nuisance direction is given to a person; and
- (b) a police officer suspects on reasonable grounds—

- (i) for an initial nuisance direction not to cause another serious nuisance—the person contravened the direction within 24 hours after the direction was given; or
- (ii) in other cases—the person has contravened the direction.

(2) The police officer may direct the person to leave the moveable dwelling park and not re-enter it for a stated period, not longer than 24 hours.

(3) A direction under subsection (2) (a “**final nuisances direction**”) may be given orally or by written notice.

PART 5—MISCELLANEOUS POWERS

Entry of place to prevent offence, injury or domestic violence

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

- (a) there is an imminent risk of either of the following happening at a place—
 - (i) injury to a person;
 - (ii) an offence involving damaging property; or
- (b) domestic violence is occurring, or has occurred before the officer’s arrival, at a place.

(2) It is lawful for the police officer to enter the place and stay on it for the time reasonably necessary—

- (a) to establish whether the reason for the entry exists; and
- (b) to ensure that, in the officer’s opinion, an imminent risk of injury, damage or domestic violence does not exist at the place; and
- (c) to give or arrange for reasonable help to any person at the place.

(3) The police officer may detain anyone at the place for the time reasonably necessary to establish whether the reason for the entry exists.

(4) If the police officer is reasonably satisfied a reason for the entry exists, the police officer may do any of the following—

- (a) detain a person for a search or to prevent acts of violence or damage to property;
- (b) search anyone detained for anything that may be, or has been used to cause the injury or damage or for an act of domestic violence;
- (c) search the place—
 - (i) for anyone who may be at risk of being injured or subject to an act of domestic violence or associated domestic violence; and
 - (ii) for anything that may be, or has been, used to cause the injury or damage or for an act of domestic violence or associated domestic violence;
- (d) seize anything found at the place or on a person at the place that may be, or has been used to cause the injury or damage or for the act of domestic violence or associated domestic violence.

Example for subsection (4)(c)(ii)—

The police officer may be satisfied the thing may be used for an act of domestic violence or associated domestic violence because of apparently reliable information.

(5) Before searching a place under this section, the police officer must inform the occupier of the place, if present, that the occupier may accompany the police officer while the place is being searched.

(6) For this section, a place that is a building, includes a vehicle at the place.

Police officer may use assistance in exercising certain powers

301.(1) It is lawful for a police officer exercising a power under this Act or any other Act—

- (a) to seek the assistance of another person (an “**assistant**”) the officer reasonably requires for performing a function of the police service; or
- (b) to take onto a place any assistant, equipment, vehicle, animal or material the officer reasonably requires for exercising the power.

Examples—

1. A police officer may seek the help of an electrician to install a listening device

under a surveillance warrant.

2. A police officer making an arrest may seek the help of a member of the public to help the police officer subdue the person.

3. A police officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device.

(2) 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, if practicable, tell the assistant—

(a) of the action the assistant is authorised to take; and

(b) of the assistant's powers under this section.

(5) Subsection (1) applies, in relation to animals, despite any other Act or law.

Protection for assistants from liability

302.(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 liability attaching to an assistant, liability attaches instead to the State.

Power to use force—exercise of certain powers

303. It is lawful for a police officer exercising or attempting to exercise 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

304.(1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

Example—

A police officer may use reasonable force to prevent a person evading arrest.

(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

305.(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) This section also 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 act.

CHAPTER 9—OTHER STANDARD SAFEGUARDS

PART 1—PRELIMINARY

Chapter does not apply to covert operations

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

PART 2—SAFEGUARDS FOR THINGS SEIZED

Division 1—Application of pt 2

Application of pt 2

307. This part does not apply to a thing seized by a police officer if, under another Act, the thing must be taken before a stated person.

Example—

The *Commissions of Inquiry Act 1950*, section 19A(1) requires property seized under a warrant issued by a commission of inquiry to be taken before the commission.

Division 2—General safeguards

Receipt for seized property

308.(1) If a police officer seizes anything under this Act or a warrant, the police officer must, as soon as is reasonably practicable after seizing the thing—

- (a) if the person from whom it is seized is present—give or cause to be given to the person a receipt for the thing; or
- (b) if the occupier of the premises is not present—leave a receipt for the thing in a conspicuous place.

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

(3) However, if the police officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (1), but only for so long as—

- (a) the police officer continues to have the reasonable suspicion; and
- (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep it under observation.

(4) Also, this section does not apply if the police officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

Right to inspect seized documents

309. 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 time and from time to time; and

(b) to take extracts from or make copies of it.

(2) If a police officer seizes a document under a production order, the officer, if asked by the person to whom the order was addressed, must give the person a copy of the document certified by the officer in writing to be a true copy of the document.

(3) The police officer may refuse to comply with subsection (1) or (2) if the officer reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the documents are evidence or commit another offence.

Division 3—Return of seized things

Application for return of seized things

310.(1) This section applies if—

- (a) a police officer seizes a thing under this Act; and
- (b) the thing has not been returned to the owner or the person who had lawful possession of it before it was seized; and
- (c) at least 28 days have passed since the thing was seized.

(2) The owner or the person who had lawful possession of the seized thing may apply to a magistrate in the approved form for an order that the thing be returned to the person.

(3) The person must give the Attorney-General and the commissioner a copy of the application and notice of the day, time and place fixed for hearing it.

(4) If satisfied the reason for retaining the thing no longer exists, the court may order that it be returned on the conditions, if any, the court considers appropriate.

(5) However, the court may not order the return of any of the following seized things—

- (a) a thing that may be evidence in a proceeding started in relation to the thing seized;
- (b) a thing that has been destroyed because it had no intrinsic value;

- (c) a thing that has been disposed of because it was perishable;
- (d) a thing that is a dangerous drug or a thing used in or for manufacturing a dangerous drug;
- (e) a thing the person may not lawfully possess;
- (f) a thing that may be subject to a forfeiture proceeding.

(6) This section applies to a search warrant issued in reliance on the commission of an interstate serious offence as if the references in the warrant to a forfeiture order included references to an interstate forfeiture order.

Return of seized things

311.(1) 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.

(2) Despite subsection (1), a police officer who seized a thing for either of the following reasons may retain the thing for a reasonable time, not more than 28 days, after it is seized—

- (a) to prevent a person causing harm to himself, herself or someone else;
- (b) to prevent an offence or a breach of the peace happening.

Division 4—Disposal of seized things

Disposal of seized weapons

312.(1) This section applies to a weapon or other thing—

- (a) given to or seized by a police officer under the *Domestic Violence (Family Protection) Act 1989*; or
- (b) otherwise seized by a police officer, whether before or after the commencement of this section.

(2) At any time after the appointed day, the weapon or other thing may be delivered—

- (a) if a police officer is satisfied someone is the owner, or would be entitled to possess it if that person complies with the *Weapons Act 1990*—
 - (i) to the owner or person entitled to possess it; or
 - (ii) if the owner or person entitled to possess it nominates another person to possess it, to that person; or
- (b) if a court order is made for the delivery of the weapon or thing to a person under the *Justices Act 1886*, section 39—to that person.

(3) However, a weapon or other thing may be delivered to a person mentioned in subsection (2) only if that person satisfies the police officer who holds or has custody of the weapon or thing that the person is authorised to possess the weapon or, if the thing is an antique firearm, the antique firearm.

(4) If the weapon or other thing has not been delivered to any person under subsection (2) within 3 months after the appointed day or the longer period the commissioner decides in a particular case, the weapon or thing is forfeited to the State.

(5) Subsection (4) does not apply to a weapon or any other thing that has been forfeited or ordered to be forfeited to the State under any Act or law.

What is the appointed day for disposal of seized weapons or things

313. The “**appointed day**” for disposal of a seized weapon or other thing is—

- (a) for a weapon or other thing seized because of a contravention or suspected contravention of the *Weapons Act 1990*, the later of the following—
 - (i) the time of the final determination of all proceedings relating to the offence or suspected offence;
 - (ii) 6 months after the day the weapon or other thing was seized;
or
- (b) otherwise—the day the weapon or other thing was seized.

Application for order in relation to seized things

314.(1) Within 28 days after a police officer seizes a thing as evidence of the commission of an offence, the police officer must apply to a justice of the peace (magistrates court) or a magistrate (the “**issuer**”) for an order under section 315 in relation to the thing, unless—

- (a) a proceeding has been started in which the thing may be relevant; 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 has no intrinsic value; or
- (d) it is perishable and will perish before it can be returned to the owner of the thing, or the person lawfully in possession of the thing before it was seized; or
- (e) it is a dangerous drug or a thing used in or for manufacturing a dangerous drug; or
- (f) it is a weapon the person from whom it was seized may not lawfully possess; or
- (g) it is given to a law enforcement agency of another State under section 317; or
- (h) it is returned under division 3.

Example for subsection (1)(c)—

1. Samples of hair taken from a person but not to be used as evidence because the person is not charged with an offence.
2. Samples of hair or blood taken from a crime scene that may be forensic evidence.

Example for subsection (1)(d)—

Fruit, vegetables or meat that will not keep.

(2) An application for an order under section 315 must also be made within 28 days after either of the following happens—

- (a) a proceeding started in relation 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) The application must be accompanied by any warrant under which the thing was seized, with a record made on it under section 331.⁴⁹

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

Orders issuer may make in relation to seized thing

315.(1) After considering the application, the issuer may, in relation to the thing, order—

- (a) that it be kept in the possession of a police officer until the end of—
 - (i) any investigation in which the thing may be relevant; or
 - (ii) any proceeding in which the thing may be relevant; or
 - (iii) any appeal against a decision in a proceeding in which the thing is relevant; 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 returned to the person who the issuer believes is lawfully entitled to possess it; or
- (d) if the person entitled to possess the thing is unknown—that the thing be disposed of; or
- (f) that it be disposed of or destroyed; or
- (e) that it be dealt with by way of a proceeding under the *Justices Act 1886*, section 39 or a forfeiture proceeding.

(2) The issuer may, in the order, impose any conditions the issuer considers appropriate, including, for subsection (1)(a), a condition limiting

⁴⁹ Section 331 (Record of execution of warrant or order)

the time for which a police officer may keep possession of documents seized as evidence.

Disposal of seized things at end of proceeding

316.(1) At the end of a proceeding, a court, in relation to a seized thing, may make any of the following orders—

- (a) an order for the return, forfeiture, destruction or disposal of the thing;
- (b) an order that the thing be dealt with by way of a proceeding under the *Justices Act 1886*, section 39⁵⁰ or a forfeiture proceeding;
- (c) an order that the police service retain the thing until it is dealt with according to law.

(2) A thing that is forfeited under an order under this Act becomes the property of the State.

(3) Subject to any direction in an order for the forfeiture, destruction or disposal of a thing, the commissioner must decide how the thing is to be disposed of or destroyed.

(4) However, if the value of the thing is more than the amount prescribed under a regulation for this section, the commissioner must first obtain the Minister's approval to the proposed disposal or destruction.

Examples—

1. The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.
2. The commissioner may give stolen clothes to a charitable organisation whose charter is to assist the poor for distribution to the needy.

⁵⁰ *Justices Act 1886*, section 39 (Power of court to order delivery of certain property)

Division 5—Ministerial arrangements**Ministerial arrangements for transmission and return of seized things**

317.(1) The Minister may enter into arrangements with a Minister of another State responsible for the administration of a law declared by regulation to be a corresponding law for this section under which—

- (a) a thing seized under this Act that may be relevant to the investigation of an offence against the law of the State in which the corresponding law is in force—
 - (i) is to be given to a law enforcement agency in that State for the investigation of or a proceeding for the offence; and
 - (ii) when no longer required for the investigation or proceeding, is to be returned to the law enforcement agency, unless disposed of by order or direction of a court; and
- (b) a thing seized under the corresponding law that may be relevant to the investigation of an offence against the law of Queensland—
 - (i) is to be given to the commissioner; and
 - (ii) when no longer required for the investigation of an offence or a proceeding for an offence, is to be returned to the law enforcement agency in the State in which it was seized, unless disposed of by order or direction of a court.

(2) A thing returned to a law enforcement agency under an arrangement under subsection (1) is property that is in the custody or possession of the police in the course of their duty within the meaning of the *Justices Act 1886*, section 39(1)(a)(ii).⁵¹

(3) However, the thing may be dealt with under the *Justices Act 1886*, section 39 only if the owner of the thing is unknown or can not, after reasonable inquiries, be located.

⁵¹ *Justices Act 1886*, section 39 (Power of court to order delivery of certain property)

PART 3—OTHER SAFEGUARDS

Division 1—General provisions about searches of persons and vehicles

General provision about searches of persons

318.(1) A police officer searching a person must—

- (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
- (b) take reasonable care to protect the dignity of the person; and
- (c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and
- (d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

Example for subsection (1)(c)—

A more thorough search may be immediately necessary because a police officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.

(2) 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 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 his or her body or has a concealed firearm.

Taking a person to another place for search

319.(1) 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.

Example—

To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino.

(2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the police officer must consider the following—

- (a) whether the thing sought may be concealed on the person;
- (b) whether, for an effective search, the search should be conducted somewhere else;
- (c) the need to protect the dignity of the person.

Limitation on period of detention for search

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

General provision about searches of vehicles

321.(1) This section deals with the searching of vehicles under this Act.

(2) Before deciding to take a vehicle to a place with appropriate facilities for searching it, a police officer must consider whether searching the vehicle somewhere else would be more effective because of the nature and size of a thing sought that may be concealed in the vehicle.

(3) If a police officer decides to take a vehicle to a place with appropriate facilities for searching it, the police officer must, if the person apparently in possession of the vehicle is known and present—

- (a) tell the person where the vehicle is to be taken; and
- (b) ask the person if he or she wants to be present during the search.

(4) If a police officer searches an unattended vehicle or anything in it, the

police officer must leave a notice in a conspicuous place in or on the vehicle stating—

- (a) that the vehicle or a stated thing in or on it has been searched; and
- (b) the police officer's name, rank and station; and
- (c) that a record of the search may be obtained from any police station.

(5) After searching an unattended vehicle or anything in it, the police officer must ensure, as far as reasonably practicable, the vehicle is left secured at least to the same extent as it was before the search.

Dealing with persons who obstruct search of person or vehicle

322.(1) If a person (the “**obstructing person**”) obstructs a police officer conducting a lawful search of the person, another person or a vehicle, a police officer must, if reasonably practicable—

- (a) warn the obstructing person it is an offence to obstruct a police officer in the performance of the police officer's duties; and
- (b) give the obstructing person a reasonable opportunity to stop obstructing the search.

(2) It may not be reasonably practicable for a police officer to comply with subsection (1) if, for example—

- (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or
- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or
- (c) an immediate search is necessary to protect the safety of any person.

Division 2—Searches involving removal of clothing

Removal of clothing for search

323.(1) A police officer conducting a lawful search of a person under this Act may require a person to remove all items of clothing or all items of

outer clothing from—

- (a) if the person is a female—the upper or lower part of the body; or
- (b) if the person is a male—the lower part of the body.

(2) Subsection (1) does not apply to a frisk search under section 279.

Protecting the dignity of persons during search

324.(1) If reasonably practicable—

- (a) the police officer must, before conducting the search—
 - (i) tell the person he or she will be required to remove clothing during the search; and
 - (ii) tell the person why it is necessary to remove the clothing; and
 - (iii) ask for the person's cooperation; and
- (b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.

(2) The search must be conducted in a way providing reasonable privacy for the person.

Example for subsection (2)—

Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex and by anyone who does not need to be present.

(3) Also, the search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.

(4) The police officer conducting the search must not make physical contact with the genital and anal areas of the person searched, but may require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made.

(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.

Special requirements for searching children and persons with impaired capacity

325.(1) If a person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of a support person.

(2) However, the police officer may search the person in the absence of a support person if the police officer reasonably suspects—

- (a) delaying the search is likely to result in evidence being concealed or destroyed; or
- (b) an immediate search is necessary to protect the safety of a person.

If video cameras monitor place where person is searched

326.(1) If a video camera monitors the area where the person is searched, the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched—

- (a) ensure the camera is turned off; or
- (b) conduct the search out of view of the camera.

(2) If the video camera is not turned off, a recording of the search must not be shown to anyone other than—

- (a) the person searched or his or her lawyer; or
- (b) a doctor treating the person searched; or
- (c) a person deciding if a proceeding is to be started against the person for an offence; or
- (d) a police officer investigating an offence involving the person; or
- (e) a police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or
- (f) a court.

Division 3—Other provisions**Safeguards for directions or requirements**

327.(1) This section applies if a police officer gives someone a direction or makes a requirement under this Act.

(2) If the person fails to comply with the direction or requirement, a police officer must, if practicable, warn the person—

- (a) it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse; and
- (b) the person may be arrested for the offence.

(3) The police officer must give the person a reasonable opportunity to comply with the direction or requirement.

Use of force likely to cause damage to enter places

328.(1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.

(2) Before the police officer uses force that may cause damage to a place to gain entry to the place, the police officer must, if reasonably practicable—

- (a) ask the occupier of the place to allow the police officer to enter the place; and
- (b) give the occupier a reasonable opportunity to allow the entry.

(3) It may not be reasonably practicable for a police officer to comply with subsection (2) if, for example—

- (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or
- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of or destroy evidence; or
- (c) an immediate search is necessary to protect the safety of any person.

Police officer to give notice of damage

329.(1) This section applies if—

- (a) a police officer damages something when exercising a power under this or another Act; or
- (b) an assistant damages something.

(2) The police officer must promptly give written notice to the person who appears to be the owner of the thing—

- (a) stating the nature of the damage; and
- (b) if the police officer believes the damage was caused by a latent defect in the thing or circumstances beyond the police officer's or assistant's control—stating the police officer's belief.

(3) However, if the police officer reasonably suspects giving the notice may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay giving the notice, but only for so long as—

- (a) the police officer continues to have the reasonable suspicion; and
- (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place.

(4) If the owner is not present, the notice must be left in a conspicuous place.

