

Queensland



**POLICE POWERS AND
RESPONSIBILITIES AND
OTHER ACTS AMENDMENT
ACT 2000**

Act No. 22 of 2000

Queensland



**POLICE POWERS AND
RESPONSIBILITIES AND OTHER ACTS
AMENDMENT ACT 2000**

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Queensland



**Police Powers and Responsibilities and Other
Acts Amendment Act 2000**

Act No. 22 of 2000

**An Act to amend the *Police Powers and Responsibilities Act 2000*, and
for other purposes**

[Assented to 23 June 2000]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

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

Commencement

2. Parts 3 to 6 commence on 1 July 2000.

PART 2—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

Act amended in pt 2 and schedule

3. This part and the schedule amend the *Police Powers and Responsibilities Act 2000*.

Amendment of s 2 (Commencement)

4.(1) Section 2(1), after ‘sections’—

insert—

‘211,’.

(2) Section 2(3), ‘Schedule 3 commences’—

omit, insert—

‘Section 211 and schedule 3 commence’.

Amendment of s 33 (Prescribed circumstances for requiring name and address)

5. Section 33(c), from ‘take’—

omit, insert—

‘take—

- (i) the person’s identifying particulars under an identifying particulars notice; or
- (ii) a DNA sample from the person under a DNA sample notice;’.

Amendment of s 122 (Certain Acts do not apply to this part)

6. Section 122, ‘*Libraries and Archives Act 1988*’—

omit, insert—

‘Public Records Act’.

Renumbering of chs 5-12

7. Chapters 5 to 12—

renumber as chapters 6 to 13.

Insertion of new ch 5

8. After section 162—

insert—

**‘CHAPTER 5—CONTROLLED OPERATIONS
AND CONTROLLED ACTIVITIES**

‘PART 1—PRELIMINARY

‘Object of ch 5

‘163. The object of this chapter is to ensure the effective investigation of serious indictable offences, misconduct offences and organised crime by—

- (a) enabling particular officers of the CJC, QCC and the police service to approve the conduct of controlled operations that may involve particular police officers and others engaging in activities that may be unlawful as part of the investigation—
 - (i) of a suspected serious indictable offence or into suspected organised crime; or
 - (ii) for particular officers of the CJC, of a suspected misconduct offence; and
- (b) ensuring anything that may be approved or authorised under this chapter is approved or authorised only in appropriate circumstances; and
- (c) ensuring, as far as practicable, only appropriately trained persons act as covert operatives under an approval under this chapter; and
- (d) ensuring a person who may act as a covert operative under an approval under this chapter engages in otherwise unlawful activities only as part of the controlled operation for which the person is a covert operative; and
- (e) providing appropriate protection from civil and criminal liability for persons acting in accordance with this chapter; and
- (f) clarifying the status of evidence obtained by persons who engage in controlled operations or controlled activities under this chapter.

‘Investigation of minor matters not affected

‘164. The enactment of this chapter is not to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned but involve the participation of police officers in activities that may be unlawful.

‘Lawfulness of particular actions

‘165. To remove doubt, it is declared—

- (a) that it is lawful for a person acting in accordance with this chapter—
 - (i) to recommend that other persons be authorised to engage in an activity that may be unlawful as part of an investigation of a suspected indictable offence, a suspected misconduct offence or into suspected organised crime (“**chapter 5 criminal activity**”); or
 - (ii) to authorise other persons to engage in an activity that may be unlawful as part of an investigation of chapter 5 criminal activity; and
- (b) that it is lawful for a person acting as a covert operative under an approval under section 175, 176 or 177¹ to engage in activities stated in the approval that may be unlawful as part of the investigation of chapter 5 criminal activity; and
- (c) that it is lawful for a police officer of at least the rank of inspector, acting in accordance with procedures established by an entity’s chief executive officer, to authorise another police officer to engage in a stated controlled activity for the entity; and
- (d) that it is lawful for the chairperson of the CJC, or the director of the official misconduct division of the CJC, acting in accordance with procedures established by the chairperson of the CJC, to authorise a police officer or a CJC officer to engage in a stated controlled activity for the CJC; and
- (e) that it is lawful for a person acting under an authority given under section 190 or 191² to engage in a controlled activity in accordance with the authority and any relevant policy of the entity.

¹ Section 175 (CJC controlled operations), 176 (Procedure in urgent circumstances other than if s 175 applies) or 177 (Consideration and approval of application)

² Section 190 (Authorised controlled activities) or 191 (Authorisation of controlled activities by CJC)

‘Controlled operations and activities generally

‘166. From the commencement of this chapter, a controlled operation or controlled activity may be approved only in accordance with this chapter.

‘PART 2—CONTROLLED OPERATIONS

‘Division 1—Controlled operations committee

‘Establishment of controlled operations committee

‘167.(1) The commissioner must establish a controlled operations committee.

‘(2) The committee must include—

- (a) an independent member; and
- (b) the chief executive officer of each entity or the chief executive’s nominee.

‘(3) The committee may also include anyone else the commissioner considers has appropriate knowledge or experience relevant to the performance of the committee’s functions.

‘Independent member

‘168.(1) The Minister may appoint a retired Supreme Court or District Court judge to be the independent member of the committee.

‘(2) Before appointing the independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

‘Acting independent member

‘169.(1) The Minister may appoint a retired Supreme Court or District Court judge to act as the independent member—

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

‘(2) Before appointing the acting independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

‘Division 2—Committee’s functions and business

‘Committee’s functions

‘170. The committee has the following functions—

- (a) to consider, and make recommendations about, applications referred to the committee by an approving officer for—
 - (i) approval to conduct a controlled operation; or
 - (ii) variation of an approval for a controlled operation;
- (b) any other function conferred on it under this or another Act.

‘Committee business

‘171.(1) The committee may conduct its business only if the independent member is present.

‘(2) The committee may otherwise conduct its business, including its meetings, in the way it considers appropriate.

‘(3) The independent member is the chairperson of the committee.

‘(4) The chairperson must record the committee recommendations in the way the chairperson considers appropriate.

‘Committee’s recommendations

‘172.(1) After considering an application and any other relevant material referred to it by an approving officer, the committee may recommend—

- (a) that an approving officer approve or refuse to approve a particular controlled operation; or
- (b) for a particular controlled operation, that it is appropriate to use a birth certificate created to help conceal the identity of a covert operative.

‘(2) However, the committee may recommend the approval of a controlled operation only if satisfied, having regard to the nature and seriousness of the offence being or to be investigated, it is appropriate for persons to engage in otherwise unlawful activities for the purposes of gathering evidence that may lead to the conviction of a person for the offence.

‘Committee’s annual report

‘172A.(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the committee must prepare and give to the Minister a written report on the committee’s activities 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—
 - (i) any covert operative; or
 - (ii) 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.

‘Division 3—Approval of controlled operations

‘Application for approval

‘173.(1) A police officer or, for an entity other than the police service, an officer authorised by the entity’s chief executive officer to apply for an

approval under this division, may apply to the relevant entity's approving officer for approval to conduct an operation under this part (“**controlled operation**”).

‘(2) The approving officer must be—

- (a) for the police service—
 - (i) the commissioner; or
 - (ii) a person for the time being performing functions in the police service as a deputy commissioner of the police service; or
 - (iii) the person for the time being performing functions in the police service as the assistant commissioner of the police service responsible for crime operations; or
- (b) for the CJC—the chairperson of the CJC; or
- (c) for QCC—the crime commissioner or an assistant crime commissioner.

‘(3) However, if a person to be investigated under a proposed controlled operation to be conducted by the CJC is or may be a police officer—

- (a) the application must be made to the chairperson of the CJC; and
- (b) the chairperson of the CJC is the approving officer for the proposed operation.

‘(4) The application must be written and include enough information to enable the relevant approving officer to properly consider whether the proposed operation should be approved.

‘(5) In particular, the application must state the following for the proposed controlled operation—

- (a) an identifying name or number;
- (b) a description of the chapter 5 criminal activity in relation to which it is proposed to conduct the operation;
- (c) if a previous application relating to the same chapter 5 criminal activity has been made under this division, whether the application was approved or refused;

- (d) the name of each person who it is intended will act as a covert operative for the operation;
- (e) a precise description of each otherwise unlawful activity a covert operative who is not a police officer or a CJC officer may be required to engage in as part of the operation;
- (f) a description of the general classes of otherwise unlawful activities a covert operative who is a police officer or a CJC officer may be required to engage in as part of the operation.

‘Application must be referred to committee

‘174.(1) The approving officer must refer the application to the committee without deciding the application.

‘(2) However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.

‘(3) This section is subject to sections 175 and 176.

‘Certain CJC controlled operations

‘175.(1) This section applies to an application made to the chairperson of the CJC under section 173(3) for approval to conduct a controlled operation.

‘(2) The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the independent member and the crime commissioner and obtain their agreement to the proposed operation.

‘(3) However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member and the crime commissioner about the controlled operation as soon as possible after approving the application.

‘Procedure in urgent circumstances other than if s 175 applies

‘176.(1) This section applies to an application for approval to conduct a

controlled operation made to an approving officer in urgent circumstances.

‘(2) However, this section does not apply if section 175 applies.

‘(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.

‘(4) The committee may consider the application as if the approval had not been given.

‘(5) The approving officer must consider the committee’s recommendations on the application, but is not bound by the recommendations.

‘Consideration and approval of application

‘**177.(1)** After considering the committee’s recommendations on an application for approval to conduct a controlled operation, the approving officer may approve or refuse to approve the application.

‘(2) The approving officer must not approve an application under section 173, 175 or 176 if the approving officer considers, because of the way the proposed controlled operation is to be conducted, it is probable that any of the following will happen in the operation—

- (a) injury to, or the death of, a person;
- (b) serious damage to property;
- (c) a serious loss of property;
- (d) someone could be encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.

‘(3) Also, the approving officer must not approve the application unless satisfied—

- (a) the purpose of the proposed controlled operation is to gather evidence of chapter 5 criminal activity; and
- (b) a controlled operation represents an effective use of public resources for investigating the chapter 5 criminal activity; and

- (c) any proposed covert operative for the operation has received appropriate training for the purpose; and
- (d) if a proposed covert operative for the operation is not a police officer or a CJC officer, it is wholly impractical in the circumstances for a police officer or a CJC officer to perform the role the proposed covert operative is to perform in the operation; and
- (e) the committee has recommended the controlled operation be approved.

‘(4) Subsection (1) and (3)(e) do not apply to the approval of a controlled operation mentioned in section 175 or 176.³

‘What approval must state

‘**178.(1)** An approval for a controlled operation must be written and state the following—

- (a) a description of the chapter 5 criminal activity to which the controlled operation relates;
- (b) the period, of not more than 6 months, for which the approval has effect;
- (c) the name of each covert operative who may engage in otherwise unlawful activities for the purposes of the operation;
- (d) a precise description of each otherwise unlawful activity a person who is not a police officer or a CJC officer may engage in while acting as a covert operative for the operation;
- (e) a description of the general classes of otherwise unlawful activities a police officer or a CJC officer may be required to engage in while acting as a covert operative for the operation;
- (f) any conditions the approving officer considers appropriate.

‘(2) For subsection (1)(c), it is enough to state an assumed name or code

³ Section 175 (Certain CJC controlled operations) or 176 (Procedure in urgent circumstances other than if s 175 applies)

name in the approval if the actual identity of the covert operative is included in a register kept for the purpose by the relevant chief executive officer.

‘Effect of approval

‘179. It is lawful for a person named in an approval of a controlled operation—

- (a) to act as a covert operative for the controlled operation to which the approval relates; and
- (b) to engage in the otherwise unlawful activity described in the approval for the purposes of the controlled operation.

‘Division 4—Variation of approval for controlled operation

‘Application to vary approval

‘180.(1) A police officer, or an officer authorised by an entity’s chief executive officer to apply for an approval under this division, may apply to the relevant entity’s approving officer for a variation of an approval for a controlled operation.

‘(2) However, if, the chairperson of the CJC was the approving officer for the controlled operation because the operation relates to a person who is or may be a police officer, the application must be made to the chairperson of the CJC.

‘(3) The application must be written and include enough information to enable the approving officer to properly consider whether the approval should be varied and if so how it should be varied.