(5) This section does not apply—

- (a) to damage the police officer reasonably believes is trivial; or
- (b) if the police officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

(6) In this section—

“**owner**”, of a thing, includes the person in possession of the thing.

Supplying police officer's details

330.(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 39 or 94;⁵² or
- (h) enters a place to make an inquiry or investigation or to serve a document; or
- (i) exercises a power as a public official.

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

- (a) if the police officer is not in uniform—
 - (i) that he or she is a police officer; and
 - (ii) his or her name, rank and station; or
- (b) if the police officer is in uniform—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,⁵³ the police officer must state the purpose of the search and the reason for seizing any property.

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

(6) However, if a person asks another police officer for the information mentioned in subsection (2) or to produce an identity card, the police officer must give to the person the information requested or produce the identity card.

⁵² Section 39 (Direction may be given to person) or 94 (Powers of direction etc. at crime scene)

⁵³ A search warrant must state the offence to which it relates and a copy of the warrant must be given to the occupier. See section 75.

Record of execution of warrant or order

331. 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 the written form of warrant or order and sign the document—

- (a) the day 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.

CHAPTER 10—ADMINISTRATION**PART 1—WATCH-HOUSES****Control of persons in watch-houses**

332. A watch-house manager may give or cause to be given to a person in custody in the watch-house any reasonably necessary directions, or take or cause to be taken any reasonably necessary steps, for ensuring the good management and control of the watch-house.

Examples—

1. The manager may direct a person in custody to move from 1 cell to another because the person is causing disruption to others or for the safety of others.
2. The manager may physically remove a person from 1 cell to another if the person fails to comply with a direction.

Transfer of persons in watch-houses

333. A watch-house manager may transfer a person in custody in a watch-house from the watch-house—

- (a) to another watch-house; or
- (b) to a holding cell at a police station; or
- (c) to another place at which the person may receive treatment necessary for the person's welfare; or
- (d) to a prison; or
- (e) into the custody of a police officer for the purposes of chapter 6.

Examples—

1. A person may be transferred from the watch-house at Holland Park to the Brisbane City watch-house because there are not enough cells or staff available at Holland Park to provide proper security at the watch-house or care for persons in custody.
2. A person held in custody at a watch-house may be transferred to a hospital to receive necessary medical treatment.

PART 2—REGISTERS

Division 1—Application and purpose

Application of pt 2

334.(1) This part applies to covert acts and enforcement acts done by a police officer for the CJC, QCC, the NCA or the police service.

(2) Also, this part applies to covert acts and enforcement acts done by a police officer at the request of a declared law enforcement agency other than the CJC or QCC.

(3) However, divisions 2 and 3 do not apply to covert acts and enforcement acts done by a police officer performing a function for the NCA.

Purpose and explanation of pt 2

335.(1) The purpose of this part is—

- (a) to establish who is responsible for keeping registers under this Act and recording information in them; and
- (b) to ensure, as far as possible, police officers record information about covert acts and enforcement acts in the correct register; and
- (c) to state who may inspect each register.

(2) Police officers sometimes do covert acts and enforcement acts for declared law enforcement agencies but do not stop being police officers only because the act is not done for the police service.

(3) In some cases, these acts are done as part of a joint operation involving 2 or more declared law enforcement agencies.

(4) If this part applies to a declared law enforcement agency, the agency must ensure information about the acts is recorded in a register as required under this part.

(5) This part also provides a mechanism for ensuring information incorrectly recorded in a particular register is removed from the register and recorded in the relevant register.

Division 2—Register of surveillance and covert search warrants

Application of div 2

336.(1) This division applies to covert acts.

(2) In this section—

“**covert act**” includes an enforcement act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

Particular Acts do not apply to this division

337. The *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to information kept in a register under this division.

Register of covert acts

338.(1) The CJC, QCC and the police service must keep a register of covert acts.

(2) The register may form part of another register whether kept under this or another Act.

(3) Each entity—

- (a) may keep its register in the way the entity's chief executive officer considers appropriate; and
- (b) must ensure its register is kept in a secure place.

Example for subsection (3)(a)—

The register may be kept on a computer or partly on a computer and partly written.

Information to be recorded in register

339.(1) The following information about an application for a covert search warrant must be recorded in the register—

- (a) when and where the application for the warrant was made;
- (b) the name of the person in relation to whom the warrant was sought and the description of the place mentioned in the application;
- (c) the type of indictable offence mentioned in the application;
- (d) whether or not the warrant was issued;
- (e) if a warrant was issued—how long the warrant was in force.

(2) The following information about covert search warrants must be recorded in the register—

- (a) if and when powers were exercised under the warrant;
- (b) when the initial search under the warrant was completed or, if the place was not searched, why it was not searched;
- (c) whether anything was seized, inspected or photographed under the warrant;
- (d) the benefits derived from the warrant, including, for example—

- (i) any proceeding started; and
- (ii) anything seized during a search;
- (e) information about the return, destruction or disposal of anything seized.

(3) The information specified in the responsibilities code about other covert acts must be recorded in the register.

Who must record information in register

340.(1) The police officer who makes the application for the covert search warrant or exercises a power or does a covert act under the warrant (the “**relevant act**”) must ensure the information required under section 339 to be recorded in the register of covert acts is recorded.

(2) However, if 2 or more police officers do the relevant act, the senior police officer involved in doing the act must ensure the information is recorded.

(3) The information must be recorded as soon as reasonably practicable after the relevant act is done or the information becomes available.

Which register to be used

341.(1) Information that must be recorded in a register under this division must be recorded in the relevant register.

(2) For subsection, the relevant register for the relevant act is—

- (a) for an act done by a police officer performing functions for the CJC—the CJC’s register; or
- (b) for an act done by a police officer performing functions for QCC—QCC’s register; or
- (c) if paragraph (a) or (b) does not apply—the police service register.

(3) However, if a police officer does a covert act as part of a joint operation involving 2 or more entities, it is enough for subsection (2) if the information is recorded in a register kept by at least 1 of the entities participating in the operation.

Who may inspect police service register

342.(1) The register of covert acts kept by the police service is not open to inspection by anyone other than—

- (a) the commissioner; or
- (b) a monitor; or
- (c) the chairperson of the CJC.

(2) However, the chairperson of the CJC must give the commissioner reasonable notice of intention to inspect the register.

Who may inspect CJC's register

343. The register of covert acts kept by the CJC is not open to inspection by anyone other than—

- (a) the chairperson of the CJC; or
- (b) a monitor; or
- (c) the parliamentary commissioner.

Who may inspect QCC's register

344. The register of covert acts kept by the QCC is not open to inspection by anyone other than—

- (a) QCC; or
- (b) a monitor; or
- (c) the parliamentary commissioner.

Other authorised inspections

345.(1) If the chief executive officer of an entity that must keep a register of covert acts under this division considers it appropriate, the chief executive officer may, in writing, authorise a person who may not otherwise inspect the entity's register to inspect the register on the conditions the chief executive officer considers appropriate.

(2) However, the chief executive officer may authorise the person to

inspect the register only if the officer is satisfied the inspection is necessary—

- (a) for an investigation into a serious indictable offence, official misconduct, misconduct or a relevant criminal activity in which information in the register may be relevant; or
- (b) for maintaining the register; or
- (c) for preparing a chapter 4 application; or
- (d) for monitoring compliance with this Act.

(3) The person authorised to inspect the register may inspect it only to the extent necessary for the purpose for which the authority is given.⁵⁴

General restrictions on inspections by monitor

346. The monitor may inspect a register under this division only to the extent necessary for performing the monitor’s functions under this Act.

Division 3—Enforcement registers

Application of div 3

347.(1) This division only applies to enforcement acts.

(2) In this section—

“**enforcement act**” does not include an act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

Register of enforcement acts

348.(1) The CJC, QCC and the police service must keep a register of enforcement acts.

⁵⁴ Failure of a police officer to comply with subsection (3) may lead to disciplinary action against the officer. Also, improper disclosure of anything learnt when inspecting the register may be an offence.

(2) The register may form part of another register whether kept under this or another Act.

(3) Each entity—

- (a) may keep its register in the way the entity’s chief executive officer considers appropriate; and
- (b) must ensure its register is kept in a way that enables police officers to comply with this Act; and
- (c) may keep its register in a way the entity’s chief executive officer considers—
 - (i) prevents a police officer not performing a function for the entity inspecting all or part of the register; or
 - (ii) restricts access to all or part of the register to only specified police officers performing functions for the entity.

Example for subsection (3)(a)—

The register may be kept on a computer or partly on a computer and partly written.

Example for subsection (3)(c)(ii)—

The chairperson of the CJC may keep the register in a way that prevents police officers, other than those seconded to the CJC, inspecting the register.

Who must record information in register

349.(1) The police officer who does an enforcement act must ensure the information required under the responsibilities code to be recorded in the register of enforcement acts is recorded.

(2) However, if 2 or more police officers do the enforcement act, the senior police officer involved in doing the act must ensure the information is recorded.

(3) The information must be recorded as soon as reasonably practicable after the act is done or the information becomes available.

Which register to be used

350.(1) Information about an enforcement act must be recorded in the relevant register.

(2) For subsection (1), the relevant register for an enforcement act is—

- (a) for an act done by a police officer performing functions for the CJC—the CJC’s register; or
- (b) for an act done by a police officer performing functions for QCC—QCC’s register; or
- (c) if paragraph (a) or (b) does not apply—the police service register.

(3) However, if a police officer does an enforcement act as part of an operation involving 2 or more entities, it is enough for subsection (2) if the information is recorded in the register kept by at least 1 of the entities participating in the operation.

(4) Further, if an entity does an enforcement act for a declared law enforcement agency, other than the NCA or another entity, information about the act must be recorded in the register kept by the entity that did the enforcement act.

Persons to be given copy of information in register

351.(1) This section applies to information about a particular enforcement act recorded in a register of enforcement acts kept by the CJC, QCC or the police service.

(2) At any time within 3 years after the enforcement act is done, the person to whom the act was done may ask any police officer who is entitled to inspect the register to give the person a copy or print-out of the information recorded in the register about the act.

Example for subsection (2)—

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

(3) The police officer must comply with the request as soon as reasonably practicable.

Restriction on disclosure of certain information

352.(1) This section applies if the chief executive officer of an entity is reasonably satisfied that making information in the entity’s register about a

particular enforcement act available to anyone entitled to inspect it may not be in the public interest because—

- (a) it may prejudice or otherwise hinder an investigation to which the information may be relevant; or
- (b) it may cause embarrassment to, or otherwise adversely affect, a person to whom the information relates or someone else associated with the person including, for example, a family member.

(2) Despite section 351, the chief executive officer may direct that the information be recorded in the entity's register in a way that restricts inspection of the information until the chief executive officer is satisfied it is no longer necessary to restrict its inspection.

(3) The chief executive officer must keep a written record of the reasons for the direction.

(4) Despite subsection (1), if, within 3 years after the enforcement act was done, the person to whom the act was done asks the chief executive officer for information restricted under subsection (2), the chief executive officer must give the person a copy or print-out of the information as soon as reasonably practicable.

Example for subsection (4)—

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

Division 4—Provisions about covert acts and enforcement acts done for the NCA

Application of div 4

353. This division applies only to covert acts and enforcement acts done by a police officer performing a function for the NCA.

Information to be given to NCA

354.(1) A police officer who does a covert act or an enforcement act for

the NCA must give information about the covert act or enforcement act to the NCA as soon as reasonably practicable after the act is done.

(2) The information must be the same information as the police officer would cause to be recorded under section 339 or 349.

(3) However, if the NCA requires the police officer to record the information in another entity's register under this part, the police officer must ensure the information is recorded in the register the NCA specifies.

Division 5—General provisions

Correcting registers

355.(1) The failure of a police officer to ensure information under section 339 or 349 is recorded in the appropriate register or give information to the NCA under section 354 does not affect anything done in relation to the act concerned, whether before or after the failure.

(2) However, as soon as possible after the police officer or someone else entitled to inspect the register becomes aware that the information is not recorded in the appropriate register, the person must take the steps reasonably necessary to ensure the information is—

- (a) removed from the register in which it is recorded; and
- (b) recorded in the appropriate register or given to the NCA.

CHAPTER 11—GENERAL

PART 1—OFFENCES

Offence to assault or obstruct police officer

356.(1) A person must not assault or obstruct a police officer in the

performance of the officer's duties.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) For subsection (1), a person who obstructs a police dog or police horse under the control of a police officer in the performance of the police officer's duties is taken to obstruct the police officer.

(3) In this section—

“**assault**” has the meaning given by the Criminal Code, section 245.

“**obstruct**” includes hinder, resist and attempt to obstruct.

Offence to contravene direction or requirement of police officer

357.(1) This section applies if a person is given a requirement or direction under this Act and no other penalty is expressly provided for a contravention of the requirement or direction.

(2) A person must not contravene a requirement or direction given by a police officer under this Act, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for contravening a requirement or direction relating to a relevant law for which the penalty for a contravention of a similar requirement or direction made by a public official under the relevant law is more than 40 penalty units—the maximum penalty under the relevant law for the offence;
- (b) otherwise—40 penalty units.

(3) However, for a contravention of a requirement made by a police officer under section 15 or 16, the person may be prosecuted for a contravention of the relevant authorising law or subsection (2), but not both.⁵⁵

(4) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.

⁵⁵ Section 15 (Steps police officer may take for failure to give name and address to public official) or 16 (Steps police officer may take for obstruction of public official)

PART 2—OTHER GENERAL PROVISIONS

Performance of duty

358. 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.

Assistance at fire or chemical incidents

359.(1) It is the duty of a police officer present at a fire or a chemical incident to give a fire authority officer who is discharging functions and exercising powers under the *Fire and Rescue Authority Act 1990* reasonably necessary help.

(2) In this section—

“**chemical incident**” has the meaning given by the *Fire and Rescue Authority Act 1990*, section 6.

“**fire authority officer**” has the meaning given by the *Fire and Rescue Authority Act 1990*, section 6.

Assistance to courts, etc

360.(1) This section applies if, under another Act or law, a tribunal has power—

- (a) to lawfully order the apprehension or detention of a person, including under a warrant; or
- (b) to order the exclusion or removal of a person from the place where the tribunal is sitting; or
- (c) to give any other order or direction for which the help of a police officer may be reasonably necessary.

(2) It is the duty of a police officer to comply with any lawful direction, request, or order of the tribunal and any reasonable request the judge or other presiding officer may lawfully make.

(3) In this section—

“**tribunal**” means a court, inquest, inquiry, tribunal or other deliberative entity.

Service and enforcement of process

361. A police officer may serve or enforce a warrant, summons, order or command of any court, judge, magistrate or justice—

- (a) even though the warrant, summons, order or command is not addressed to the police officer; and
- (b) despite the requirements of any other Act or law, or rule having the force of law, about who may enforce the warrant, summons, order or command.

Provisions restricting starting of proceeding

362.(1) This section applies if a provision of another Act prescribed under a regulation for this section restricts or prevents a police officer starting a proceeding against a person for an offence against that Act.

(2) Despite the other Act, a police officer may start a proceeding against the person for the offence.

(3) However, as soon as reasonably practicable after starting the proceeding, a police officer must inform the chief executive of the department within which the Act is administered of the starting of the proceeding.

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

363.(1) This section applies if under this Act, a police officer may obtain a warrant, approval, production notice, production order or another authority (a “**prescribed authority**”).

(2) A police officer may apply for a prescribed authority by phone, fax, radio or another similar facility if the police officer considers it necessary because of—

- (a) urgent circumstances; or

(b) other special circumstances, including, for example, the police officer's remote location.

(3) Before applying for the prescribed authority, the police officer must prepare an application stating the grounds on which the prescribed authority is sought.

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

Steps after issue of prescribed authority

364.(1) After issuing the prescribed authority, the issuer must immediately fax a copy to the police officer if it is reasonably practicable to fax the copy.

(2) If it is not reasonably practicable to fax a copy to the police officer—

(a) the issuer must tell the police officer—

(i) what the terms of the prescribed authority are; and

(ii) the day and time the prescribed authority was issued; and

(b) the police officer must complete a form of prescribed authority (a **“prescribed authority form”**) and write on it—

(i) the issuer's name; and

(ii) the day and time the issuer issued the prescribed authority; and

(iii) the terms of the prescribed authority.

(3) The facsimile prescribed authority, or the prescribed authority form properly completed by the police officer, authorises the entry and the exercise of the other powers stated in the prescribed authority issued by the issuer.

(4) The police officer must, at the first reasonable opportunity, send to the issuer—

(a) the sworn application; and

(b) if the police officer completed it—the completed prescribed authority form.

(5) On receiving the documents, the issuer must attach them to the prescribed authority.

Presumption about exercise of powers under prescribed authority

365. A court must find the exercise of a power by a police officer was not authorised by a prescribed authority if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a prescribed authority; and
- (b) the authority is not produced in evidence; and
- (c) it is not proved by the police officer relying on the lawfulness of the entry that a police officer obtained the prescribed authority.

Protection of methodologies

366.(1) In a proceeding, 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 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.

(3) Subsection (1) does not affect a provision of another Act under which a police officer can not be compelled to disclose information or make statements in relation to the information.

Example for subsection (3)—

Drugs Misuse Act 1986, section 47.

(4) In this section—

“police officer” includes a police officer of another State or the Australian Federal Police.

“proceeding” does not include—

- (a) a hearing for an investigation under the *Crime Commission Act 1997*, part 7; or
- (b) a proceeding of the CJC in which a police officer is being examined under the *Criminal Justice Act 1989*, section 95; or
- (c) a commission of inquiry under the *Commissions of Inquiry Act 1950*; or
- (d) a hearing of the NCA for a special investigation under the *National Crime Authority (State Provisions) Act 1985*, section 16.

Compensation

367.(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 Act

368. The commissioner must ensure this Act is available for inspection at any police station by anyone who asks to inspect it.

Approved forms

369. The commissioner may approve forms for use under this Act.

Review of Act

370.(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

371.(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.