‘(4) In particular, the application must state the following for the controlled operation—

- (a) the identifying name or number for the operation;
- (b) a description of the chapter 5 criminal activity in relation to which the operation was approved;
- (c) if a previous application for variation of the approval for the operation has been made under this division, whether the approval

was varied because of the application;

- (d) if it is intended to change particulars relating to persons who are or are intended to be covert operatives, the name of each person to whom the change relates and particulars of the change sought;
- (e) if it is intended to change the description of the chapter 5 criminal activity in relation to which the operation was approved, a description of the chapter 5 criminal activity for which approval is sought.

‘Application must be referred to committee

‘**181.(1)** The approving officer must refer the application to the committee without deciding the application.

‘**(2)** However, if the approving officer considers the application does not have enough merit to justify referring it to the committee, the approving officer may refuse to refer the application to the committee.

‘**(3)** This section is subject to sections 182 and 183.

‘Certain CJC controlled operations

‘**182.(1)** This section applies if an application for the variation of an approval for a controlled operation is made to the chairperson of the CJC under section 180(2).

‘**(2)** The chairperson may approve the application without referring it to the committee but, before approving the application, the chairperson must consult with the independent member and the crime commissioner and obtain their agreement to the proposed variation.

‘**(3)** However, the chairperson may approve an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member and the crime commissioner about the variation as soon as possible after approving it.

‘Procedure in urgent circumstances other than if s 182 applies

‘**183.(1)** This section applies to an application for the variation of an

approval for a controlled operation that is made to an approving officer in urgent circumstances.

‘(2) However, this section does not apply if section 182 applies.

‘(3) The approving officer may approve the application without referring it to the committee, but must refer the application to the committee as soon as practicable after approving it.

‘(4) The committee may consider the application as if the approval had not been given.

‘(5) The approving officer must consider the committee’s recommendations on the application but is not bound by the recommendations.

‘When approval may be given

‘184. The approving officer must not approve the application unless reasonably satisfied the variation is necessary for the continued effective investigation of chapter 5 criminal activity.

‘How approval may be varied

‘185.(1) The approving officer may vary the approval but only by—

- (a) extending the period of the approval from time to time by not more than 6 months at a time; or
- (b) changing particulars about who may act as a covert operative under the approval; or
- (c) changing particulars of the chapter 5 criminal activity to which the approval relates.

‘(2) The approval mentioned in section 179,⁴ as varied under subsection (1), has the effect mentioned in section 179.

⁴ Section 179 (Effect of approval)

Division 5—Special provisions about creating identity documents

‘Request for issue of document to conceal identity—general

‘186.(1) This section applies if, for a particular controlled operation, the committee recommends the use of a birth certificate created to help conceal the identity of a covert operative.

‘(2) The chief executive officer of the entity proposing to conduct the controlled operation may, in writing, authorise a named officer of the entity to create a birth certificate for the purpose of concealing the identity of the covert operative.

‘Request for issue of document to conceal identity—CJC

‘187.(1) This section applies if, for a controlled operation for which the chairperson of the CJC is the approving officer, the independent member and the crime commissioner recommend the use of a birth certificate created to help conceal the identity of a covert operative.

‘(2) The chairperson of the CJC may authorise a named officer of the CJC to create a birth certificate for the purpose of concealing the identity of the covert operative.

‘Giving effect to authority under s 186 or 187

‘188. On the production to the registrar-general, for inspection, of a written instrument signed by an entity’s chief executive officer and stating that a named officer is authorised under section 186 or 187⁵ to create a birth certificate for the purpose of concealing the identity of a covert operative—

- (a) the officer may create a birth certificate for that purpose; and
- (b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.

⁵ Section 186 (Request for issue of document to conceal identity—general) or 187 (Request for issue of document to conceal identity—CJC)

‘Special provisions about concealing identities of covert operatives

‘189.(1) This section applies despite any other Act or law.

‘(2) It is lawful for a person responsible for issuing a relevant document to issue, at the request of the approving officer of an entity, a relevant document that helps a covert operative conceal his or her identity and personal particulars, including for example, the person’s date and place of birth.

‘(3) The chief executive officer of an entity, the officer authorised to create a relevant document, the person responsible for issuing the relevant document, and anyone helping to issue the document—

- (a) does not commit an offence by authorising, issuing or helping to issue the document; and
- (b) no civil proceeding may be started or continued against the person only because of the issue of the document.

‘(4) Also, any contract or agreement made with a covert operative under an identity created under this division is not invalid only because of the use by the covert operative of that identity.

‘(5) As soon as practicable after the chief executive officer of the entity decides a relevant document issued under this division is no longer needed for a controlled operation, the chief executive officer must return the document to the issuing authority.

‘(6) A covert operative must not use a relevant document issued under this division other than for the purposes of a controlled operation.

Maximum penalty—75 penalty units.

‘(7) In this section—

“relevant document” means a document that—

- (a) may be lawfully issued under an Act; and
- (b) may be used to identify a person or authorise the person to do a lawful act.

‘PART 3—CONTROLLED ACTIVITIES

‘Authorised controlled activities

‘190.(1) This section applies if a police officer considers it is reasonably necessary for a police officer to engage in conduct that is directed to obtaining evidence of the commission of an offence against a particular person and involves the following (a “**controlled activity**”)—

- (a) a single meeting between the police officer and the person, whether or not the meeting was the result of a written or oral communication with the person;
- (b) deliberately concealing the true purpose of the communication between the police officer and the person;
- (c) the commission by the police officer of otherwise unlawful activity.

‘(2) A police officer of at least the rank of inspector may, in accordance with any relevant policy of the entity for whom the controlled activity is to be conducted, authorise another police officer to engage in a stated controlled activity.⁶

‘(3) The authority must be written and state the controlled activities the police officer is authorised to engage in.

‘(4) A police officer authorised to engage in the controlled activity must comply with any relevant policy of the entity for whom the controlled activity is to be conducted.

‘Authorisation of controlled activities by CJC

‘191.(1) This section applies if the chairperson of the CJC or the director of the official misconduct division of the CJC considers it is reasonably necessary for a police officer or CJC officer to engage in conduct that—

- (a) is directed to obtaining evidence of the commission of a suspected

⁶ Under the *Freedom of Information Act 1991*, section 19 (Availability of certain documents) the policy documents must be made available for inspection and purchase by members of the community.

- misconduct offence by a police officer (“**relevant officer**”); and
- (b) involves the following (a “**controlled activity**”)—
- (i) a single meeting between a police officer or CJC officer and the relevant officer, whether or not the meeting was the result of a written or oral communication with the person;
 - (ii) deliberately concealing the true purpose of the communication between the police officer or CJC officer and the relevant officer;
 - (iii) the commission by the police officer or CJC officer of otherwise unlawful activity.

‘(2) The chairperson or director may, in accordance with any relevant policy of the CJC, authorise a police officer or CJC officer to engage in a stated controlled activity.

‘(3) The authority must be written and state the controlled activities the police officer or CJC officer is authorised to engage in.

‘(4) The person authorised to engage in the controlled activity must comply with any relevant policy of the CJC.

‘PART 4—MISCELLANEOUS

‘Disclosure of information

‘192.(1) This section applies to a person to whom the existence of any of the following (“**relevant information**”) becomes known—

- (a) an application for—
 - (i) approval of a controlled operation; or
 - (ii) a variation of an approval given for a controlled operation;
- (b) a decision of the committee to recommend the approval of, or the variation of an approval for, a controlled operation, and the committee’s recommendation;

- (c) an approval of—
 - (i) a controlled operation; or
 - (ii) a variation of an approval given for a controlled operation;
- (d) information about a controlled operation;
- (e) documents issued under part 2, division 5;
- (f) the actual identity of a covert operative.

‘(2) The person must not disclose relevant information, other than—

- (a) for the purposes of this chapter; or
- (b) with the approval of the relevant entity; or
- (c) to the extent—
 - (i) the information has generally been made known; or
 - (ii) it is in the public interest to disclose the information.

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

‘Protection from liability

‘**193.(1)** This section applies to each of the following persons (a “**relevant person**”)—

- (a) a member of the committee;
- (b) an approving officer;
- (c) the crime commissioner;
- (d) a person who is or was a covert operative;
- (e) a person who, as part of a controlled operation, provides a covert operative with help, including by giving the covert operative things necessary for the purposes of the controlled operation;
- (f) a person who authorised a controlled activity;
- (g) a person who is or was authorised under this chapter to engage in a controlled activity.

‘(2) A relevant person does not incur civil liability for an act done, or

omission made, under this chapter.

‘(3) If subsection (2) prevents a civil liability attaching to the person, the liability attaches instead to the State.

‘(4) Also, a relevant person does not incur criminal liability for an act done, or omission made—

- (a) for a controlled operation, in accordance with an approval given for the controlled operation; or
- (b) for a controlled activity, in accordance with—
 - (i) an authority given for the controlled activity; and
 - (ii) an entity’s policy about controlled activities.

‘(5) In addition, a relevant person who is a police officer or a CJC officer does not incur criminal liability for an act done, or omission made, that, because of a controlled operation or controlled activity, was reasonably necessary for—

- (a) protecting the safety of any person; or
- (b) protecting the identity of a covert operative; or
- (c) taking advantage of an opportunity to gather evidence in relation to chapter 5 criminal activity not mentioned in the approval.

‘(6) However, subsection (5) does not relieve a police officer or a CJC officer from criminal liability for an act done or omission made if the act or omission results in—

- (a) injury to, or the death of, a person; or
- (b) serious damage to property; or
- (c) a serious loss of property; or
- (d) someone being encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.

‘(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.⁷

‘Admissibility of evidence obtained through controlled operation and activities

‘194. It is declared that evidence gathered because of a controlled operation or controlled activity is not inadmissible only because it was obtained by a person while engaging in an unlawful act if the unlawful act was authorised under this chapter.

‘Cross-jurisdictional protection

‘195.(1) This section applies to a police officer who is a member of the police force or service of the Commonwealth or another State and enters Queensland under an approval under a law declared by regulation to be a corresponding law of the Commonwealth or the other State.

‘(2) Sections 193(2), (4) and (5) and 194 apply to any act or omission of the police officer done or made in good faith as part of the controlled operation while the police officer is in Queensland.

‘(3) However, subsection (2) does not apply to the act or omission if it is probable that any of the following will happen because of the act or omission—

- (a) injury to, or the death of, a person;
- (b) serious damage to property;
- (c) a serious loss of property;
- (d) someone could be encouraged or induced by a covert operative to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the covert operative to engage in it.

⁷ *Police Service Administration Act 1990*, section 10.5 (Liability for tort generally)

‘Evidentiary provision

‘196.(1) In a proceeding, a certificate of the chief executive officer of an entity stating any of the following is evidence of the things it states—

- (a) at a stated time a stated person was an approving officer for a stated law enforcement agency;
- (b) at a stated time a stated person was a covert operative;
- (c) on a stated day a stated person approved the conduct of a stated controlled operation or controlled activity;
- (d) on a stated day a stated person varied an approval for a stated controlled operation in a stated way.

‘(2) For subsection (1)(b), it is enough to state an assumed name or code name in the certificate if the actual identity of the covert operative is included in a register kept for the purpose by the relevant chief executive officer.

‘Powers not to be delegated

‘197.(1) Powers of an approving officer under this chapter may not be delegated.

‘(2) Also, powers of the chairperson of the CJC or the director of the official misconduct division of the CJC under section 191⁸ may not be delegated.

‘(3) Subsections (1) and (2) apply despite any other Act.’

Renumbering of ss 163-174

9. Sections 163 to 174—

renumber as sections 198 to 209.

Insertion of new ss 210-211

10. After section 209, as renumbered—

⁸ Section 191 (Authorisation of controlled activities by CJC)

insert—

‘Additional case when arrest for being drunk in a public place may be discontinued

‘210.(1) This section applies if—

- (a) a person is arrested for being drunk in a public place;⁹ and
- (b) a police officer is satisfied it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of being drunk (a **“place of safety”**).

Examples of a place of safety—

1. A hospital may be a place of safety for a person who needs medical attention.
2. A place other than a hospital that provides care for persons who are drunk may be a place of safety.
3. A vehicle used to transport persons to a place of safety and under the control of someone other than a police officer may be a place of safety.
4. The person’s home, or the home of a relative or friend, may be a place of safety if there is no likelihood of domestic violence or associated domestic violence happening at the place because of the person’s condition or the person is not subject to a domestic violence order preventing the person from entering or remaining at the place.

‘(2) It is the duty of the police officer, at the earliest reasonable opportunity—

- (a) to take the person to the place of safety; and
- (b) to release the person at the place of safety.