CHAPTER 12—REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENTS

PART 1—ACTS REPEALED AND AMENDED

Acts repealed

372.(1) Each of the following Acts is repealed—

- (a) the *Criminal Investigation (Extraterritorial Offences) Act 1985*;
- (b) the *Police Powers and Responsibilities Act 1997*.

(2) The *Gaming Act 1850* (NSW) as it applies in Queensland ceases to have effect.

Acts amended

373. Schedules 2 and 3 amend the Acts they mention.

PART 2—TRANSITIONAL PROVISIONS

Division 1—Transitional provisions commencing on date of assent

Definition for div 1

374. In this part—

“**1997 Act**” means the *Police Powers and Responsibilities Act 1997*.

Continued operation of 1997 Act, s 8(3) and (4)

375.(1) This section has effect from the expiry of section 8(3) of the 1997 Act.

(2) Despite section 8(5) of the 1997 Act, section 8(3) and (4) of that Act continue to have effect until the expiry of this division.

Continued operation of 1997 Act, s 136

376.(1) This section has effect from the expiry of section 136 of the 1997 Act.

(2) Despite section 136(3) of the 1997 Act, section 136 of that Act continues to have effect until the repeal of the 1997 Act.

Expiry of division

377. This division expires immediately before division 2 commences.

Division 2—Transitional provisions commencing at a later date

Definitions for div 2

378. In this part—

“**amended Act**” means an Act amended by this Act.

“**repealed Act**” means the following—

- (a) an Act repealed by this Act;
- (b) *Gaming Act 1850* (NSW).

Transitional provision about change in way powers may be exercised

379.(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.

Transitional provision about warrants, orders and notices

380.(1) This section applies if a warrant, notice or order under a provision of an amended Act or under a repealed Act is in force immediately before the amendment or repeal of the relevant Act.

(2) The warrant, notice or order continues to have effect until it ends according to its terms.

(3) This Act applies to anything done under the warrant, notice or order after the commencement of this section, with necessary changes.

Transitional provision about noise abatement

381.(1) A complaint made under the *Environment Protection Act 1994*, section 149 that is not investigated before the commencement of this section or that is being investigated on the commencement of this section is taken to be a complaint made under section 287 of this Act.

(2) A noise abatement direction made under the *Environmental Protection Act 1994*, section 150 before the commencement of this section may be enforced after the commencement of this section as if it were a noise abatement direction under this Act.

Transitional provision about nuisance in moveable dwelling parks

382.(1) This section applies if a police officer gives a person an initial nuisance direction under the *Residential Tenancies Act 1994* before the commencement of this section.

(2) For section 299 of this Act, the direction is taken to be an initial nuisance direction given under this Act.

Transitional provisions about registers of covert and enforcement acts

383.(1) A register of covert acts kept under the repealed Act is taken to be a register of covert acts for this Act.

(2) A register of enforcement acts kept under the repealed Act is taken to be a register of enforcement acts for this Act.

(3) This section applies to a register kept under the repealed Act by the commissioner, the CJC or QCC.

Transitional provision about entries in registers

384. A failure, before the commencement of this section, to keep or record information in the way required by this Act before the commencement does not and never did affect anything done in relation to the act concerned before or after the failure.

Transitional provision about public interest monitor

385.(1) This section applies to a person who, immediately before the commencement of this section—

- (a) held office under the old Act as—
 - (i) the public interest monitor; or
 - (ii) a deputy public interest monitor; or
- (b) was appointed under section 79A of the old Act to act as—
 - (i) the public interest monitor; or
 - (ii) a deputy public interest monitor.

(2) On the commencement of this section—

- (a) the public interest monitor under the old Act is taken to have been appointed as the public interest monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and
- (b) a deputy public interest monitor under the old Act is taken to have been appointed as a deputy public interest monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and
- (c) a person appointed to act as the public interest monitor or a deputy public interest monitor is taken to have been appointed to act as the public interest monitor or a deputy public monitor under this Act on the conditions decided under the old Act.

(3) In this section—

“old Act” means the *Police Powers and Responsibilities Act 1997*.

PART 3—AMENDMENT OF CRIME COMMISSION ACT 1997

Act amended in pt 3

386. This part amends the *Crime Commission Act 1997*.

Replacement of ss 74–77

387. Sections 74 to 77—

omit, insert—

‘Search warrant applications

‘**74.(1)** An authorised QCC officer may apply for a warrant to enter and search a place (“**search warrant**”) to obtain evidence of the commission of relevant criminal activity or a major crime being investigated by QCC.

‘**(2)** The application may be made to a magistrate or Supreme Court judge, unless the application must be made to a Supreme Court judge under subsection (3).

‘**(3)** The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

‘**(4)** An application under this section must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information required under a regulation 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 relevant criminal activity or a major crime to which the application relates.

‘**(5)** Subsection (4)(b) applies only to—

- (a) information kept in a register that the QCC officer may inspect; and
- (b) information the officer otherwise actually knows.

‘(6) The magistrate or judge (the “**issuer**”) may refuse to consider the application until the QCC 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.

‘Issue of search warrant

‘75. The issuer may issue a search warrant only if satisfied there are reasonable grounds for suspecting evidence of the commission of relevant criminal activity or major crime—

- (a) is at the place; or
- (b) is likely to be taken to the place within the next 72 hours.

‘Order in search warrants about documents

‘76. The issuer may, in a search warrant, order the person in possession of documents at the place to give to a QCC officer or police officer all documents that are evidence of the commission of the relevant criminal activity or major crime.

‘When warrant ends

‘77.(1) A search warrant issued because there are reasonable grounds for suspecting there is evidence of the commission of an offence at a place ends 7 days after it is issued.

(2) A search warrant issued because there are reasonable grounds for suspecting evidence of the commission of an offence is likely to be taken to a place within the next 72 hours ends 72 hours after it is issued.

‘What search warrant must state

‘77A.(1) A search warrant must state—

- (a) that a stated QCC officer, all QCC officers, or all police officers, may enter the place and exercise search warrant powers at the

place; and

- (b) if the warrant is issued in relation to—
 - (i) a relevant criminal activity or a major crime—the relevant criminal activity or major crime 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 enforced at night, the hours when the place may be entered; and
- (e) the date and time the warrant ends.

‘(2) If the issuer makes an order under section 76, the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under the Criminal Code, section 205.⁵⁶

‘Powers under search warrants

‘77B.(1) An authorised QCC officer or police officer has the following powers under a search warrant (“**search warrant powers**”)—

- (a) power to enter the place stated in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;
- (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;

⁵⁶ Criminal Code, section 205 (Disobedience to lawful order issued by statutory authority)

- (f) if the officer reasonably suspects a person on the relevant place has been involved in the commission of the relevant criminal activity or the major crime to which the warrant relates (“**the relevant criminal activity or the major crime**”), power to detain the person for the time taken to search the place;
- (g) power to dig up land;
- (h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the officer reasonably suspects may be evidence of the relevant criminal activity or the major crime;
- (i) power to muster, hold and inspect any animal the officer reasonably suspects may provide evidence of the relevant criminal activity or the major crime;
- (j) power to photograph anything the officer reasonably suspects may provide evidence of the commission of the relevant criminal activity or the major crime;
- (k) 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 the relevant criminal activity or the major crime.

‘(2) Also, a QCC officer or police officer has the following powers if authorised under a search warrant—

- (a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;
- (b) 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 vehicle;
 - (ii) to take a vehicle to, and search for evidence of the commission of the relevant criminal activity or the major crime that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

‘(3) Power to do anything at the relevant place that may cause structural damage to a building may be exercised only if the warrant—

- (a) authorises the exercise of the power; and
- (b) is issued by a Supreme Court judge.

‘Copy of search warrant to be given to occupier

‘77C.(1) If a QCC officer or police officer executes a search warrant for a place that is occupied, the officer must—

- (a) if the occupier of the place is present—give to the occupier a copy of the warrant and a statement summarising the person’s rights and obligations under the warrant; or
- (b) if the occupier is not present—leave the copy in a conspicuous place.

‘(2) If the officer reasonably suspects giving the person the copy may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

- (a) the officer continues to have the reasonable suspicion; and
- (b) that officer or another officer involved in the investigation remains in the vicinity of the place to keep the place under observation.

‘Search to prevent loss of evidence

‘77D.(1) This section applies if an authorised QCC officer reasonably suspects—

- (a) a thing at or about a place, or in the possession of a person at or about a place is evidence of relevant criminal activity or a major crime being investigated by QCC; and
- (b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.

‘(2) An authorised QCC officer may enter the place and exercise search warrant powers, other than power to do something that may cause structural damage to a building, at the place as if they were conferred under a search warrant.

‘Post-search approval

‘77E.(1) As soon as reasonably practicable after exercising powers under section 77D, the authorised QCC officer must apply to a magistrate in writing for an order approving the search (“**post-search approval order**”).

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

‘(3) The applicant need not appear at the consideration of the application, unless the magistrate otherwise requires.

‘(4) The magistrate may refuse to consider the application until the authorised QCC 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.

‘**Making of post-search approval order**

‘**77F.(1)** The magistrate may make a post-search approval order only if satisfied—

- (a) in the circumstances existing before the search—
 - (i) the QCC 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.

‘(2) The magistrate may also make an order under section 78, whether or not a post-search approval order is made.

‘**Appeal**

‘**77G.(1)** Within 28 days after either of the following happens, the authorised QCC officer may appeal against the order to the Supreme Court—

- (a) a magistrate refuses to make a post-search approval order;
- (b) a magistrate makes an order under section 77F(2).

‘(2) If the authorised QCC officer appeals, the officer must retain the thing seized until the appeal is decided.

‘(3) The court may make an order under section 78, whether or not the appeal is upheld.

‘Limitations on search of persons

‘77H.(1) This section applies to a lawful search of a person under this Act or a warrant.

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

Example—

An immediate search by a person of the opposite sex may be necessary because the person searched may have a concealed firearm.

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

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

‘(7) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person

where the person is, the QCC officer or police officer must consider the following—

- (a) whether the thing sought may be concealed on the person;
- (b) whether, for an effective search, the search should be conducted somewhere else;
- (c) the need to protect the dignity of the person.

‘Supplying officer’s details

‘77I.(1) This section applies if a QCC officer or police officer—

- (a) searches a place under a warrant under this division; or
- (b) seizes any property under a warrant under this division.

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

- (a) the fact that the officer is a QCC officer or police officer;
- (b) the officer’s name; and
- (c) if the QCC officer is a police officer—his or her rank and station.

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

‘(4) If 2 or more officers are searching a place, only the officer in charge of the search is required to comply with subsections (2) and (3), unless a person asks another officer for the information.

‘Receipt for seized property

‘77J.(1) If a QCC officer or police officer seizes anything under a warrant, the officer must, as soon as is reasonably practicable after seizing the thing—

- (a) if the person from whom it is seized is present—give or cause to be given to the person a receipt for the thing; or
- (b) if the occupier of the premises is not present—leave a receipt for the thing in a conspicuous place.

‘(2) The receipt must describe the thing seized and include any other

information required under a regulation.

‘(3) However, if the officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the officer may delay complying with subsection (1), but only for so long as—

- (a) the officer continues to have the reasonable suspicion; and
- (b) that officer or another officer involved in the investigation remains in the vicinity of the place to keep it under observation.

‘(4) Also, this section does not apply if the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

‘(5) The officer must ensure the details of the search and anything seized are recorded in the warrants register.’.

Replacement of s 79 (Access to seized things)

388. Section 79—

insert—

‘Right to inspect seized documents

‘**79.(1)** Unless a justice otherwise orders, QCC, or another law enforcement agency in whose possession it is, must allow a person who would be entitled to the document—

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

‘(2) QCC or the other law enforcement agency may refuse to comply with subsection (1) if the entity in possession of the thing reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the documents are evidence or commit another offence.’.

Replacement of pt 6, div 3 hdg

389. Part 6, division 3 heading—

omit, insert—

‘Division 3—Non-application of certain Acts’.

Amendment of s 81 (Certain Acts do not apply to this part)

390.(1) Section 81, heading, ‘**this part**’—

omit, insert—

‘divs 3A-3E’.

(2) Section 81, ‘under this part’—

omit, insert—

‘under divisions 3A to 3E’.

Replacement of ss 82-91

391. Sections 82 to 91—

omit, insert—

‘Division 3A—Use of surveillance devices under warrant of Supreme Court judge

‘Surveillance warrant applications

‘82.(1) This section applies if the crime commissioner reasonably believes a person is or has been, is, or is likely to be, involved in relevant criminal activity or a major crime being investigated by QCC.

‘(2) An authorised QCC officer may, with the crime commissioner’s approval, apply to a Supreme Court judge for a warrant (“**surveillance warrant**”) authorising the use of a class A or class B surveillance device or both.

‘(3) For subsection (2), an authorised QCC officer who is a police officer must be of at least the rank of inspector.

‘(4) The application must—

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

- (b) include information stated under a regulation about any warrants issued within the previous year in relation to the person or the place specified in the application.

‘(5) Subsection (4)(b) only applies to—

- (a) information kept in a register that the officer may inspect; and
- (b) information the officer otherwise actually knows.

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

‘(7) The judge may refuse to consider the application until the applicant 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.

‘Who may be present at consideration of application for surveillance warrant

‘**83.(1)** The judge must hear an application for a surveillance warrant 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).

‘(2) Also, the judge must hear the application—

- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

‘Consideration of application for surveillance warrant

‘84. Before deciding an application for a surveillance warrant, the judge must, in particular, and being mindful of the highly intrusive nature of a surveillance warrant, consider the following—

- (a) the nature and seriousness of the relevant criminal activity or major crime;
- (b) for a class A surveillance device, if the warrant is issued, the likely extent of interference with the privacy of—
 - (i) the relevant person; 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 relevant criminal activity or major crime;
- (d) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (e) the extent to which officers investigating the relevant criminal activity or major crime 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 relevant criminal activity or major crime;
- (g) how much the use of conventional ways of investigation would prejudice the investigation of the relevant criminal activity or major crime because of delay or for another reason;
- (h) any submissions made by a monitor.

‘Issue of surveillance warrant

‘85.(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be, involved in the relevant criminal activity or major crime; and

(b) is likely to be—

- (i) at a place, including a public place, mentioned in the application; or
- (ii) at a class of place mentioned in the application.

(2) The judge may issue a warrant for the use of a class A surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in relevant criminal activity or major crime.

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

- (a) a condition requiring regular reporting to a judge 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 officer, before installing or using the device, must have a reasonable belief that the relevant person is or will be in the place where the device is to be used.

Example for subsection 3(b)—

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

‘What surveillance warrant must state

‘86. The surveillance warrant must state the following—

- (a) that a QCC officer or any QCC officer may exercise surveillance powers under the warrant;
- (b) the name of the relevant person, if known;
- (c) the place where the surveillance device authorised under the warrant may be used;
- (d) the type of surveillance device that may be used under the warrant;
- (e) for a visual surveillance device that is to be installed in a dwelling, the parts of the dwelling in which the device may be installed;

- (f) any conditions the judge imposes under section 85(3);
- (g) the day and time the warrant starts and when the warrant ends.

‘Report on use of surveillance devices

‘**87.(1)** This section applies if, because of a condition of a surveillance warrant, a QCC officer gives to a judge a report on activities under the warrant.

‘**(2)** The judge may, after considering the report, require the destruction of any recording made that is not related to the relevant criminal activity or the major crime mentioned in the warrant, unless the recording relates to the investigation by QCC of another relevant criminal activity or another major crime.

‘Duration and extension of surveillance warrants

‘**88.(1)** A surveillance warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) the day the investigation under the warrant ends.

‘**(2)** However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained of other relevant criminal activity or other major crime.

‘**(3)** The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

‘**(4)** Despite the ending of the warrant under subsection (1) or (2), the QCC officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

‘Power under surveillance warrants

‘**89.** A QCC officer to whom a surveillance warrant is directed may

lawfully exercise the following powers under the warrant (“**surveillance powers**”)—

- (a) for a class A surveillance device—power to enter a stated place or class of place, covertly or through subterfuge, to install, maintain, replace or remove a surveillance device; or
- (b) for a class B surveillance device—power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (c) for a listening device—
 - (i) power to install and use the device to intercept and record private conversations; and
 - (ii) power to use an assistant to translate or interpret conversations intercepted under the warrant;
- (d) for a visual surveillance device—
 - (i) power to install and use the device to monitor and record visual images; and
 - (ii) power to use an assistant to interpret visual images intercepted under the warrant;
- (e) for another surveillance device—power to install and use the device for the purpose for which it is designed, including, for example, tracking the location of a person or moveable object;
- (f) power to take electricity for using a surveillance device;
- (g) power to use reasonable force—
 - (i) to enter a place to install, maintain, replace or remove a surveillance device; or
 - (ii) to install, maintain, replace or remove a surveillance device;
- (h) power to use 1 or more surveillance devices, whether of the same or a different kind, in the same place;
- (i) power to pass through, over, under or along a place to get to the place where the surveillance device is to be used.

Division 3B—Emergency use of surveillance devices**‘Emergency use of surveillance devices**

‘**90.(1)** This section applies if the crime commissioner reasonably believes—

- (a) there is a risk of serious injury to a person from relevant criminal activity or a major crime being investigated by QCC; and
- (b) using a surveillance device may help reduce the risk.

‘**(2)** With the approval of the crime commissioner, an authorised QCC officer may authorise the use of a surveillance device.

‘**(3)** For subsection (2), an authorised QCC officer who is a police officer must be of at least the rank of inspector.

‘**(4)** A QCC officer acting under an authority under subsection (2) may exercise any of the powers a QCC officer may exercise under a surveillance warrant.

‘Application for approval of emergency use of surveillance device

‘**91.(1)** Within 2 business days after authorising the use of a surveillance device, the authorised QCC officer who authorised its use must apply to a Supreme Court judge for approval of the exercise of the powers.

‘**(2)** The application must be sworn and state the grounds on which the approval is sought.

‘**(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 QCC 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.

‘Who may be present at consideration of application

‘91A.(1) The judge must hear an application under section 91 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).

‘(2) Also, the judge must hear the application—

- (a) in the absence of the person who is alleged to have caused or be causing the risk or anyone likely to inform the person of the application; and
- (b) without that person having been informed of the application.

‘Consideration of application

‘91B. Before deciding an application for an approval, the judge must, in particular, and being mindful of the highly intrusive nature of using a surveillance device, consider the following—

- (a) the nature of the risk of serious injury to a person;
- (b) the extent to which issuing a surveillance warrant would have helped reduce or avoid the risk;
- (c) the extent to which QCC officers or police officers could have used conventional ways of investigation to help reduce or avoid the risk;
- (d) how much the use of conventional ways of investigation could have helped reduce or avoid the risk;
- (e) how much the use of conventional ways of investigation would have prejudiced the safety of the person because of delay or for another reason;
- (f) any submissions made by a monitor.

‘Judge may approve emergency use of powers

‘91C.(1) After considering the application, the judge may approve the application if satisfied there were reasonable grounds to believe—

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

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

‘Use of evidence and information

‘91D.(1) Evidence obtained because of the exercise of powers approved under section 91C is admissible in a proceeding for an offence.

‘(2) Also, information obtained under this division may be given to any person or organisation involved in helping prevent or reduce the risk of serious injury to a person.

‘(3) Subsection (2) does not apply to information from recordings ordered to be destroyed by a judge.

‘Division 3C—Use of surveillance devices under magistrates warrant**‘Surveillance warrant applications**

‘91E.(1) This section applies if the crime commissioner reasonably believes a person has been, is, or is likely to be involved in relevant criminal activity or a major crime.

‘(2) With the approval of the crime commissioner, an authorised QCC officer may apply to a magistrate for a warrant (“**surveillance warrant**”) authorising the use of a class B surveillance device.

‘(3) For subsection (2), an authorised QCC officer who is a police officer must be of at least the rank of inspector.

‘(4) The application must—

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

- (b) include information required under a regulation about any warrants issued within the previous year in relation to the person or the place specified in the application.

‘(5) Subsection (4)(b) only applies to—

- (a) information kept in a register that the QCC officer may inspect; and
- (b) information the QCC officer otherwise actually knows.

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

‘(7) The magistrate may refuse to consider the application until the applicant 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.

‘Who may be present at consideration of application

‘91F.(1) The magistrate must hear an application for a surveillance warrant in the absence of anyone other than the following—

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

‘(2) Also, the magistrate must hear the application—

- (a) in the absence of the person proposed to be placed under surveillance (the “**relevant person**”) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

‘Consideration of application

‘91G. Before deciding an application for a surveillance warrant, the magistrate must, in particular, and being mindful of the highly intrusive nature of a surveillance warrant, consider the following—

- (a) the nature and seriousness of the relevant criminal activity or the major crime;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of the relevant criminal activity or the major crime;
- (c) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (d) the extent to which QCC officers investigating the relevant criminal activity or the major crime 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 relevant criminal activity or the major crime;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the relevant criminal activity or the major crime because of delay or for another reason;
- (g) any submissions made by a monitor.

‘Issue of surveillance warrant

‘91H.(1) After considering the application, the magistrate may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing the relevant person—

- (a) has been, is, or is likely to be, involved in the commission of the relevant criminal activity or the major crime; and
- (b) is likely to be—
 - (i) at a place, including a public place, mentioned in the application; or
 - (ii) at a class of place mentioned in the application.

‘(2) The magistrate may impose any conditions on the warrant that the magistrate considers are necessary in the public interest.

‘What warrant must state

‘91I. The warrant must state the following—

- (a) that a stated QCC officer or any QCC officer may exercise surveillance powers under the warrant using a class B surveillance device;
- (b) the name of the relevant person, if known;
- (c) the place where the surveillance device authorised under the warrant may be used;
- (d) any conditions imposed under section 91H(2);
- (e) the day and time the warrant starts and when the warrant ends.

‘Duration and extension of surveillance warrants

‘91J.(1) A surveillance warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) the day the investigation under the warrant ends.

‘(2) However, despite the investigation ending, the warrant continues in force until the day stated in the warrant if, as a result of using the surveillance device, evidence is gained of another relevant criminal activity or another major crime.

‘(3) The warrant may be extended from time to time on application and the provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

‘(4) Despite the ending of the warrant under subsection (1) or (2), the QCC officer may continue to exercise powers under the warrant, but only to the extent necessary to remove the surveillance device to which the warrant relates.

‘Powers under surveillance warrants

‘91K. A QCC officer to whom a surveillance warrant is directed may lawfully exercise the following powers under the warrant—

- (a) power to enter a place to install a tracking device without covert entry to a building;
- (b) power to pass through, over, under or along a place to get to the place where the tracking device is to be used;
- (c) power to enter a vehicle or another moveable object, or open a thing, to install, maintain, replace or remove a tracking device;
- (d) power to use reasonable force to install, maintain, replace or remove a tracking device;
- (e) power to use 1 or more tracking devices, whether of the same or a different kind, in the same place;
- (f) power to take electricity for using a tracking device.

Examples for paragraph (a)—

1. Installing a tracking device on a vehicle located in public undercover car park where entry is gained by any member of the public by paying a fee, or on a vehicle on a street.
2. Installing a tracking device on a parcel inside a shipping container located in a storage yard, if the parcel is reasonably believed to contain unlawful drugs.

‘Division 3D—Other provisions about surveillance devices**‘Restriction about records and access to surveillance warrant applications etc.**

‘91L.(1) This section applies to the following (“**relevant proceeding**”)—

- (a) an application to a Supreme Court judge or a magistrate for—
 - (i) a surveillance warrant; or
 - (ii) the extension of a surveillance warrant;
- (b) an application to a Supreme Court judge for approval of the emergency use of a surveillance device;

- (c) an order made or approval given under an application mentioned in paragraph (a) or (b).

‘(2) Despite the *Recording of Evidence Act 1962*, a transcript of a relevant proceeding must not be made.

‘(3) A person must not publish a report of a relevant proceeding.

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

‘(4) A person is not entitled to search information in the custody of a court in relation to a relevant proceeding, unless a Supreme Court judge otherwise orders.

‘Disclosure of information obtained using surveillance warrant

‘91M.(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 QCC officer or 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
- (b) a judge hearing an application for—
 - (i) an extension of the warrant; or
 - (ii) approval of the emergency use of a surveillance device; or
 - (iii) a warrant in relation to the same or a different person; or
- (c) a magistrate hearing an application for an extension of the warrant or a warrant in relation to the same or a different person; or
- (d) a court taking evidence about a charge of an offence in which the information is evidence; or
- (e) the crime commissioner or a person authorised by the crime commissioner; or
- (f) a QCC officer, police officer or other law enforcement officer involved in—
 - (i) the investigation into the relevant criminal activity or the major crime 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
- (g) a declared law enforcement agency; or
- (h) a public prosecutor, but only for—
 - (i) use in a proceeding in which the information is evidence; or
 - (ii) an application for an extension of the warrant; or
 - (iii) an application under section 91; or
 - (iv) the issue of another surveillance warrant; or
- (i) a lawyer representing a person in a proceeding in which the information is evidence; or
- (j) a monitor; or
- (k) a person transcribing or making copies of recordings.

‘Destruction of records

‘91N.(1) QCC must keep all information obtained under a surveillance warrant and transcripts of recordings or photographs made or taken under the warrant in a secure place.

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

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

Division 3E—Covert searches**‘Covert search warrant applications**

‘91O.(1) An authorised QCC officer, with the approval of the crime commissioner, may apply to a Supreme Court judge for a warrant (“**covert search warrant**”) to enter and search a place for evidence of relevant criminal activity or a major crime being investigated by QCC.

‘(2) For subsection (1), an authorised QCC officer who is a police officer must be of at least the rank of inspector.

‘(3) The application must—

- (a) be sworn and state the grounds on which the warrant is sought; and
- (b) include information about any warrants issued within the previous year in relation to the place or person suspected of being involved in the relevant criminal activity or major crime to which the application relates.

‘(4) Subsection (3)(b) applies only to—

- (a) information kept in a register that the officer may inspect; and
- (b) information the officer otherwise actually knows.

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

‘(6) The judge may refuse to consider the application until the applicant 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.

‘Who may be present at consideration of application

‘91P.(1) The judge must hear an application for a covert search warrant 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).

‘(2) Also, the judge must hear the application—

- (a) in the absence of the person the subject of the application (the **“relevant person”**) or anyone likely to inform the relevant person of the application; and
- (b) without the relevant person having been informed of the application.

‘Consideration of application

‘**91Q.** Before deciding the application, 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 relevant criminal activity or the major crime being investigated;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of, the relevant criminal activity or the major crime;
- (c) the benefits derived from any previous covert search warrants, search warrants or surveillance warrants in relation to the relevant person or place;
- (d) the extent to which QCC officers investigating the matter 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 matter;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;
- (g) any submissions made by a monitor.

‘Issue of covert search warrant

‘91R.(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing there is, in or on a place, evidence of the relevant criminal activity or the major crime.

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

‘What covert search warrant must state

‘91S. A covert search warrant must state the following—

- (a) that a stated QCC officer, or any QCC officer, may, with reasonable help and force, enter the place, covertly or by subterfuge and exercise covert search powers under the warrant;
- (b) the relevant criminal activity or the major crime for which the warrant was issued;
- (c) any evidence or samples of evidence that may be seized under the warrant;
- (d) that the warrant may be executed at any time of the day or night;
- (e) that, if practicable, the search must be videotaped;
- (f) the day and time the warrant starts and when the warrant ends.

‘Duration and extension of covert search warrant

‘91T.(1) A covert search warrant is in force until the earlier of the following—

- (a) the day stated in the warrant;
- (b) when the initial search is complete.

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

‘(3) The provisions of this division for an application for a warrant apply to an application for an extension, with all necessary changes.

‘Restriction about records and access to covert search warrant applications

‘**91U.(1)** 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.

‘**(2)** A person must not publish a report of a proceeding on an application for a covert search warrant or an extension of a covert search warrant.

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

‘**(3)** 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

‘**91V.** A QCC officer to whom a covert search warrant is directed may lawfully exercise the following powers under the warrant (“**covert search powers**”)—

- (a) power to enter the place stated 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 QCC officer reasonably believes is evidence of the commission of relevant criminal activity or the major crime stated in the warrant;
- (f) power to photograph anything the QCC officer reasonably believes may provide evidence of the commission of relevant criminal activity or the major crime stated in the warrant;
- (g) power to inspect or test anything found on the place.

‘Report on covert search

‘91W.(1) Within 7 days after executing a covert search warrant, the applicant must give to the Supreme Court judge who issued the warrant and a monitor a report containing information required under a regulation on the exercise of the powers under the warrant.

‘(2) The applicant 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 it—

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

Amendment of s 92 (Register of warrants and applications for warrants)

392.(1) Section 92, heading, **‘and applications for warrants’**—

omit, insert—

‘, warrant applications etc.’.

(2) Section 92(1), from ‘applications’ to ‘or 3’—

omit, insert—

‘prescribed information’.

(3) Section 92(2)(b), ‘or 3’—

omit, insert—

‘, 3A, 3C or 3E’.

(4) Section 92(4)(c), ‘or 3’—

omit, insert—

‘, 3A, 3C or 3E’.

(5) Section 92(5), ‘or 3’—

omit, insert—

‘, 3A, 3C or 3E’.

(6) Section 92—

insert—

‘(7) In this section—

“**prescribed information**” means information prescribed under a regulation about—

(a) applications for—

(i) search warrants; or

(ii) surveillance warrants; or

(iii) extensions of surveillance warrants; or

(iv) covert search warrants; or

(v) extensions of covert search warrants; or

(b) a disclosure of information under section 91M(2)(f)(ii) or (g).’.

Amendment of schedule (Dictionary)

393.(1) Schedule, definition “class A device”—

omit, insert—

‘ “**class A device**” means—

(a) a surveillance device installed—

(i) in a private place, or on a person’s clothing, without the person’s consent; or

(ii) if the device is a listening device, in a public place; or

(b) a surveillance device that is a combination of a listening device and a tracking device.’.

(2) Schedule, definition “class B device”, after ‘in’—

insert—

‘or on’.

(3) Schedule, definition “covert search warrant”, ‘section 88’—

omit, insert—

‘section 91O’.

(4) Schedule, definition “photograph”, ‘and videotape’—

omit, insert—

‘, videotape and record an image’.

(5) Schedule—

insert—

‘ **“relevant person”**—

- (a) in relation to an application to a judge for a surveillance warrant—see section 83; and
- (b) in relation to an application to a magistrate for a surveillance warrant—see section 91F; and
- (c) in relation to an application to a judge for a covert search warrant—see section 91B.’.

(6) Schedule, definition “surveillance warrant”—

omit, insert—

‘ **“surveillance warrant”**—

- (a) for a surveillance warrant authorising the use of a class A or class B surveillance device or both—see section 82(2); or
- (b) for a surveillance warrant authorising the use of a class B surveillance device—see section 91E(2).’.

SCHEDULE 1**ACTS NOT AFFECTED BY THIS ACT**

section 8

*Bail Act 1980**Crime Commission Act 1997**Corrective Services Act 1988, sections 73, 74 and 112**Criminal Justice Act 1989**Domestic Violence (Family Protection) Act 1989**Fuel Subsidy Act 1997, section 129(2) and (3)**Juvenile Justice Act 1992, other than to the extent to which section 163 and chapter 6 of this Act apply to children**Liquid Fuel Supply Act 1984, section 41**Mental Health Act 1974**Prisoners International Transfer (Queensland) Act 1997**Prisoners (Interstate Transfer) Act 1982**Public Safety Preservation Act 1986**Rural Lands Protection Act 1985**State Counter-Disaster Organisation Act 1975**Young Offenders (Interstate Transfer) Act 1989.*

SCHEDULE 2**ACTS AMENDED ON ASSENT**

section 373

**AGRICULTURAL CHEMICALS DISTRIBUTION
CONTROL ACT 1966****1. Section 34(1)(d)—***omit, insert—*

‘(d) ask anyone the inspector considers can help, to help the inspector search, inspect, examine, open, select, take or remove anything on the place;’.

AUCTIONEERS AND AGENTS ACT 1971**1. Section 51(a), ‘, an inspector, or to a police officer’—***omit, insert—*

‘or an inspector’.

2. Section 58(2), ‘, an inspector or to a police officer’—*omit, insert—*

‘or an inspector’.

3. Section 67(a), ‘, an inspector, or to a police officer’—*omit, insert—*

‘or an inspector’.

SCHEDULE 2 (continued)

BANANA INDUSTRY PROTECTION ACT 1989**1. Section 21(1)(h)—***omit, insert—*

‘(h) if the authorised person is obstructed, or reasonably believes that he or she will be obstructed—ask anyone the authorised person considers can help, to help the authorised person exercise the powers.’.

BURIALS ASSISTANCE ACT 1965**1. Section 5(2)—***omit.***COMMISSIONS OF INQUIRY ACT 1950****1. Section 3—***insert—*

‘**“listening device”** see the *Invasion of Privacy Act 1971*.’.

2. Section 19C, from ‘(1) The *Invasion*’ to ‘such an approval—’—*omit, insert—*

‘(1) A chairperson may apply to a Supreme Court judge for an approval to use a listening device.

‘(2) The application—’.

SCHEDULE 2 (continued)

COMMUNITY SERVICES (ABORIGINES) ACT 1984**1. Section 45B(1)(a), ‘police officer or’—***omit.***COMMUNITY SERVICES (TORRES STRAIT) ACT
1984****1. Section 43B(1)(a), ‘police officer or’—***omit.***COOPERATIVES ACT 1997****1. Sections 395(11) and 407—***omit.***CRIMINAL CODE****1. Section 1, definition ‘police officer’—***omit.***2. Section 137, after ‘wilfully’—***insert—*

‘and without lawful excuse’.

SCHEDULE 2 (continued)

3. Section 255(1), after ‘him or her,’—*insert—*

‘if reasonably practicable,’.

4. Section 256—*omit.***5. Section 259—***omit.***6. Section 260(2)—***omit.***7. Section 262, heading, ‘and police officers’—***omit.***8. Section 262, ‘, and for a police officer to use,’—***omit.***9. Section 262, ‘or officer’—***omit.***10. Sections 679 and 680A—***omit.***11. Section 685B(1), ‘a police officer or’—***omit.*

SCHEDULE 2 (continued)

**CULTURAL RECORD (LANDSCAPES QUEENSLAND
AND QUEENSLAND ESTATE) ACT 1987****1. Section 51—**

omit.

DISEASES IN TIMBER ACT 1975**1. Section 6(1)(h)—**

omit.

2. Section 6(1)(i)—

renumber as section 6(1)(h).

DRUGS MISUSE ACT 1986**1. Part 3—**

omit.

2. Part 4—

omit.

3. Section 43A, definition “authorised officer”—

omit, insert—

‘ “authorised officer” means an environmental health officer.’.

SCHEDULE 2 (continued)

4. Section 43A, definition “official identity card”, from ‘an identity card’ to ‘the chief executive’—

omit, insert—

‘an identity card issued by the chief executive’.

5. Section 43H(1), ‘(other than a police officer in uniform)’—

omit.

6. Section 43Q(2)—

omit.

7. Section 53—

omit.

EXOTIC DISEASES IN ANIMALS ACT 1981**1. Section 12(2A), ‘police officer or’—**

omit.

2. Section 20(1)(k)—

omit, insert—

‘(k) may ask anyone the inspector thinks can help, to help the inspector exercise the powers or perform the functions;’.

SCHEDULE 2 (continued)

FISHERIES ACT 1994**1. Section 144(1), ‘uniformed’—**

omit.

2. Section 144(2)(a)—

omit, insert—

‘(a) the inspector first produces the inspector’s identity card for inspection by the person; or’.

FOOD ACT 1981**1. Section 28(1)(d), from ‘officer’s aid’—**

omit, insert—

‘officer’s aid another authorised officer; or’.

2. Section 28A—

omit.

FORESTRY ACT 1959**1. Section 18(1)(a)—**

omit.