Example—

The place of safety may be a vehicle under the control of someone other than a police officer that is used to transport persons to another place of safety.

‘(3) Subsection (2) does not apply if the police officer is satisfied—

- (a) a person at the place of safety is unable to provide care for the person; or

⁹ See the *Liquor Act 1992*, section 164(2).

- (b) the person's behaviour may pose a risk of harm, including, but not limited to, an act of domestic violence or associated domestic violence, to other persons at the place of safety.

'(4) Before the police officer releases the person, the police officer must ensure the person apparently in possession or in charge of the relevant place of safety gives a police officer a signed undertaking in the approved form to provide care for the relevant person.

'(5) A person taken to a place of safety can not be compelled to stay there.

'(6) If the place of safety is not the person's home, the person apparently in possession or in charge of the place of safety may lawfully provide care for the person until the person voluntarily leaves the place.

'Additional case when arrest for minor drugs offence may be discontinued

'211.(1) This section applies if—

- (a) a person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and
- (b) the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and

Examples of commission of an offence related to a minor drug offence—

1. Burglary of a home to obtain money to buy the drugs.
 2. The drugs are obtained as a result of the robbery of another person.
- (c) the person—
 - (i) has not previously been convicted of an offence involving violence against a person; or
 - (ii) has been convicted of an offence involving violence against a person for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and
 - (d) during an electronically recorded interview, the person admits having committed the offence; and
 - (e) the person has not been offered the opportunity to attend a drug

diversion assessment program.

‘(2) If the person is—

- (a) an adult; or
- (b) a child who has previously been cautioned under the *Juvenile Justice Act 1992* for a minor drugs offence;

a police officer must offer the person the opportunity to attend a drug diversion assessment program.

‘(3) However, if the person is a child who has not been cautioned previously under the *Juvenile Justice Act 1992* for a minor drugs offence, a police officer may offer the child the opportunity to attend a drug diversion assessment program.

‘(4) If the person agrees—

- (a) the person must sign an agreement to attend a drug diversion assessment program; and
- (b) the police officer must—
 - (i) give the person a written requirement to comply with the agreement; and
 - (ii) inform the person that failure to attend the program is an offence against section 445;¹⁰ and
 - (iii) give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.

‘(5) On the signing of the agreement, the drug, and anything that may be, or has been, used for smoking the drug, is forfeited to the State.

‘(6) It is the duty of a police officer to release the person at the earliest reasonable opportunity if the police officer is satisfied subsection (4) has been complied with.’.

¹⁰ Section 445 (Offence to contravene direction or requirement of police officer)

Renumbering of ss 175-187

11. Sections 175 to 187—

renumber as sections 212 to 224.

Amendment of s 188 (Duty of police officer receiving custody of person arrested for offence)

12.(1) Section 188(2)(b)—

renumber as section 188(2)(c).

(2) Section 188(2)—

insert—

‘(b) for a person arrested for—

- (i) being drunk in a public place, decide whether to discontinue the arrest under section 210; or
- (ii) a minor drugs offence, decide whether to discontinue the arrest under section 211;¹¹ or’.

(3) Section 188—

insert—

‘**(3)** If a person is released under section 210 or 211 before appearing in a court in relation to the offence, any proceeding against the person for the offence is discontinued even though the person may have been charged with having committed the offence.’.

(4) Section 188—

renumber as section 225.

¹¹ Section 210 (Additional case where arrest for being drunk in a public place may be discontinued), section 211 (Additional case where arrest for minor drugs offence may be discontinued)

Renumbering of ss 189-231

13. Sections 189 to 231—

renumber as sections 226 to 268.

Amendment of s 232 (Search of persons in custody)

14.(1) Section 232—

insert—

‘(5) A police officer may give a thing taken from a person who is taken to a place of safety under section 210¹²—

- (a) if the place of safety is the person’s home—to a person at the home who is an adult member of the person’s family; or
- (b) if the place of safety is the home of a friend or relative—to the friend or relative, for safe keeping while the person is at the place; or
- (c) otherwise—to the person apparently in possession or in charge of the place of safety, for safe keeping while the person is at the place.

‘(6) The person to whom the thing is given must give the police officer a signed receipt in the approved form for the thing and, if the place of safety is not the person’s home, must return the thing to the person from whom it was taken before the person voluntarily leaves the place of safety.’

(2) Section 232—

renumber as section 269.

Renumbering of ss 233-234

15. Sections 233 and 234—

renumber as sections 270 and 271.

¹² Section 210 (Additional case where arrest for being drunk in a public place may be discontinued)

Amendment of s 235 (Identifying particulars notice may be given)

16.(1) Section 235(3)(c)—

omit, insert—

‘(c) must be signed by the police officer serving the notice.’.

(2) Section 235—

renumber as section 272.

Renumbering of ss 236-258

17. Sections 236 to 258—

renumber as sections 273 to 295.

Insertion of new ch 8 (as renumbered), pts 4-5

18. In chapter 8, as renumbered, after section 295, as renumbered—

insert—

‘PART 4—DNA PROCEDURES

‘Division 1—Application and purpose of pt 4

‘Primary purpose of pt 4

‘296. The primary purposes of this part are—

- (a) to authorise particular police officers, doctors and nurses to take a hair sample or a mouth swab (“**DNA sample**”) from another person for use for DNA analysis; and
- (b) to establish procedures for taking DNA samples; and
- (c) to authorise—
 - (i) the establishment of a DNA database; and
 - (ii) the recording in the database of information obtained by performing a DNA analysis of a DNA sample taken under

this part; and

- (iii) the use of information in the database for investigations by declared law enforcement agencies.

Division 2—Preliminary provisions about taking DNA samples for DNA analysis

‘Who may take DNA samples

‘297.(1) It is lawful for each of the following persons (“DNA sampler”) to take a DNA sample from a person for DNA analysis under this part—

- (a) a police officer authorised under subsection (3) to take DNA samples;
- (b) a doctor;
- (c) a nurse.

‘(2) However, a doctor or nurse may take a DNA sample from a person only if asked by a police officer to take the sample.

‘(3) The commissioner may authorise a police officer to take DNA samples.

‘(4) However, the commissioner may authorise a police officer only if the commissioner is satisfied the police officer—

- (a) has the necessary experience or expertise to be able to take the samples; or
- (b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

‘Where DNA samples may be taken

‘298. A DNA sampler may take a DNA sample from a person at a location in any of the following places that provides reasonable privacy for the person—

- (a) a police establishment;

- (b) a hospital;
- (c) a prison or a detention centre;
- (d) another place the sampler considers is appropriate in the circumstances.

‘How DNA samples may be taken

‘299.(1) A DNA sampler may take a DNA sample from a person only—

- (a) by requiring the person to use a mouth swab; or
- (b) by collecting from the person hair, including roots of the hair.

‘(2) However, a DNA sampler must not collect hair from—

- (a) the genital or anal area of a person; or
- (b) a person’s buttocks; or
- (c) the breasts of a female.

‘Division 3—Taking DNA samples with consent

‘Informed consent needed for taking DNA sample

‘300.(1) A police officer may ask a person to consent to the taking of a DNA sample from the person for DNA analysis.

‘(2) The police office must ensure the person is given a reasonable opportunity to give an informed consent to the taking of the DNA sample.

‘(3) Before a DNA sampler takes the sample, a police officer must—

- (a) be reasonably satisfied the person is not under the influence of liquor or a drug; and
- (b) ensure the person has given an informed consent to the taking of the sample.

‘Special requirements for obtaining consent from persons with impaired capacity

‘301.(1) This section applies if—

- (a) a police officer intends to ask a person, other than a child, to consent to the taking of a DNA sample from the person; and
- (b) the police officer reasonably suspects the person is a person with impaired capacity.

‘(2) Before the police officer asks for the consent, the police officer must ensure—

- (a) if reasonably practicable, the person is given a reasonable opportunity to speak to a support person in circumstances in which the conversation can not be overheard; and
- (b) a support person is present when the police officer gives the explanation required under section 303.

‘Special requirement for obtaining consent from children

‘302.(1) This section applies if a police officer intends to ask a person the police officer reasonably suspects is a child to consent to the taking of a DNA sample from the person.

‘(2) The police officer must not ask the child to give the consent unless—

- (a) the child is or appears to the police officer to be at least 14; and
- (b) a support person is present when the police officer gives the explanation required under section 303.

‘Explanation to be given before asking for consent

‘303.(1) To enable a person to give an informed consent, a police officer must explain the following—

- (a) why it is proposed to take a DNA sample from the person;
- (b) how the DNA sample may be taken and where it may be taken from;
- (c) that the person may refuse to consent to the taking of the DNA

sample;

- (d) that, if the person consents, a DNA sampler will take the DNA sample;
- (e) that the person may withdraw consent at any time before the DNA sample is taken or while the sample is being taken;
- (f) that a DNA analysis may be performed using any DNA sample taken;
- (g) that, unless the person otherwise requires, the results of a DNA analysis of the DNA sample may—
 - (i) be recorded in the DNA database; and
 - (ii) be used in the way permitted under division 6;
- (h) that, if the person refuses to consent, the person may be required under division 4 to provide a DNA sample;
- (i) that the DNA analysis may provide evidence that may be used in a proceeding before a court.

‘(2) The police officer may give the explanation by giving the person a statement, in the approved form, containing the information required under subsection (1).

‘Explanation and consent to be recorded

‘**304.(1)** If the explanation under section 303 is given orally, the giving of the explanation and the consent to the taking of a DNA sample must, if reasonably practicable, be electronically recorded.

‘(2) If the consent is not electronically recorded, it must be written and signed by the person giving the consent.

‘(3) If written consent is given by a child or a person with impaired capacity, it must also be signed by the support person present when the consent is given.

‘Division 4—Taking DNA samples without consent

‘Purpose of div 4

‘305. This division states the circumstances in which a person may be required to provide a DNA sample for DNA analysis.

‘Special requirement if person with impaired capacity

‘306.(1) This section applies if a police officer reasonably suspects a person from whom a DNA sample is to be taken under this division is a person with impaired capacity.

‘(2) Before a DNA sampler takes the DNA sample, the police officer must, if reasonably practicable, ensure—

- (a) the person is given a reasonable opportunity to speak to a support person in circumstances in which the conversation can not be overheard; and
- (b) a support person is present when the sample is taken.

‘Taking DNA sample if proceedings started against adult by arrest, notice to appear or complaint and summons

‘307.(1) This section applies if a police officer starts or continues a proceeding for an indictable offence against an adult by arrest, notice to appear or complaint and summons.

‘(2) A police officer may detain the person for a reasonable time, of not more than 1 hour, to obtain the approval of a commissioned officer under subsection (3) to take a DNA sample from the person.

‘(3) A police officer may, with the approval of a commissioned officer, detain the person for the time reasonably necessary to take a DNA sample from the person and, if necessary, take the person to a place mentioned in section 298(a), (b) or (d)¹³ for the purpose.

‘(4) The commissioned officer must be—

¹³ Section 298 (Where DNA samples may be taken)

- (a) if the police officer investigating the offence or matter holds rank below the rank of inspector—a police officer of at least the rank of inspector; or
- (b) if the police officer investigating the offence or matter holds the rank of inspector or above—a more senior commissioned officer.

‘(5) Before approving the detention of the person, the commissioned officer must have regard to the rights and liberties of the person and the public interest.

‘(6) A DNA sampler may take a DNA sample from a person detained under an approval of a commissioned officer under this section.

‘DNA sample notice may be given

‘308.(1) This section applies if a police officer starts or continues a proceeding for an indictable offence against an adult by arrest, notice to appear or complaint and summons and decides it is not necessary to immediately take a DNA sample from the person.

‘(2) With the approval of a commissioned officer, a police officer may, by written notice (“**DNA sample notice**”), require the person to report to a police officer at a stated police establishment between stated hours within 7 days after the issue of the notice to enable a DNA sampler to take a DNA sample from the person for DNA analysis.

‘(3) The commissioned officer must be—

- (a) if the police officer investigating the offence or matter holds rank below the rank of inspector—a police officer of at least the rank of inspector; or
- (b) if the police officer investigating the offence or matter holds the rank of inspector or above—a more senior commissioned officer.

‘(4) The commissioned officer must not approve the issue of the DNA sample notice unless satisfied, having regard to the rights and liberties of the person and the public interest, taking the sample is reasonably necessary in the particular circumstances.