SCHEDULE 2 (continued)

GAMING MACHINE ACT 1991**1. Section 34(1)(a)—**

omit.

2. Section 181(3)(i), ‘from ‘call to the inspector’s’ to ‘is competent to assist’—

omit, insert—

‘ask a person the inspector thinks can help’.

3. Section 202—

omit.

GRAIN INDUSTRY (RESTRUCTURING) ACT 1991**1. Section 3, definition “inspector”, ‘or a police officer’—**

omit.

2. Section 39(2), ‘(other than a police officer)’—

omit.

3. Section 43(1), ‘(other than a police officer in uniform)’—

omit.

SCHEDULE 2 (continued)

HEALTH ACT 1937**1. Section 131A—**

omit.

2. Section 168—

omit.

3. Section 168A—

omit.

INTEGRATED RESORT DEVELOPMENT ACT 1987**1. Section 98, heading, ‘, police officers’—**

omit.

2. Section 98(1), ‘government,’—

omit, insert—

‘government) or’.

3. Section 98(1), ‘or any police officer’—

omit.

4. Section 98(1), ‘police officer’s’—

omit.

SCHEDULE 2 (continued)

5. Section 98(1), ‘, other person or member’—*omit, insert—*

‘or other person’.

6. Section 98(2), from ‘an inspector’ to ‘referred to in subsection (1)’—*omit, insert—*

‘the inspector, officer or other person’.

7. Section 98(3), from ‘an inspector’ to ‘referred to in subsection (1)’—*omit, insert—*

‘the inspector, officer or other person’.

8. After section 98—*insert—***‘Primary and secondary thoroughfares are public places for certain purposes**

‘**98A.** A primary thoroughfare or secondary thoroughfare is a public place for the purposes of any law conferring powers or imposing functions on a police officer.’.

JURY ACT 1995**1. Section 12—***omit, insert—***‘Arrangements with commissioner of the police service**

‘**12.(1)** For keeping a jury roll, the sheriff or the electoral commission may arrange with the commissioner of the police service for the police service to—

SCHEDULE 2 (continued)

- (a) make inquiries reasonably required for keeping a jury roll; or
- (b) give other reasonable help relevant to keeping a jury roll.

‘(2) The sheriff or the electoral commission must give a police officer helping under the arrangement any information the sheriff or commission has that may help the officer conduct the inquiries.

‘(3) Subsection does not limit the help the sheriff or the electoral commission may require.

‘(4) The *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply to the disclosure of information for inquiries, or to the sheriff or the electoral commission, under this section.’.

JUSTICES ACT 1886**1. Section 35, ‘police officer or other’—**

omit.

2. Section 61—

omit.

3. Section 65,—

insert—

‘(2) Subsection (1) does not apply to a police officer.⁵⁷’.

⁵⁷ For police officers, see the *Police Powers and Responsibilities Act 2000*, chapter 5 (Arrest and custody powers).

SCHEDULE 2 (continued)

LAND ACT 1994**1. Section 398(3), ‘who is in uniform’—**

omit.

LAND TAX ACT 1915**1. Section 4AB—**

omit.

LIQUID FUEL SUPPLY ACT 1984**1. Section 5, definition “authorised person”, ‘and any police officer’—**

omit.

**MEDICAL ACT AND OTHER ACTS
(ADMINISTRATION) ACT 1966****1. Section 14(1)(c)—**

omit, insert—

‘(c) ask anyone the inspector considers can help, to help in the inspection or examination;’.

SCHEDULE 2 (continued)

**METROPOLITAN WATER SUPPLY AND
SEWERAGE ACT 1909****1. Section 135—**

omit.

MINERAL RESOURCES ACT 1989**1. Section 342(1)(j) from ‘ call to the person’s aid—’ to ‘a police officer;’—**

omit, insert—

‘ask a mining registrar, field officer or other officer to help,’.

2. Section 343(14)—

omit.

3. Section 400(2)—

omit.

4. Section 401, ‘, police officer or other person acting’—

insert—

‘or anyone else acting’.

5. Section 401, ‘, police officer or other person liable—

omit, insert—

‘or other person liable’.

SCHEDULE 2 (continued)

6. Section 402(2), from ‘officer duly’—

omit, insert—

‘officer authorised under this Act or anyone else helping them.’.

7. Section 404(a), ‘, police officer’—

omit.

MIXED USE DEVELOPMENT ACT 1993**1. Section 165(4), definition “authorised person”, paragraph (c)—**

omit.

2. Section 165(4)(d) and (e)—

renumber as section 165(4)(c) and (d).

3. Part 8, division 4, after section 165—

insert—

‘Community property and precinct property is public place for certain purposes

‘**165A.** Community property and precinct property is a public place for the purposes of any law conferring powers or imposing functions on a police officer.’.

SCHEDULE 2 (continued)

**PASTORAL WORKERS' ACCOMMODATION ACT
1980****1. Section 23(b)—***omit, insert—*

‘(b) ask a health inspector or anyone else the inspector considers can help, to help the inspector perform the functions; and’.

PLANT PROTECTION ACT 1989**1. Section 19(1)(l)—***omit, insert—*

‘(l) if the inspector is obstructed, or reasonably believes he or she will be obstructed, ask anyone the inspector considers can help, to help the inspector exercise the inspector’s powers.’.

2. Section 19(3), from ‘called’ to ‘shall assist’—*omit, insert—*

‘asked to help an inspector under subsection (1)(l) must help’.

PRIVATE EMPLOYMENT AGENCIES ACT 1983**1. Section 9(1)(g)—***omit, insert—*

‘(g) ask anyone the inspector considers can help, to help the inspector exercise the inspector’s powers.’.

SCHEDULE 2 (continued)

PROFITEERING PREVENTION ACT 1948**1. Section 55(3), ‘or any police officer’—**

omit.

2. Section 58, from ‘or any police officer’ to ‘commissioner’—

omit.

PROSTITUTION ACT 1999**1. Schedule 3, amendments of Police Powers and Responsibilities Act 1997—**

omit.

QUEENSLAND LAW SOCIETY ACT 1952**1. Section 11A(6C)—**

omit, insert—

‘**(6C)** If it appears to the receiver that an order made under subsection (6B) has not been complied with, the receiver may apply to the court for an order authorising the receiver or someone else named in the order to enter any place stated in the order and exercise stated powers at the place.

‘**(6CA)** The court may make the order sought and any other order the court considers appropriate.

‘**(6CB)** Without limiting subsection (6CA), the powers that may be stated in an order under subsection (6CA) include—

- (a) power to search for any property of which the receiver is entitled under this section to take possession; and

SCHEDULE 2 (continued)

- (b) power to seize the property and remove it to the place the receiver considers appropriate; and
- (c) power to take onto the place anyone the receiver or other person reasonably considers necessary for giving effect to the order.

‘(6CC) Before the police officer named in the order or asked by the receiver or another person to help gives the help, the receiver or other person must—

- (a) give the police officer a copy of the order; and
- (b) explain to the police officer the powers the receiver has under this Act.’.

RACING AND BETTING ACT 1982

1. Section 9—

omit.

2. Section 154(2), ‘or from a police officer’—

omit.

3. Section 229, heading, ‘police officers,’—

omit.

4. Section 229(1)(a), (b) and (f), ‘police officer,’—

omit.

5. Section 229(1)(c), ‘a police officer’—

omit, insert—

‘an’.

SCHEDULE 2 (continued)

6. Section 229(1)(d), ‘police officer or’—

omit.

7. Section 231—

omit.

8. Section 232A—

omit.

9. Section 234—

omit.

10. Section 257(2)(a), from ‘betting inspectors’—

omit, insert—

‘betting inspectors and other officers; and’.

SANCTUARY COVE RESORT ACT 1985**1. Section 54, heading, ‘, police officers’—**

omit.

2. Section 54(1), ‘Council,’—

omit, insert—

‘Council) or’.

SCHEDULE 2 (continued)

3. Section 54(1), ‘or any police officer’—

omit.

4. Section 54(1), ‘, other person or member’—

omit, insert—

‘or other person’.

5. Section 54(1A), from ‘an inspector’ to ‘referred to in subsection (1)’—

omit, insert—

‘the inspector, officer or other person’.

6. Section 54(2), from ‘an inspector’ to ‘referred to in subsection (1)—

omit, insert—

‘the inspector, officer or other person’.

7. After section 54—

insert—

‘Primary and secondary thoroughfares are public places for certain purposes

‘**54A.** A primary thoroughfare or secondary thoroughfare is a public place for the purposes of any law conferring powers or imposing functions on a police officer.’.

SCHEDULE 2 (continued)

STAMP ACT 1894**1. Section 29(7)—**

omit.

STOCK ACT 1915**1. Section 24(1), ‘or police officer’—**

omit.

2. Section 24(1), ‘or officer’s’—

omit.

3. Section 29(1)(r)—

omit, insert—

‘(r) ask anyone the inspector considers can help, to help the inspector exercise the powers;’.

4. Section 37(3), ‘or a police officer’—

omit.

TRADING (ALLOWABLE HOURS) ACT 1990**1. Section 8(1)(b)—**

omit.

SCHEDULE 2 (continued)

2. Section 9(3)(a), ‘all persons acting in aid of’—

omit, insert—

‘anyone helping’.

TRAVEL AGENTS ACT 1988**1. Section 6, definition “authorised officer”, paragraph (c)—**

omit.

2. Section 6, definition “authorised officer”, paragraph (d)—

renumber as paragraph (c).

**VAGRANTS, GAMING AND OTHER OFFENCES ACT
1931****1. Section 2, definition “Gaming Acts”—**

omit, insert—

‘**“gaming Acts”** means the following Acts—

- *Charitable and Non-Profit Gaming Act 1999*
- Criminal Code, sections 232 to 235
- *Racing and Betting Act 1980*
- *Suppression of Gambling Act 1895.’*

2. Section 6(1)—

omit.

SCHEDULE 2 (continued)

3. Section 6(2)(a), from ‘so’ to ‘detained’—

omit, insert—

‘seized’.

4. Section 6(2)(b), ‘so’—

omit.

5. Section 7A(2) to (4A)—

omit.

6. Section 11—

omit.

7. Section 14(2), from ‘, and no such’—

omit, insert—

‘acting on the written authority of a police officer of at least the rank of inspector.’.

8. Section 14(3), from ‘No such’ to ‘as aforesaid’—

omit, insert—

‘A proceeding for an offence against subsection (1) must not be taken’.

9. Section 15—

omit.

10. Section 16—

omit.

SCHEDULE 2 (continued)

11. Section 21—

omit.

12. Section 21A(1) and (2)—

omit, insert—

‘**21A.(1)** This section applies if a police officer lawfully seizes a fruit machine or a similar machine.

‘**(2)** The machine is forfeited to the State.’.

13. Section 21A(3), from ‘mechanical’—

omit, insert—

‘machine.’.

14. Section 23—

omit.

15. Section 24—

omit.

16. Section 26—

omit.

17. Section 31, heading—

omit, insert—

‘**Bottles in stadiums**’.

SCHEDULE 2 (continued)

18. Section 31(1) and (1A)—

omit.

19. Heading before section 31(2)—

omit.

20. Section 31(2) and (3)—

renumber as section 31(1) and (2).

21. Section 31(2), as renumbered, ‘subsection (2)’—

omit, insert—

‘subsection (1)’.

22. Section 31(4) and (5), ‘subsection (2)’—

omit, insert—

‘subsection (1)’.

23. Heading before section 34(2)—

omit.

24. Section 34(2)—

omit.

25. Section 36—

omit.

SCHEDULE 2 (continued)

26. Section 37B(4), ‘or police officer’—

omit.

27. Section 47, from ‘Offender may be punished’ to ‘When any’—

omit, insert—

‘Committal for trial

‘47. If a’.

28. Section 55(e), ‘making the arrest’—

omit, insert—

‘starting the proceeding’.

WORKERS’ ACCOMMODATION ACT 1952**1. Section 9(b)—**

omit, insert—

‘(b) ask a health inspector or anyone else the inspector considers can help, to help the inspector exercise the inspector’s powers; and’.

SCHEDULE 3

ACTS AMENDED AFTER ASSENT

section 373

AMBULANCE SERVICE ACT 1991

1. Section 46(2) and (3)—

omit.

ANIMALS PROTECTION ACT 1925

1. Section 3, definition “officer”—

omit, insert—

‘ “**officer**” means—

- (a) the following paid employees of the Royal Queensland Society for the Prevention of Cruelty to Animals Queensland—
 - (i) the secretary;
 - (ii) the chief inspector;
 - (iii) an inspector; or
- (b) a police officer;⁵⁸ or
- (c) a person appointed as an officer by the Governor in Council.’.

⁵⁸ A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 12.

SCHEDULE 3 (continued)

2. Section 10—

omit.

3. Section 11—

insert—

‘(7) In this section—

“**officer**” does not include police officer.’.

4. Section 15A(2)—

omit.

AUCTIONEERS AND AGENTS ACT 1971**1. Section 59(1), ‘, an inspector or a police officer’—**

omit, insert—

‘or an inspector’.

2. Section 59(2), ‘, or inspector or any police officer’—

omit, insert—

‘or inspector’.

3. Section 134(3)—

omit, insert—

‘(3) If it appears to the receiver that an order made under subsection (2) has not been complied with, the receiver may apply to the court for an order authorising the receiver or someone else named in the order to enter any place stated in the order and exercise stated powers at the place.

 SCHEDULE 3 (continued)

‘**(3A)** The court may make the order sought and any other order the court considers appropriate.

‘**(3B)** Without limiting subsection (3A), the powers that may be stated in an order under subsection (3A) are—

- (a) power to search for any property of which the receiver is entitled under this section to take possession; and
- (b) power to seize the property and remove it to the place the receiver considers appropriate; and
- (c) power to take onto the place anyone the receiver or other person reasonably considers necessary for giving effect to the order.

‘**(3C)** Before the police officer named in the order or asked by the receiver or another person to help gives the help, the receiver or other person must—

- (a) give the police officer a copy of the order; and
- (b) explain to the police officer the powers the receiver has under this Act.’.

BAIL ACT 1980

1. Section 6—

insert—

‘ **“police establishment”** means a police establishment under the *Police Service Administration Act 1990*.

“watch-house manager” means a watch-house manager under the *Police Powers and Responsibilities Act 2000*.’.

2. Section 7(1), from ‘Where’ to ‘watch-house keeper at that place—’—

omit, insert—

‘This section applies if—

SCHEDULE 3 (continued)

- (a) a person, who has been arrested in connection with a charge of an offence, is delivered into the custody of a police officer who is—
 - (i) the officer-in-charge of a police establishment; or
 - (ii) a watch-house manager; and
- (b) the person is not detained under the *Police Powers and Responsibilities Act 2000*, chapter 6, part 2; and
- (c) the police officer is satisfied the person can not be taken promptly before a court.

(1A) The police officer—’.

3. Section 14(1)—

omit, insert—

‘14.(1) This section applies if—

- (a) a person, who has been arrested in connection with a charge of an offence, other than an indictable offence or an offence mentioned in the schedule, is delivered into the custody of a police officer who is—
 - (i) the officer-in-charge of a police establishment; or
 - (ii) a watch-house manager; and
- (b) the person has not first appeared before a justice in relation to the offence; and
- (c) the police officer is satisfied the person can not be taken promptly before a court.

‘(1A) If the police officer considers it appropriate, the police officer may grant bail to the person and release the person from custody on the person making a deposit of money as security for the person’s appearance before a court on the day and at the time and place notified to the person under this section.’.

SCHEDULE 3 (continued)

4. Section 14(2)(a), from ‘lodged at’ to ‘lock up’—

omit, insert—

‘kept at the police establishment or watch-house’.

5. Section 23(1), ‘broken or the defendant is apprehended pursuant to section 29’—

omit, insert—

‘broken, or the defendant is arrested by a police officer under the *Police Powers and Responsibilities Act 2000*, section 165,⁵⁹’.

6. Section 28A(1)(a)(iii), ‘under section 7(1)(b)’—

omit, insert—

‘under section 7(1A)(b)’.

7. Section 29—

omit, insert—

‘Offence to breach conditions of bail

‘29.(1) A defendant must not break any condition of the undertaking on which the defendant was granted bail requiring the defendant’s appearance before a court.

Maximum penalty—40 penalty units or 2 years imprisonment.

‘(2) Subsection (1) does not apply to—

- (a) a defendant who is a child within the meaning of the *Juvenile Justice Act 1992*; or
- (b) a condition that the defendant surrender into custody.⁶⁰

⁵⁹ *Police Powers and Responsibilities Act 2000*, section 165 (Arrest of person granted bail)

⁶⁰ For defendants who fail to surrender into custody see section 33 (Failure to appear in accordance with undertaking).

SCHEDULE 3 (continued)

8. Section 29A, heading, ‘pursuant to s 21(7) or 29(1)’—

omit, insert—

‘under s 21(7) or the Police Powers and Responsibilities Act 2000’.

9. Section 29A(1)(b)—

omit, insert—

‘(b) under the *Police Powers and Responsibilities Act 2000*, section 165;’.

10. Schedule, entry relating to the *Gaming Act 1850* (NSW)—

omit.

BRISBANE FOREST PARK ACT 1977**1. Section 46, ‘police officer or a’—**

omit.

BUILDING ACT 1975**1. Section 27(1)—**

omit, insert—

‘27.(1) This section applies if it is necessary or desirable to remove any person from a building or other structure that is to be wholly or partly demolished by a local government under this Act.’.

2. Section 27(2)(a), ‘and any police officer acting on a request of the local government in that behalf’—

omit.

SCHEDULE 3 (continued)

3. Section 27(2)(b), ‘any such officer and any such police officer’—

omit, insert—

‘any officer’.

4. Section 27—

insert—

‘(3) An officer of a local government mentioned in subsection (2) is a public official for the *Police Powers and Responsibilities Act 2000*.’.

CASINO CONTROL ACT 1982**1. Section 88(1)(i)(i), ‘or a police officer’—**

omit.

2. Section 106—

omit.