‘(5) A DNA sample notice—

- (a) must state—

- (i) it is an offence to fail to comply with the notice; and
 - (ii) that, before the DNA sample is taken, the person must produce to a police officer 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) must be signed by the police officer serving the notice.

‘(6) The police officer giving the notice must warn the person it is an offence to contravene a requirement under subsection (2).

‘(7) A DNA sampler may take a DNA sample from a person who attends at a police establishment as required under a DNA sample notice.

‘Taking DNA sample from adult before court

‘**309.(1)** This section applies if, in a proceeding against an adult charged with an indictable offence, a court is satisfied it is reasonably necessary, having regard to the rights and liberties of the person and the public interest, to take DNA a sample for DNA analysis from the person.

‘(2) The court may order—

- (a) that the person charged be held in police custody for up to 1 hour to enable a DNA sampler to take the sample from the person; or
- (b) that the person report to a police officer at a stated police establishment between stated hours within 7 days to enable a DNA sampler to take the DNA sample from the person.

‘(3) A DNA sampler may take a DNA sample for DNA analysis from a person who is held in custody under subsection (2)(a) or reports to a police establishment as required under an order under subsection (2)(b).

‘Taking DNA sample after conviction of adult

‘**310.(1)** This section applies if a court finds an adult guilty of an indictable offence.

‘(2) The court may order—

- (a) that the person be held in police custody for up to 1 hour to enable a DNA sampler to take a DNA sample from the person; or
- (b) that the person report to a police officer at a stated police establishment between stated hours within 7 days to enable a DNA sampler to take a DNA sample from the person.

‘(3) A DNA sampler may take a DNA sample from a person who is held in custody under subsection (2)(a) or reports to a police establishment as required under an order under subsection (2)(b).

‘Taking DNA sample from prisoner

‘311.(1) This section applies to a prisoner who is serving a term of imprisonment for an indictable offence.

‘(2) A DNA sampler may, in accordance with an arrangement between the commissioner and the general manager of the prison—

- (a) enter the prison where the person is held; and
- (b) detain the prisoner and take the prisoner to an appropriate place in the prison for the purpose of taking a DNA sample for DNA analysis from the prisoner; and
- (c) take the DNA sample from the prisoner.

‘(3) A correctional officer under the *Corrective Services Act 1988* may be present when the DNA sample is taken.

‘(4) This section expires 3 years after it commences.

‘Taking DNA sample from child

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

- (a) starts or continues a proceeding for an indictable offence against a child by arrest, attendance notice under the *Juvenile Justice Act 1992*, or complaint and summons; and
- (b) considers it is reasonably necessary to take a sample from the child for DNA analysis.

‘(2) The police officer must apply to the Childrens Court for an order

authorising the taking of a sample from the child for DNA analysis.

‘(3) The police officer must give notice of the application to—

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

‘(4) The court may order the taking of a sample if satisfied—

- (a) an indictable offence has been committed; and
- (b) the child is reasonably suspected of having committed the offence; and
- (c) a DNA analysis may tend to prove or disprove the child’s involvement in the offence.

‘(5) If the child is not in custody when the sample is to be taken, the order must require the child to report to a police officer at a stated police establishment between stated hours within 7 days to enable the sample to be taken.

‘(6) A DNA sampler may take a DNA sample from the child who attends at a police establishment as required under an order under subsection (4).

Division 5—General requirements about taking DNA samples

‘Protecting the dignity of persons while taking DNA samples

‘313.(1) If it is reasonably necessary for taking a DNA sample from a person, a police officer may ask the person to remove stated items of the person’s clothing.

‘(2) If it is reasonably necessary for clothing other than outer garments to be removed, the police officer—

- (a) must not require the person to remove more clothing than is

necessary for the DNA sample to be taken; and

- (b) if reasonably practicable, must not take the DNA sample—
 - (i) in the presence of someone whose presence is not required while the sample is being taken; or
 - (ii) where someone not involved in taking the sample can see the sample being taken.

‘Help with DNA sampling

‘**314.(1)** This section applies to a DNA sampler who is taking a DNA sample from a person.

‘**(2)** If help is needed to take the DNA sample, the DNA sampler may ask other persons to give reasonably necessary help.

‘**(3)** It is lawful for a DNA sampler and a person helping the DNA sampler to use reasonably necessary force for taking a DNA sample.

‘**(4)** If the DNA sample is being taken with consent, the DNA sampler and a person helping the DNA sampler must immediately stop taking the sample if the person withdraws the consent.

‘**(5)** However, withdrawal of consent does not make inadmissible evidence of a DNA analysis done on any DNA sample taken before the consent is withdrawn.

Division 6—General

‘Power to analyse etc. DNA samples

‘**315.(1)** It is lawful for a police officer or a person acting under an arrangement between the commissioner and the chief executive (health)—

- (a) to perform a DNA analysis of a DNA sample taken under this part; and
- (b) to perform any further analysis of the DNA sample that may be reasonably necessary for ensuring the accuracy of an earlier analysis; and

- (c) to keep the DNA sample until it is required under this part to be destroyed; and
- (d) to take the steps reasonably necessary to ensure the results of the analysis are included in a DNA database; and
- (e) to compare the results of the DNA analysis with other results of DNA analyses to which the person has access.

‘(2) It is lawful—

- (a) for a police officer to keep the results of any DNA analysis of a DNA sample taken under this part; and
- (b) for a police officer to use the results of any DNA analysis for any investigation being conducted by a police officer for the police service or a declared law enforcement agency.

‘(3) A DNA sample mentioned in subsection (1)(c) must be kept in a secure place.

‘When DNA samples and results must be destroyed

‘316.(1) The commissioner must ensure any DNA sample and the results of a DNA analysis of the sample are destroyed within a reasonable time if—

- (a) the arrest of the person for an indictable offence to which the sample relates is discontinued under section 208(1) or 211(1);¹⁴ or
- (b) a charge of an indictable offence to which the sample relates is discontinued before a court; or
- (c) the person is not found guilty of the indictable offence, including on appeal; or
- (d) within 1 year after the sample is taken, the person is not charged with an indictable offence.