3. Section 113(1) and (2)—

omit, insert—

‘**113.(1)** A part of a casino to which the public has access is, while the public has access to it, a public place for the purpose of any law conferring powers on a police officer.’.

4. Section 114—

omit.

SCHEDULE 3 (continued)

5. Section 115—

omit.

6. Section 121—

omit.

7. Section 124(1)—

omit, insert—

‘**124.(1)** On the conviction of a person for an offence against this Act the court may order that any gaming equipment, chips, books, accounts, records or documents detained under section 88(2) and relating to or connected with the commission of the offence be forfeited to the State.’.

**CLASSIFICATION OF COMPUTER GAMES AND
IMAGES ACT 1995****1. Section 33(1), ‘uniformed’—**

omit.

2. Section 33(2)(a)—

omit, insert—

‘(a) the inspector first produces the inspector’s identity card for the person’s inspection; or’.

3. Section 47(7)—

omit.

SCHEDULE 3 (continued)

4. Section 48—

omit.

5. Section 51(3)(b), ‘obstruction.’—

omit, insert—

‘obstruction; and

- (c) if the person continues or repeats the conduct, a police officer may be asked to help enforce this section.⁶¹’.

6. Section 51(4)—

omit.

7. Section 52—

omit.

CLASSIFICATION OF FILMS ACT 1991**1. Section 4(1), from ‘appoint’—**

omit, insert—

‘appoint any of the following persons to be an inspector—

- (a) an officer or employee of the department;
- (b) a police officer.⁶²’.

⁶¹ See the *Police Powers and Responsibilities Act 2000*, section 11 (Exercise of powers under other Acts).

⁶² A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 10.

SCHEDULE 3 (continued)

CLASSIFICATION OF PUBLICATIONS ACT 1991**1. Section 5(1), from ‘appoint’—**

omit, insert—

‘appoint any of the following persons to be an inspector—

- (a) an officer or employee of the department;
- (b) a police officer.⁶³’.

COLLECTIONS ACT 1966**1. Section 25(2), ‘, any inspector or any police officer’—**

omit, insert—

‘or any inspector’.

2. Section 25(3)(g), ‘, inspector or police officer as the case may be,’—

omit, insert—

‘or inspector’.

3. Section 25(3)(i), ‘, inspector or police officer, as the case may be’—

omit, insert—

‘or inspector’.

4. Section 26(5)—

omit.

⁶³ A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 10.

SCHEDULE 3 (continued)

5. Section 26A(1), ‘or a police officer’—

omit.

6. Section 26A(2)(a), ‘or a police officer’—

omit.

7. Section 26A(2)(b)—

omit.

8. Section 27(2) and 28, ‘, police officer’—

omit.

9. Section 30(2), ‘, any inspector or any police officer’—

omit, insert—

‘or any inspector’.

10. Section 37(1)(b) and (g), ‘or police officer’—

omit.

11. Section 39B—

omit.

12. Section 43(1)(a) and (b), ‘or police officer’—

omit.

13. Section 47(3)(zn), ‘police officers,’—

omit.

SCHEDULE 3 (continued)

CORRECTIVE SERVICES ACT 1988**1. Section 10, definition “police gaol”—**

omit.

2. Section 10—

insert—

‘**“watch-house manager”** means a watch-house manager under the *Police Powers and Responsibilities Act 2000*.’.

3. Section 32(2), (3), (4), (5), ‘police gaol’—

omit, insert—

‘watch-house’.

4. Section 33(3), ‘police gaol’—

omit, insert—

‘watch-house’.

5. Section 63(5), ‘or in a police gaol’—

omit, insert—

‘or delivered into the custody of a watch-house manager’.

6. Section 74(2), ‘police gaol’—

omit, insert—

‘watch-house’.

SCHEDULE 3 (continued)

7. Section 85(1), from ‘discharged,’ to ‘written application’—

omit, insert—

‘discharged—

- (a) a correctional officer may arrest the prisoner without warrant; or
- (b) a correctional officer or police officer may apply in writing’.

8. Section 85(5), ‘or in a police gaol’—

omit, insert—

‘or delivered into the custody of a watch-house manager’.

9. Section 86(10), ‘or in a police gaol’—

omit, insert—

‘or delivered into the custody of a watch-house manager’.

10. Section 94(1), ‘Where’—

omit, insert—

‘This section applies if’.

11. Section 94(1), from ‘release;’—

omit, insert—

‘release.’.

12. Section 94—

insert—

‘(1A) Either—

- (a) a correctional officer may arrest the prisoner without warrant; or
- (b) a correctional officer or a police officer may apply in writing to a

SCHEDULE 3 (continued)

justice for the issue of a warrant for the apprehension of the prisoner.’.

13. Section 94(3), ‘or in a police gaol’—

omit, insert—

‘or delivered into the custody of a watch-house manager’.

14. Section 95(2), ‘police gaol’—

omit, insert—

‘watch-house’.

15. Section 104(7), ‘, a police officer’—

omit.

16. Section 104(7), ‘, police officer’—

omit.

17. Section 107, ‘or a police officer’—

omit.

18. Section 107(b), ‘or police officer’—

omit.

19. Section 114(3), ‘police gaol’—

omit, insert—

‘watch-house’.

SCHEDULE 3 (continued)

20. Section 119(1)(a), ‘police gaol’—

omit, insert—

‘watch-house’.

CRIMES (CONFISCATION) ACT 1989**1. Section 4, definitions “approved form”, “premises”, “property-tracking document” and “search warrant”—**

omit.

2. Section 4—

insert—

‘ **“monitoring order”** means a monitoring order under the *Police Powers and Responsibilities Act 2000*.

“search warrant” means a search warrant under the *Police Powers and Responsibilities Act 2000*.’.

3. Part 5, heading—

omit, insert—

‘PART 5—OBLIGATIONS OF FINANCIAL INSTITUTIONS’.**4. Part 5, divisions 1, 2 and 3—**

omit.

5. Part 5, division 4, heading—

omit.

SCHEDULE 3 (continued)

6. Section 73, ‘In this division—’—

omit, insert—

‘In this part—’.

7. Section 90—

insert—

‘(3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order must be disregarded.’.

8. Section 92—

insert—

‘(3) In applying this section to a financial institution, the fact that the financial institution is, or has been, subject to a monitoring order must be disregarded.’.

9. Section 107—

omit.

10. Section 108—

omit.

CRIMINAL CODE**1. Section 56B(2)—**

omit, insert—

‘(2) On the conviction of a person for an offence against subsection (1), any arms found in the person’s possession or under the person’s control are forfeited to the State.’.

SCHEDULE 3 (continued)

2. Section 229M—

omit.

3. Section 258—

insert—

‘(3) This section does not limit the powers a police officer has under the *Police Powers and Responsibilities Act 2000*.’.

4. Section 260(3)—

omit.

5. Section 450A, ‘by a police officer or’—

omit.

6. Section 455, ‘by a police officer, or’—

omit.

7. Section 479—

omit, insert—

‘Arrest without warrant

‘**479.** Any person found committing a misdemeanour defined in this chapter may be arrested without warrant by the owner of the property injured or the owner’s employee or a person authorised by the owner or employee.’.

8. Part 8, chapter 58, before section 546—

insert—

SCHEDULE 3 (continued)

‘Chapter does not apply to police officers

‘545A. This chapter does not apply to a police officer.’.

9. Section 546(a) and (f)—

omit.

10. Section 548(1), ‘or police officer’—

omit.

11. Section 548(1), ‘or officer’—

omit.

12. Section 548(1), ‘by a police officer’—

omit.

13. Section 679B—

omit.

CRIMINAL JUSTICE ACT 1989**1. Section 80(3), ‘the keeper of a watch-house’—**

omit, insert—

‘a watch-house manager, within the meaning of the *Police Powers and Responsibilities Act 2000*, schedule 4.’.

SCHEDULE 3 (continued)

DISTRICT COURT ACT 1967**1. Section 47—**

omit.

**DOMESTIC VIOLENCE (FAMILY PROTECTION)
ACT 1989****1. Section 3—**

insert—

‘**“watch-house manager”** means a watch-house manager under the *Police Powers and Responsibilities Act 2000*, schedule 4.’.

2. Section 68—

omit.

3. Section 70(1), ‘take the person to a watch-house’—

insert—

‘deliver the person into the custody of A watch-house manager’.

4. Section 70(1A), ‘is taken to the watch-house’—

omit, insert—

‘arrives at the watch-house’.

5. Section 70(2) and (3)—

omit.

SCHEDULE 3 (continued)

5. Section 70(1A) and (1B)—

renumber as section 70(2) and (3).

7. Section 73—

omit.

8. Section 74(5)—

omit.

9. Section 74(6)—

renumber as section 74(5).

10. Section 75, heading, ‘—availability for inspection’—

omit.

11. Section 75(1), from ‘the particulars—

omit, insert—

‘the particulars of a person taken into custody under section 69 in the register, the failure is evidence that—

- (a) the taking of the spouse into custody under that section was unlawful; and
- (b) the custody of that spouse by a police officer and at the watch-house was also unlawful.’.

12. Section 75(2), ‘or 73(7)—

omit.

SCHEDULE 3 (continued)

13. Section 75(2), ‘, premises, or weapons’—

omit.

14. Section 75(2), ‘or, as the case may be, section 73, or to another’—

omit, insert—

‘or to another person’

15. Section 75(2), ‘such person, premises, or weapons’—

omit, insert—

‘the person taken into custody’.

16. Section 75(3), ‘, those premises, or those weapons’—

omit.

17. Section 75A(1), after ‘receipt’—

insert—

‘under the *Police Powers and Responsibilities Act 2000*, section 308⁶⁴’.

18. Section 75A(2) and (3)—

omit.

19. Section 76—

omit.

⁶⁴ *Police Powers and Responsibilities Act 2000*, section 308 (Receipt for seized property)

SCHEDULE 3 (continued)

20. Section 77—*omit.***21. Section 79—***omit.***22. Section 92—***omit.***DRUGS MISUSE ACT 1986****1. Section 10(5)—***omit.***2. Section 10A(1A)—***omit.***3. Section 43P—***omit.***4. Section 52—***omit.*

SCHEDULE 3 (continued)

EDUCATION (GENERAL PROVISIONS) ACT 1989**1. Section 118(2), ‘a police officer or’—***omit.***ENVIRONMENTAL PROTECTION ACT 1994****1. Chapter 4, part 3, heading, ‘AND POLICE OFFICERS’—***omit.***2. Section 144(1)(c)—***omit.***3. Section 144(4)—***omit.***4. Chapter 4, part 4—***omit.***5. Section 167—***omit.***6. Section 168—***omit.*

SCHEDULE 3 (continued)

FIRE AND RESCUE AUTHORITY ACT 1990**1. Section 136—**

omit.

2. Section 152—

omit.

FISHERIES ACT 1994**1. Section 171(5)—**

omit.

2. Section 171(6)—

renumber as section 171(5).

3. Section 180—

insert—

‘(4) This section does not apply to a police officer.’.

FOSSICKING ACT 1994**1. Section 91(4)(b)(ii), ‘Weapons Act 1990’—**

omit, insert—

‘Police Powers and Responsibilities Act 2000’.

SCHEDULE 3 (continued)

FUEL SUBSIDY ACT 1997**1. Section 128—**

omit.

2. Section 140(5)—

omit.

3. Section 140(6)—

renumber as section 140(5).

4. Section 142—

omit.

5. Section 158(2)(b), ‘an obstruction.’—

omit, insert—

‘an obstruction; and

- (c) if the person continues to obstruct the authorised person, the authorised person may ask a police officer to help the authorised person exercise the power.’.

6. Section 158(3) and (4)—

omit.

7. Section 159—

omit.

SCHEDULE 3 (continued)

GAMING MACHINE ACT 1991

1. Section 123(3), definition “authorised person”, paragraph (e)—
omit.

2. Section 124, ‘or a police officer’—
omit.

3. Section 124, ‘or police officer’—
omit.

4. Section 124(d)(ii), ‘or officer’—
omit.

5. Sections 198—
omit.

6. Section 201—
omit.

7. Section 207—
omit, insert—

‘Starting proceedings

‘207. Without limiting the way in which a proceeding for an offence against this Act may be started, a proceeding for an offence may be started by the chief executive or another person authorised by the commission or chief executive to start the proceeding in a particular case.’.

SCHEDULE 3 (continued)

HAWKERS ACT 1984**1. Section 6(1), definitions “arrest”, “authorised police officer”, “officer in charge of police” and “police establishment”—**

omit.

2. Section 8(1) to (3)—

omit, insert—

‘**8.(1)** The chief executive may appoint an officer or employee of the department to be an authorised officer.’.

3. Section 8(4)—

renumber as section 8(2).

4. Section 36—

omit.

5. Section 38—

omit.

6. Section 39—

omit.

7. Section 40—

omit.

SCHEDULE 3 (continued)

HEALTH RIGHTS COMMISSION ACT 1991**1. Section 24(3)(c)—**

omit.

2. Section 24(4), from ‘subsection’—

omit, insert—

‘subsection (3)(b) or (d) to exercise a power conferred on an authorised person, the commissioner must obtain the approval of the chief executive of the public authority or department of which the person is an officer.’.

3. Section 112, ‘, other than a police officer in uniform,’—

omit.

4. Section 113—

omit.

INDUSTRIAL RELATIONS ACT 1999**1. Section 285(6) and (7)—**

omit.

2. Section 660(4), from ‘police’ to ‘authority,’—

omit, insert—

‘person acting under the industrial tribunal’s authority’.

SCHEDULE 3 (continued)

INVASION OF PRIVACY ACT 1971**1. Section 43(2)(c)(i)—**

omit.

2. Section 43(2)—

insert—

‘(d) to or in relation to the use of a listening device by a police officer or another person under a provision of an Act authorising the use of a listening device.’.

3. Section 43(2)(c)(ii) and (iii)—

renumber as section 43(2)(c)(i) and (ii).

4. Section 43(3), (4), (4A) and (5)—

omit.

5. Section 43(8), ‘subsection (7)’—

omit, insert—

‘subsection (4)’.

6. Section 43(9), ‘subsection (8)’—

omit, insert—

‘subsection (5)’.

7. Section 43(6) to (9)—

renumber as section 43(3) to (6).

SCHEDULE 3 (continued)

8. Section 45(2)(e), from ‘in accordance with’—

omit, insert—

‘under section 43(2)(c) or (d).’

9. Section 47—

omit.

10. Section 48A(7)—

omit.

JURY ACT 1995**1. Section 71—**

omit.

JUSTICES ACT 1886**1. Section 34—**

omit.

2. Section 59(2)—

omit, insert—

‘(2) The justice may issue a warrant under subsection (1) for a simple offence, not being an indictable offence, only if the justice is satisfied—

- (a) proceeding by way of complaint and summons for the offence would be ineffective; or
- (b) the Act or law creating the offence authorises the issue of a warrant in the first instance.’

SCHEDULE 3 (continued)

JUVENILE JUSTICE ACT 1992**1. Sections 10(10) and 194A(5)—**

omit.

KENO ACT 1996**1. Section 183—**

omit.

2. Section 196(5)—

omit.

3. Section 196(6)—

renumber as section 196(5).

4. Section 198—

omit.

5. Section 215(2)(b), ‘an obstruction.’—

omit, insert—

‘an obstruction; and

- (c) if the person continues to obstruct the inspector, the inspector may ask a police officer to help the inspector exercise the power.’.

SCHEDULE 3 (continued)

6. Section 215(3) and (4)—*omit.***7. Section 216—***omit.***LIQUOR ACT 1992****1. Section 164(4) and (5)—***omit.***2. Section 184(1)(e)—***omit.***LOCAL GOVERNMENT ACT 1993****1. Section 1073—***omit.***2. Section 1074—***omit.***3. Section 1075—***omit.*

SCHEDULE 3 (continued)

**LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT
1978****1. Section 26(2), ‘shall’—**

omit, insert—

‘must, if practicable.’.

2. Section 67(3)—

omit.

3. Section 82(7)—

omit.

4. Section 83—

omit.

5. Section 87(3), ‘an obstruction.’—

omit, insert—

‘an obstruction; and

- (c) if the person continues to obstruct the authorised officer, the authorised officer may ask a police officer to help the authorised officer exercise the power.’.

6. Section 87(4)—

omit, insert

‘(4) Subsection (3) does not apply to an authorised officer who is a police officer.’.

SCHEDULE 3 (continued)

7. Section 88—*omit.***LOCAL GOVERNMENT (CHINATOWN AND THE
VALLEY MALLS) ACT 1984****1. Section 41—***omit.***2. Section 42—***omit.***3. Section 43—***omit.***LOCAL GOVERNMENT (QUEEN STREET MALL)
ACT 1981****1. Section 35—***omit.***2. Section 36—***omit.***3. Section 37—***omit.*

SCHEDULE 3 (continued)

LOTTERIES ACT 1997**1. Section 169—**

omit.

2. Section 182(5)—

omit.

3. Section 182(6)—

renumber as section 182(5).

4. Section 184—

omit.

5. Section 201(2)(b), ‘an obstruction.’—

omit, insert—

‘an obstruction; and

- (c) if the person continues to obstruct the inspector, the inspector may ask a police officer to help the inspector exercise the power.’.

6. Section 201(3) and (4)—

omit.

7. Section 202—

omit.

SCHEDULE 3 (continued)

NATURE CONSERVATION ACT 1992

- 1. Section 127(1)(c)—**
renumber as section 127(1)(d).

- 2. Section 127(1)—**
insert—
‘(c) appoint a police officer;⁶⁵ or

- 3. Section 127(4)—**
omit.

- 4. Section 127(6), ‘subsection (1)(c)’—**
omit, insert—
‘subsection (1)(d)’.

- 5. Section 127(5) and (6)—**
renumber as section 127(4) and (5).

- 6. Section 130(1)(a), after ‘other than’—**
insert—
‘a police officer or’.

⁶⁵ A proposed appointment must have the approval of the commissioner of the police service under the *Police Powers and Responsibilities Act 2000*, section 12.

SCHEDULE 3 (continued)

7. Section 154(1)(d), ‘police officer or’—

omit.

8. Section 170—

omit.

PAWNBROKERS ACT 1984**1. Section 6, definitions “arrest”, “authorised police officer”, “officer in charge of police” and “police establishment”—**

omit.

2. Section 8(1) to (3)—

omit, insert—

‘8.(1) The chief executive may appoint an officer or employee of the department to be an authorised officer for this Act.’.

3. Section 8(4)—

renumber as section 8(2).

4. Section 35(6)—

omit.

5. Section 48—

omit.

SCHEDULE 3 (continued)

6. Section 50(1)—

omit.

7. Section 51—

omit.

8. Section 53—

omit.

POLICE SERVICE ADMINISTRATION ACT 1990**1. Section 1.4, definition “breach of discipline”, ‘Police Powers and Responsibilities Act 1997’—**

omit, insert—

‘Police Powers and Responsibilities Act 2000’.

2. Section 2.3(g)—

omit, insert—

‘(g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are—

(i) required of officers under any Act or law or the reasonable expectations of the community; or

(ii) reasonably sought of officers by members of the community.’.

3. After section 2.3—

insert—

SCHEDULE 3 (continued)

‘Presence of police officers at fire or chemical incident

‘2.3A(1) On receiving information of the occurrence of an incident requiring the attendance of fire authority officers, the commissioner or the police officer in charge, at the time, of the police station nearest to the location of the incident must immediately send as many police officers as are considered necessary to preserve order and to help at the incident.

‘(2) In this section—

“incident” means—

- (a) a fire; or
- (b) a chemical incident under the *Fire and Rescue Authority Act 1990*.

“fire authority officer” means a fire authority officer under the *Fire and Rescue Authority Act 1990*.’.

4. Section 3.5—

omit.

5. After section 10.21B—

insert—

‘Local laws do not to apply in relation to police dogs or horses etc.

‘10.21C A local law does not apply in relation to—

- (a) a police dog or police horse; or
- (b) a police dog handler in connection with the keeping, maintenance or use of any police dog for discharging a function under this Act; or
- (c) an officer in connection with the keeping, maintenance or use of any police horse for discharging a function under this Act.’.

SCHEDULE 3 (continued)

6. Section 10.22—

omit.

7. Section 10.23(1)(a), ‘10.19, 10.20 or 10.20A,’—

omit, insert—

‘10.19 or 10.20,’.

8. Section 10.24—

omit, insert—

‘Representation of officers in court

‘10.24(1) Any officer may appear for and represent an officer involved in any of the following proceedings in a Magistrates Court or a Childrens Court—

- (a) a proceeding for an application made by an officer in the performance of duty under any Act;
- (b) a proceeding in which an officer is involved in the performance of duty otherwise than only as a witness;
- (c) a proceeding in which the commissioner is involved or of which the commissioner or another officer is required to be given notice.

Example for subsection (1)(a)—

An application for a post-search approval order under the *Police Powers and Responsibilities Act 2000*.

‘(2) Also, any officer may appear and act for the prosecution in a proceeding in a Magistrates Court or a Childrens Court for a charge of an offence even though the officer is not the informant or complainant.’.

SCHEDULE 3 (continued)

PUBLIC SAFETY PRESERVATION ACT 1986**1. Part 3—***omit.***2. Section 16(4) and (5)—***omit.***PUBLIC TRUSTEE ACT 1978****1. Section 117O—***omit.***RACING AND BETTING ACT 1980****1. Section 153(6), ‘, an officer or a police officer’—***omit, insert—**‘or an officer’.***2. Section 160(1), ‘or request a police officer’—***omit.***3. Section 160(2), ‘, employee or police officer’—***omit, insert—**‘or employee’.*

SCHEDULE 3 (continued)

4. Section 160(4)—

omit.

5. Section 160—

insert—

‘(5) A person acting under subsection (1) or (2) is a public official for the *Police Powers and Responsibilities Act 2000.*’.

6. Section 225(2) and (3)—

omit, insert—

‘(2) On the conviction of a person for an offence against subsection (1), anything mentioned in subsection (1) that has been seized is forfeited to the State.’.

7. Section 232—

omit.

8. Section 233(1), ‘police officer or’—

omit.

9. Section 233(1)(e)—

omit.

10. section 235—

omit.

11. Section 243—

omit.

SCHEDULE 3 (continued)

12. Section 246—*omit.***RECREATION AREAS MANAGEMENT ACT 1988****1. Section 23(1)(a)—***omit.***2. Section 42—***omit.***REGULATORY OFFENCES ACT 1985****1. Section 8—***omit.***RESIDENTIAL TENANCIES ACT 1994****1. Section 278, ‘the park.’—***omit, insert—**‘the park.⁶⁶’.***2. Section 279—***omit.*

⁶⁶ For the power to give directions to persons causing a serious nuisance and remove persons from a moveable dwelling park see the *Police Powers and Responsibilities Act 2000*, chapter 8 (Other powers), part 4 (Powers relating to nuisance in moveable dwelling parks).

SCHEDULE 3 (continued)

3. Section 280—*omit.***4. Section 281—***omit.***5. Section 282—***omit.***6. Section 285—***omit.***7. Schedule 3, definition “final nuisance direction”, ‘section 281’—***omit, insert—**‘the Police Powers and Responsibilities Act 2000’.***8. Schedule 3, definition “initial nuisance direction”, ‘section 280’—***omit, insert—**‘the Police Powers and Responsibilities Act 2000’.***SECOND-HAND DEALERS AND COLLECTORS ACT
1984****1. Section 6, definitions “arrest”, “authorised police officer”, “officer in charge of police” and “police establishment”—***omit.*

SCHEDULE 3 (continued)

2. Section 8(1) to (3)—

omit, insert—

‘**8.(1)** The chief executive may appoint an officer or employee of the department to be an authorised officer for this Act.’.

3. Section 8A(1) and 8B, ‘(other than a police officer)’—

omit.

4. Section 55—

omit.

5. Section 57(1)—

omit.

6. Section 57(2) to (5)—

renumber as section 57(1) to (4).

7. Section 58—

omit.

8. Section 60—

omit.

SOUTH BANK CORPORATION ACT 1989**1. Section 37B(1), (2) and (3), ‘or police officer’—**

omit.

SCHEDULE 3 (continued)

2. Section 37D(1), ‘or police officer (“the officer”)’—

omit.

3. Section 37D(1)(b), (2), (3) and (4), ‘officer’—

omit, insert—

‘security officer’.

4. Section 37D(6)(a), ‘an officer’—

omit, insert—

‘a security officer’.

5. Section 37F—

omit.

**STATE BUILDINGS PROTECTIVE SECURITY ACT
1983****1. Section 25—**

omit.

2. Section 26—

omit.

3. Section 27—

omit.

SCHEDULE 3 (continued)

STOCK ACT 1915**1. Section 43(1)(b)—**

omit.

2. Section 43(1)(c)—

renumber as section 43(1)(b).

**TOBACCO AND OTHER SMOKING PRODUCTS
(PREVENTION OF SUPPLY TO CHILDREN) ACT
1998****1. Section 27(3)—**

omit.

2. Section 29(1), ‘(other than a police officer)’—

omit.

3. Section 30, ‘(other than a uniformed police officer)’—

omit.

4. Section 30(a)—

omit, insert—

- ‘(a) the authorised person first produces for the person’s inspection the authorised person’s identity card; or’.

SCHEDULE 3 (continued)

TOW TRUCK ACT 1973**1. Section 4, definition “authorised officer”, ‘a police officer,’—**

omit.

2. Section 4, definition “seized”, ‘Transport Operations (Road Use Management) Act 1995, section 100(1)(c) or (d)’—

omit, insert—

‘*Police Powers and Responsibilities Act 2000, section 60 because of section 61(d) or (e) of that Act*’.

TRANSPORT INFRASTRUCTURE ACT 1994**1. Section 147—**

omit.

2. Section 164(1)(j)—

omit.

**TRANSPORT OPERATIONS (MARINE SAFETY) ACT
1994****1. Section 79—**

insert—

‘(2) A delegation under subsection (1)(d) has effect only if the commissioner of the police service has given written approval to the proposed delegation.’.

SCHEDULE 3 (continued)

2. Section 160(1), ‘in uniform’—

omit.

3. Section 173(5)—

omit.

4. Section 173(6)—

renumber as section 173(5).

5. Section 182(2)(b), ‘the obstruction.’—

omit, insert—

‘the obstruction; and

- (c) tell the person that if the person continues to obstruct the shipping inspector, the shipping inspector may ask a police officer to help the shipping inspector exercise the power.’.

5. Section 182 (3)—

omit, insert—

‘(3) Subsection (2) does not apply to a shipping inspector who is a police officer.’.

**TRANSPORT OPERATIONS (PASSENGER
TRANSPORT) ACT 1994****1. Section 113(1), ‘uniformed’—**

omit.

SCHEDULE 3 (continued)

2. Section 113(2)(a)—*omit, insert—*

‘(a) the person first produces the person’s identity card for the other person’s inspection; or’.

3. Section 118(1), ‘uniformed’—*omit.***4. Section 118(2)(a)—***omit, insert—*

‘(a) the person first produces the person’s identity card for the other person’s inspection; or’.

5. Section 127(5)—*omit.***6. Section 127(6)—***renumber as section 127(5).***7. Section 137(6)—***omit.***8. Section 137(7)—***renumber as section 137(6).***9. Section 141(2)—***omit.*

SCHEDULE 3 (continued)

**TRANSPORT OPERATIONS (ROAD USE
MANAGEMENT) ACT 1995****1. Section 20—**

insert—

‘(4) A provision of part 3 that corresponds to a provision of the *Police Powers and Responsibilities Act 2000* does not apply to an authorised person who is a police officer.’.

2. Section 25(1), ‘uniformed’—

omit.

3. Section 25(2)(a)—

omit, insert—

‘(a) the officer first produces the officer’s identity card for the other person’s inspection; or’.

4. Section 31(1)—

omit.

5. Section 31(3) and (4), ‘or (2)’—

omit.

6. Section 31(2) to (4)—

renumber as section 31(1) to (3).

SCHEDULE 3 (continued)

7. Section 48(1)(c)—*omit.***8. Section 48(1)(d), from ‘for an’ to ‘police officer—’—***omit.***9. Chapter 3, part 4—***omit.***10. Section 93—***omit.***11. Section 95—***omit.***12. Section 97—***omit.***13. Section 98—***omit.***14. Section 99—***omit.***15. Section 100(1) to (6B)—***omit.*

SCHEDULE 3 (continued)

16. Section 100(6C), ‘(7) to (15)’—*omit, insert—*

‘(3) to (11)’.

17. Section 100(6D), ‘6C’—*omit, insert—*

‘(1)’.

18. Section 100(10), ‘(14)’—*omit, insert—*

‘(10)’.

19. Section 100(11)(b), ‘(9)’—*omit, insert—*

‘(5)’.

20. Section 100(13), ‘(11)’—*omit, insert—*

‘(7)’.

21. Section 100(15), ‘(7)’—*omit, insert—*

‘(3)’.

22. Section 100(15), ‘(14)’—*omit, insert—*

‘(10)’.

SCHEDULE 3 (continued)

- 23. Section 100(16)(b), ‘(6C)(a)(i)’—**
omit, insert—
‘(1)(a)(i)’.
- 24. Section 100(16)(c), ‘(6C)(a)(ii)’—**
omit, insert—
‘(1)(a)(ii)’.
- 25. Section 100(17), ‘(16)’—**
omit, insert—
‘(12)’.
- 26. Section 100(17) and (18), ‘(7) to (15)’—**
omit, insert—
‘(3) to (11)’.
- 27. Section 100(6C) to (19)—**
renumber as section 100(1) to (15).
- 28. Section 100(19), ‘subsections (7) to (16)’—**
omit, insert—
‘this section’.
- 29. Section 110—**
omit, insert—

SCHEDULE 3 (continued)

‘Notice restricting parking in special circumstances

‘110.(1) If the chief executive is satisfied special circumstances exist justifying a restriction on parking in a traffic area or designated parking space, the chief executive may, by notice published in a newspaper circulating generally in the locality concerned—

- (a) prohibit the parking of vehicles in the area or designated parking space for a stated time; and
- (b) direct the owner or driver of any vehicle parked in the area or designated parking space to remove the vehicle from the area.

‘(2) If the owner or driver of a vehicle parked in a traffic area or designated parking space cannot be readily located, or, if located, fails to remove the vehicle from the area or parking space when directed to do so, the chief executive may remove the vehicle from the area or parking space.

‘(3) Section 100 applies to a vehicle mentioned in subsection (2).’.

30. Section 122—

omit.

31. Section 133(2), from ‘next following’—

omit, insert—

‘after the day the work is carried out.’.

32. Section 133(3)(b)—

omit.

SCHEDULE 3 (continued)

**VAGRANTS, GAMING AND OTHER OFFENCES ACT
1931****1. Section 2, heading—***omit, insert—***‘Definitions’.****2. Section 2, definition “arrest”—***omit.***3. Section 31(4) to (7)—***omit.***4. Section 35(2) to (4)—***omit.***5. Section 35(5), definition “chairperson”—***omit.***6. Section 37B(4), ‘or police officer’—***omit.***7. Sections 38—***omit.***8. section 42—***omit.*

SCHEDULE 3 (continued)

9. Section 45—*omit.***10. Section 46—***omit.***11. Section 56—***omit.***12. Section 57—***omit.***WATER RESOURCES ACT 1989****1. Section 224A(4)—***omit.***WEAPONS ACT 1990****1. Section 128(1)(c)—***omit.***2. Section 128(1), as a penalty—***insert—*

‘Maximum penalty—20 penalty units.’.

SCHEDULE 3 (continued)

3. Section 128(2), as a penalty—*insert—*

‘Maximum penalty for subsection (2)—20 penalty units.’.

4. Section 128, penalty after subsection (3)—*omit.***4. Section 130—***omit.***6. Part 5—***omit.***7. Section 154—***omit.***WORKPLACE HEALTH AND SAFETY ACT 1995****1. Section 116—***omit.***2. Section 120(7)—***omit.***3. Section 121—***omit.*

SCHEDULE 3 (continued)

4. Section 173(3)(b), ‘an obstruction.’—

omit, insert—

‘an obstruction; and

- (c) if the person continues to obstruct the inspector, the inspector may ask a police officer to help the inspector exercise the power.’.

5. Section 173(4) and (5)—

omit.

6. Section 174—

omit.

SCHEDULE 4

DICTIONARY

section 3

“abate”, for noise, includes prevent, reduce, eliminate and control the noise.

“aboriginal police officer” means a person who is an aboriginal police officer under the *Community Service (Aborigines) Act 1984*.

“adult” means a person who is not a child.

“antique firearm” means an antique firearm under the *Weapons Act 1990*.

“arrest warrant” see section 168.⁶⁷

“assistant” see section 301.⁶⁸

“associated domestic violence” means associated domestic violence within the meaning of the *Domestic Violence (Family Protection) Act 1989*.

“at” a place, includes in or on the place.

“authorised assistant” means an assistant authorised under the responsibilities code for this Act.

“authorised person”, for chapter 8, part 2, means a person appointed as an authorised person under section 273.⁶⁹

“belongings” means belongings under the *State Buildings Protective Security Act 1983*.

“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.

“breath test” see Road Use Management Act, section 80.

⁶⁷ Section 168 (Arrest warrant application)

⁶⁸ Section 301 (Police officer may use assistance in exercising certain powers)

⁶⁹ Section 273 (Appointment of authorised persons)

SCHEDULE 4 (continued)

“**cash dealer**” means a cash dealer under the *Financial Transactions Reports Act 1988* (Cwlth).

“**chapter 4 application**” means an application under chapter 4 for a monitoring order, surveillance warrant or a covert search warrant or an extension of a surveillance warrant or a covert search warrant.

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

“**chief executive officer**” means—

- (a) for the CJC—the chairperson of the CJC; or
- (b) for the police service—the commissioner; or
- (c) for QCC—the crime commissioner.

“**child**” means a child within the meaning of the *Juvenile Justice Act 1992*.

“**CJC**” means the criminal justice commission.

“**class A surveillance device**” means—

- (a) a surveillance device installed—
 - (i) in a private place, or on a person’s clothing, without the person’s consent; or
 - (ii) if the device is a listening device, in a public place; or
- (b) a surveillance device that is a combination of a listening device and a tracking device.

“**class B surveillance device**” means a tracking device installed in or on a vehicle or other moveable object without covert entry to a building by the person installing it.

“**commissioner**” means the commissioner of the police service.

“**court**” includes anyone conducting a committal proceeding.

“**corresponding law**” means a law of another State, or of a Territory, declared under a regulation to be a law corresponding with this Act or a stated part of this Act.

 SCHEDULE 4 (continued)

“covert act” means any of the following acts—

- (a) the making of a chapter 4 application;
- (b) the exercise of powers under this Act under a monitoring order, a surveillance warrant or a covert search warrant;
- (c) the disclosure of information under section 146(2)(f)(ii) or (g).⁷⁰

“covert search powers” see means powers a police officer may exercise under section 155.⁷¹

“covert search warrant” see section 148.⁷²

“crime scene” means a primary or secondary crime scene.

“crime scene warrant” see section 87.⁷³

“crime scene powers” means powers a police officer may exercise under a crime scene warrant or in a public place.⁷⁴

“dangerous drug” see the *Drugs Misuse Act 1986*, section 4.

“dangerous goods” see the Road Use Management Act, schedule 4.

“declared law enforcement agency” means an entity declared under a regulation to be a law enforcement agency for this Act.

“detention centre” see the *Juvenile Justice Act 1992*, section 5.

“detention order” see the *Juvenile Justice Act 1992*, section 5.

“detention period” has the meaning given under section 197(4) and includes any period for which detention is extended under section 200.⁷⁵

⁷⁰ Section 146 (Disclosure of information obtained using surveillance warrant)

⁷¹ Section 155 (Powers under covert search warrant)

⁷² Section 148 (Covert search warrant applications)

⁷³ Section 87 (Application for crime scene warrant)

⁷⁴ See section 93 (Powers at crime scenes) and 94 (Powers of direction etc. at crime scene)

⁷⁵ Section 197 (Initial period of detention for investigation or questioning), section 200 (When detention period may be extended)

 SCHEDULE 4 (continued)

“domestic violence” see the *Domestic Violence (Family Protection) Act 1989*, section 11(1).

“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.

“electronic screening”, of a person or a person’s belongings, means, for section 260 or 277, using an electronic screening device, in relation to the person or belongings.⁷⁶

“electronically recorded” means audio recorded or video recorded.

“enforcement act” means any of the following acts—

- (a) the search of a person, other than under chapter 8, part 2;⁷⁷
- (b) the search of a vehicle, other than at a roadblock;
- (c) the search of premises, other than a vehicle or a public place;

⁷⁶ Section 260 (Use of electronic screening devices in state buildings), section 277 (Use of electronic screening devices at special event sites)

⁷⁷ Chapter 8 (Other powers), part 2 (Preserving safety for special events)

 SCHEDULE 4 (continued)

- (d) the taking or seizing of a thing, other than under section 232(4);⁷⁸
- (e) the arrest of a person;
- (f) the detention of a person for investigations or questioning under chapter 6;⁷⁹
- (g) the questioning of a person to whom chapter 6, part 3 applies;⁸⁰
- (h) the exercise of powers under this Act relating to a search warrant, production order or production notice;
- (i) the giving of a direction under section 39.⁸¹

“enter” a place, includes re-enter the place.

“entity”, in chapter 10, part 2, means the CJC, QCC or the police service.⁸²

“entrant”, to a state building or a special event site, means a person who is about to enter or is at the building or site.

“environmental nuisance” see the *Environment Protection Act, 1994*, section 15.

“evidence of the commission of an offence” includes—

- (a) a thing or activity that may provide evidence of an offence or suspected offence; and
- (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of an offence or suspected offence; and
- (c) a thing that is to be used for committing an offence or suspected offence; and

⁷⁸ Section 232 (Search of persons in custody)

⁷⁹ Chapter 6 (Powers and responsibilities relating to investigations and questioning)

⁸⁰ Chapter 6 (Powers and responsibilities relating to investigations and questioning for indictable offences), part 3 (Safeguards ensuring rights of an fairness to persons being questioned for indictable offences)

⁸¹ Section 39 (Directions may be given to a person)

⁸² Chapter 10 (Administration), part 2 (Registers)

 SCHEDULE 4 (continued)

- (d) a thing that may be liable to forfeiture or is forfeited; and
- (e) a thing that may be used in evidence for a forfeiture proceeding; and
- (f) a property tracking document.

“explosive” see the *Explosives Act 1999*, schedule 2.⁸³

“exercise a power”, under this or another Act, includes exercise a power under a warrant, order or another authority issued under this or another Act.

“final nuisance direction” see section 299.⁸⁴

“financial institution” includes cash dealer.

“forfeiture proceeding” means a proceeding for an order forfeiting or restraining the use of property under the *Crimes (Confiscation) Act 1989* or another Act.

“frisk search” means—

- (a) a search of a person conducted by quickly running the hands over the person’s outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

⁸³ The *Explosives Act 1999*, schedule 2 provides—

‘ **“explosive”** includes—

- (a) a substance or a thing containing a substance, manufactured or used with a view to produce—
 - (i) a practical effect by explosion; or
 - (ii) a pyrotechnic effect; and
- (b) a substance or thing declared under a regulation to be an explosive.

Examples of explosives—

Ammunition, detonators, gunpowder, nitroglycerine, pyrotechnics (including fireworks).

⁸⁴ Section 299 (Direction to leave park)

SCHEDULE 4 (continued)

“government entity” means a government entity under the *Public Service Act 1996*, section 21, other than subsection (1)(d), (e) and (f).

“hand held scanner” means a device that may be passed over or around a person or the person’s belongings to detects metal or other substances.

“heavy vehicle” see the Road Use Management Act, schedule 4.

“identifying particulars”, of a person, means any of the following—

- (a) palm prints;
- (b) fingerprints;
- (c) handwriting;
- (d) voiceprints;
- (e) footprints;
- (f) a photograph of the person’s identifying features.

Examples for paragraph (f)—

1. Photographs of scars or tattoos.
2. Photographs of the person.

“identifying particulars notice” see section 235.⁸⁵

“identifying particulars 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—
 - *Explosives Act 1999*
 - *Hawkers Act 1984*
 - *Pawnbrokers Act 1984*
 - *Second-hand Dealers and Collectors Act 1984*
 - *Police Service Administration Act 1990*, section 10.19 or 10.20

⁸⁵ Section 235 (Identifying particulars notice may be given)

 SCHEDULE 4 (continued)

- *Regulatory Offences Act 1985*
- *State Buildings Protective Security Act 1983*
- *Vagrants, Gaming and Other Offences Act 1931*
- *Weapons Act 1990*.

“initial nuisance direction” see section 298.⁸⁶

“island police officer” means a person who is an island police officer under the *Community Services (Torres Strait) Act 1984*.

“knife” means a thing with a sharpened point or blade that is reasonably capable of—

- (a) being held in 1 or both hands; and
- (b) being used to wound or threaten someone when held in 1 or both hands.

“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.

“licence”, for chapter 2, part 1, includes accreditation, approval, authorisation, authority, exemption and permit.

“licence holder”, for chapter 2, part 1, means a person who holds a licence granted or issued under a relevant law.

“licensed brothel” means a licensed brothel under the *Prostitution Act 1999*.

“liquor” see the Road Use Management Act, schedule 4.

“list of support persons and interpreters” means the list of support persons and interpreters kept by the commissioner under section 230.⁸⁷

“listening device” means any instrument, apparatus, equipment or device (other than a hearing aid for persons with an auditory impairment)

⁸⁶ Section 298 (Initial direction about serious nuisance)

⁸⁷ Section 230 (List of support persons and interpreters)

 SCHEDULE 4 (continued)

capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

“major crime” see *Crime Commission Act 1997*, section 7.

“make an inquiry” includes find out whether someone is in a place.

“mall” means any of the following—

- (a) a mall established under the *Local Government Act 1993*;
- (b) the Chinatown Mall within the meaning of the *Local Government (Chinatown and Valley Malls) Act 1994*;
- (c) the Queen Street Mall within the meaning of the *Local Government (Queen Street Mall) Act 1991*;
- (d) the Valley Mall within the meaning of the *Local Government (Chinatown and Valley Malls) Act 1994*.

“monitor”, when used as a noun, means—

- (a) the public interest monitor appointed under section 157; or
- (b) a deputy public interest monitor.⁸⁸

“monitoring order” see section 116.⁸⁹

“motor vehicle” see the Road Use Management Act, schedule 4.

“moveable dwelling park”, see the *Residential Tenancies Act 1994*, schedule 3.

“NCA” means the national crime authority established under the *National Crime Authority Act 1984* (Cwlth).

“noise abatement direction” see section 288.⁹⁰

“notice to appear” see section 177(2).⁹¹

⁸⁸ Section 157 (Public interest monitor)

⁸⁹ Section 116 (Monitoring order applications)

⁹⁰ Section 288 (Powers of police officers on investigation of complaint)

⁹¹ Section 177 (Notice to appear may be issued for offence)

SCHEDULE 4 (continued)

“noxious or offensive substance” see *State Buildings Protective Security Act 1983*, section 3.

“offensive weapon” see *State Buildings Protective Security Act 1983*, section 3.

“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.

“outer garment” includes cloak, coat and garment.

“parliamentary commissioner” means the parliamentary commissioner under the *Criminal Justice Act 1989*.

“pedestrian” see Road Use Management Act, schedule 4.

“person in control”, of a vehicle, see Road Use Management Act, schedule 4.

“person with impaired capacity” means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

“personal property”, in relation to a person at or about to enter a special event site—

- (a) means things carried by the person or things apparently in the immediate control of the person; but
- (b) does not include clothing being worn by the person.

“photo licence” means a licence for a weapon issued under the *Weapons Act 1990* that shows the following—

- (a) the photograph of the licensee or, if the licensee is an incorporated or unincorporated body, the licensee’s representative;
- (b) the licence number;

SCHEDULE 4 (continued)

- (c) numbers and letters indicating licence conditions;
- (d) letters indicating the categories of weapons the licensee may possess.

“photograph” includes photocopy, videotape, and record an image.

“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 dog” means a dog kept by the commissioner for helping police officers perform the duties of police officers.

“police establishment” means a police establishment under the *Police Service Administration Act 1990*.

“police horse” means a horse kept by the commissioner for use by police officers when performing the duties of police officers.

“police officer”, for chapter 8, part 3, includes a person holding appointment as—

- (a) an aboriginal police officer; and
- (b) an islander police officer.

“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

 SCHEDULE 4 (continued)

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
- (d) a vehicle and a caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

“prescribed authority” see section 363.⁹²

“prescribed place”—

- (a) for chapter 2, part 4, in relation to soliciting for prostitution, means any public place to which the public has access, whether on payment of a fee or otherwise, but does not include any area in a licensed brothel that can not be viewed from outside the brothel; and⁹³
- (b) for chapter 2, part 4, in relation to other matters, means—
 - (i) a shop; or
 - (ii) a child-care centre; or
 - (iii) a pre-school centre; or
 - (iv) a primary, secondary or special school; or
 - (v) premises licensed under the *Liquor Act 1992*; or
 - (vi) a railway station and any railway land around it; or
 - (vii) a mall; or
 - (viii) the part of the corporation area under the *South Bank Corporation Act 1989* declared to be the site under that Act; or
 - (ix) a racing venue within the meaning of the *Racing and Betting Act 1980*; or

⁹² Section 363 (Obtaining warrants, orders and authorities etc., by telephone or similar facility)

⁹³ Chapter 2 (General enforcement powers), part 4 (Directions to move-on)

 SCHEDULE 4 (continued)

- (x) an automatic teller machine; or
- (xi) a place declared under section 40 to be a notified area.⁹⁴

“primary crime scene” means a place—

- (a) where a seven 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.

“prison” see *Corrective Services Act 1988*, section 10.

“prisoner” see *Corrective Services Act 1988*, section 10.

“private conversation” means any words spoken by 1 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 1 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 by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

“private vehicle” see Road Use Management Act, schedule 4.

“produce”, a document, includes make the document available.

“production notice” see section 97.⁹⁵

“production order” see section 106.⁹⁶

⁹⁴ Section 40 (Declaration of notified areas)

⁹⁵ Section 97 (Production notices)

⁹⁶ Section 106 (Production order applications)

SCHEDULE 4 (continued)

“prohibited item”, in relation to a special event, means a thing stated to be a prohibited item in the declaration of the event as a special event.

“proscribed thing” means proscribed matter under the *State Buildings Protective Security Act 1983*.

“property tracking document” means a property tracking-document under the *Crimes (Confiscation) Act 1989*.

“prostitution” see the Criminal Code, section 229E.

“public official” means a person—

- (a) who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for a government entity; or
- (b) who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for an entity other than a government entity and is declared under a regulation to be a public official for this Act; or
- (c) declared by another Act to be a public official for this Act.

“public place” means—

- (a) a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to the place may be restricted at particular times or for particular purposes; or
- (b) a place declared under another Act to be a public place for any law conferring powers or imposing functions on police officers; or
- (c) a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public; or
- (d) a place that is a public place under another Act.⁹⁷

⁹⁷ See, for example, the *Vagrants, Gaming and Other Offences Act 1931*, section 2, definition “public place”.

 SCHEDULE 4 (continued)

Examples for paragraph (a)—

1. A road.
2. A park.
3. A beach.
4. A road that is closed to general use by vehicles for a public procession or a parade.

Example for paragraph (b)—

Under the *Sanctuary Cove Resort Act 1985*, section 54A primary and secondary thoroughfares are public places for the purposes of any law conferring powers or imposing functions on a police officer.

Examples for paragraph (c)—

1. A cinema complex.
2. A shop.
3. A restaurant.
4. A racecourse.

“public prosecutor” means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

“QCC” means the Queensland crime commission.

“QCC officer” see *Crime Commission Act 1997*.

“question”, for chapter 6⁹⁸, means question a person as a suspect about his or her involvement in an indictable offence.

“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.

⁹⁸ Chapter 6 (Powers and responsibilities relating to investigations and questioning for indictable offences)

 SCHEDULE 4 (continued)

“register of covert acts” means the register of covert acts kept under section 339.

“register of enforcement acts” means the register of enforcement acts kept under section 349.

“relevant act” means conduct of a kind mentioned in section 36 or 37.⁹⁹

“relevant criminal activity” see *Crime Commission Act 1997*, section 9.

“relevant law”, means an Act under which a person or place must be licensed, and prescribed under a regulation for chapter 2, part 1.¹⁰⁰

“relevant person”—

- (a) in relation to an application to a judge for a surveillance warrant—see section 125; and
- (b) in relation to an application to a magistrate for a surveillance warrant—see section 139; and
- (c) in relation to an application to a judge for a covert search warrant—see section 149; and
- (d) in relation to a removal order—see section 196; and
- (e) for chapter 6, part 3—see section 209; and
- (f) for chapter 7, part 3—see section 239.

“relevant vehicle incident” means—

- (a) an incident involving a vehicle on a road in which—
 - (i) death or injury was caused to a person; or
 - (ii) damage was caused to a vehicle, tram, or train, or any other real or personal property; or
 - (iii) death or injury was caused to an animal; or
- (b) an incident involving a boat in which—

⁹⁹ Section 36 (When part applies to behaviour) or 37 (When part applies to person’s presence)

¹⁰⁰ Chapter 2 (General enforcement powers), part 1 (Ending inquiries and inspection)

 SCHEDULE 4 (continued)

- (i) death or injury was caused to a person; or
- (ii) damage was caused to a boat or any other real or personal property.

“removal order” see section 193.¹⁰¹

“responsibilities code” means the code of responsibilities of police officers prescribed under a regulation.

“responsible chief executive officer”, for a surveillance warrant, means the chief executive officer of the entity responsible for keeping the register of covert acts in which information about the warrant is recorded.

“responsible officer” see section 82;¹⁰².

“restricted area”, for a special event, means a part of the special event site designated by the event organiser as an area to which entry is restricted to persons who have the consent or other authorisation of the organiser.

“riot” see the Criminal Code, section 61(4).¹⁰³

“road” see Road Use Management Act.

“Road Use Management Act” means the *Transport Operations (Road Use Management) Act 1995*.

“search”, a person, includes frisk search the person.

“search warrant” see section 68.¹⁰⁴

“search warrant powers” see section 74.¹⁰⁵

¹⁰¹ Section 193 (Application for removal of person from lawful custody)

¹⁰² Section 82 (Initial establishment of crime scene)

¹⁰³ 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”.’.

¹⁰⁴ Section 68 (Search warrant applications)

¹⁰⁵ Section 74 (Power under search warrants)

 SCHEDULE 4 (continued)

“secondary crime scene” means a place—

- (a) where there may be evidence, of 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) an offence against the *Drugs Misuse Act 1986* punishable by at least 20 years imprisonment.

“serious offence”, for chapter 4, part 1¹⁰⁶, means a serious offence under the *Crimes (Confiscation) Act 1989*, section 4 or an interstate serious offence under that Act.

“serious violent offence” means—

- (a) an offence involving deprivation of liberty; or

¹⁰⁶ Chapter 4 (Covert evidence gathering powers), part 1 (Monitoring orders)

SCHEDULE 4 (continued)

- (b) a 7 year imprisonment offence involving violence or a threat of violence to a person.

“seven year imprisonment offence” means an indictable offence for which the maximum penalty is at least 7 years imprisonment.

“solicit” includes the following—

- (a) offer to provide prostitution;
- (b) accept an offer to provide prostitution.

“special event” means an event declared under chapter 8, part 2 to be a special event.¹⁰⁷

“special event site” means a site described in a declaration of a special event as a special event site.

“state building” see *State Buildings Protective Security Act 1983*, section 4.

“stop”, of a vehicle or animal, includes requiring it to remain stationary for the time reasonably necessary to enable a function or power under this or another Act to be exercised.

“support person” means—

- (a) for an aborigine or Torres Strait islander who is at least 17—
 - (i) an adult relative or another adult 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 support persons 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

¹⁰⁷ Chapter 8 (Other powers), part 2 (Preserving safety for special events)

 SCHEDULE 4 (continued)

whose primary purpose is to provide legal services; or

- (iv) if no-one mentioned in subparagraphs (i) to (iii) is available—an adult 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 support persons 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); or
- (c) for a person with impaired capacity—a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person’s interests.

“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 powers” means powers a police officer may exercise under a surveillance warrant.¹⁰⁸

“surveillance warrant” see sections 124 and 138.¹⁰⁹

“tainted property” see *Crimes (Confiscation) Act 1989*, section 13.¹¹⁰

“term of imprisonment” see *Penalties and Sentences Act 1992*.

¹⁰⁸ Section 131 (Power under surveillance warrant)

¹⁰⁹ Section 124 (Surveillance warrant applications), section 138 (Surveillance warrant applications)

¹¹⁰ *Crimes (Confiscation) Act 1989*, section 13 (Meaning of “tainted property”)

SCHEDULE 4 (continued)

“time out” includes any time reasonably required—

- (a) to take a person from the place where the person is arrested to the nearest place where the investigating officer has access to facilities for complying with chapter 6, part 3; 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
- (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

SCHEDULE 4 (continued)

person on bail or serve on the person a notice to appear or complaint and summons.

“train” includes tram.

“tram” see Road Use Management Act, schedule 4.

“transport Act” see Road Use Management Act, schedule 4.

“transport vehicle” means—

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

“vehicle” means a vehicle under the Road Use Management Act, an aircraft or a boat.

“walk-through detector”, for chapter 8, means a device through which a person walks, that detects metal or other substances.

“watch-house manager” means a police officer for the time being in charge of a watch-house.

“weapon” see *Weapons Act 1990*, section 5.

“X-ray machine”, for chapter 8, means a device through which a person’s belongings are passed and X-rayed.