‘(2) Subsection (1) does not apply if—

¹⁴ Section 208 (When arrest may be discontinued—general rule) or 211 (Additional case where arrest for minor drugs offence may be discontinued)

- (a) the person has been proceeded against on a charge of another indictable offence that has not been decided; or
- (b) the person has been found guilty of another indictable offence, whether before or after the commencement of this section; or
- (c) the DNA sample and the results of the DNA analysis of the sample are required for the investigation of another indictable offence the person is reasonably suspected of having committed; or
- (d) the person is not proceeded against because he or she has been found unfit for trial because of mental illness.

‘(3) For subsection (1), the commissioner may destroy the results of a DNA analysis by ensuring that any information in the DNA database that identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample is deleted.

‘(4) This section does not apply to a DNA sample taken from a prisoner under section 311,¹⁵ other than to the extent subsection (1)(b) applies to the offence for which the person was imprisoned.

‘DNA database

‘317.(1) The commissioner must ensure information obtained by a DNA analysis of a DNA sample taken under this part is recorded in a DNA database approved by the commissioner.

‘(2) A DNA database approved under subsection (1)—

- (a) may include a database established by agreement between the Commonwealth and the States for keeping information, including DNA information, obtained by Commonwealth and State law enforcement agencies; and
- (b) is for use only for investigations being conducted by those agencies.

‘(3) The commissioner may arrange for information obtained by a DNA analysis of either of the following, held by the commissioner, to be included

¹⁵ Section 311 (Taking sample from prisoner)

in the database—

- (a) a sample, including blood, taken before or after the commencement of this section;
- (b) a thing a police officer reasonably suspects is evidence of the commission of an offence.

‘(4) It is lawful for the commissioner to use the DNA database for any investigation being conducted by a police officer for the police service or a declared law enforcement agency.

‘Restricted use of DNA samples

‘318. A police officer must not use a DNA sample, or the results of the analysis of DNA a sample, for any purpose other than performing a function of the police service.

‘PART 5—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES

‘Division 1—Preliminary

‘Purpose of pt 5

‘319. The purpose of this part is to help ensure victims of particular sexual offences and serious assault offences, and certain other persons receive appropriate medical, physical and psychological treatment by authorising—

- (a) the taking of blood and urine samples from a person a police officer reasonably suspects has committed the relevant offence; and
- (b) the analysis of the samples to find out whether the person may have transmitted a relevant disease to the victim.

‘Application of pt 5

‘**320.(1)** This part applies in relation to the following offences against the Criminal Code (“**relevant offences**”), but only if semen, blood, saliva or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin of a victim of the offence—

- (a) rape;
- (b) a sexual assault involving penetration of a penis into the victim’s mouth;
- (c) incest committed against a child under 12;
- (d) sodomy of a child under 12;
- (e) carnal knowledge of a girl under 12;
- (f) abuse of an intellectually impaired person involving penetration of a penis into the victim’s mouth;
- (g) a serious assault if—
 - (i) blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim’s skin; or
 - (ii) blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane of the victim.¹⁶

‘**(2)** This part also applies to a person other than the victim if semen, blood, saliva or another bodily fluid may have been transmitted to the person during or soon after the commission of a relevant offence.

‘**(3)** However, this part does not apply to an assault that involves—

- (a) the penetration of the anus or vagina by an object other than a penis; or
- (b) the transfer of blood or another bodily fluid in a way that does not penetrate the anus, vagina, a mucous membrane or the skin of a victim; or
- (c) spitting saliva onto intact skin.

¹⁶ For the offences, see the Criminal Code, sections 208 (Unlawful sodomy), 215 (Carnal knowledge of girls under 16), 216 (Abuse of intellectually impaired persons), 222 (Incest), 337 (Sexual assaults), 340 (Serious assaults) and 347 (Rape).

‘Certain Acts do not apply to this part

‘321. The Public Records Act and the *Freedom of Information Act 1992* do not apply to activities or records under this part to the extent those Acts would otherwise enable the identity of a person in relation to whom a disease test order is made or the victim of the relevant offence to be disclosed.

‘Division 2—Taking blood and urine samples

‘Application for order for blood and urine testing of person

‘322.(1) This section applies if a police officer arrests a person (“**relevant person**”) the police officer reasonably suspects has committed a relevant offence.

‘(2) A police officer may apply to a magistrate or, if the relevant person is a child, the Childrens Court for an order (“**disease test order**”) authorising the taking of a sample of blood and urine from the relevant person.

‘(3) The application must be written and state the grounds on which it is made.

‘(4) Before the application is made, the police officer must give the relevant person a copy of the application and inform the person that he or she has the right to be represented by a lawyer at the hearing of the application.

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

‘Notice to be given of application for disease test order for child

‘323.(1) This section applies if a police officer applies under section 322 for a disease test order for a child.

‘(2) The police officer must give notice of the application to—

- (a) the child; and

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

‘Disease test order

‘324.(1) This section applies to the consideration of an application for a disease test order.

‘(2) The magistrate or Childrens Court—

- (a) must hear and decide the application with as little delay as possible and in the absence of the public; and
- (b) may, in extraordinary circumstances, adjourn the application for no more than 24 hours to allow further evidence to be put before the magistrate or Childrens Court; and
- (c) must not hear the application unless satisfied the relevant person has been informed of the right to be represented by a lawyer at the hearing.

‘(3) Also, the victim of the relevant offence can not be compelled to give evidence at the hearing.

‘(4) If the relevant person, or the relevant person’s lawyer, is present when the application is being heard, the relevant person or the lawyer may make submissions to the magistrate or Childrens Court, but not submissions that will unduly delay the consideration of the application.

‘(5) If the magistrate or Childrens Court is satisfied there are reasonable grounds for suspecting a relevant offence has been committed and, in the circumstances of the offence, a blood and urine sample should be taken from the relevant person, the magistrate or Childrens Court may make a disease test order in relation to the relevant person.

‘What disease test order must state

‘325. A disease test order must state the following—

- (a) the name of the relevant person;
- (b) that the relevant person may be held in custody for the time reasonably necessary to enable a sample of the person’s blood and a sample of the person’s urine to be taken;
- (c) that a police officer may take the relevant person to a place the police officer considers has appropriate facilities for taking the sample;
- (d) that a doctor or a prescribed nurse may take a blood sample and a urine sample from the relevant person.

‘Appeal against disease test order

‘326.(1) A relevant person may appeal against a disease test order to the District Court.

‘(2) The appeal—

- (a) must be filed without delay; and
- (b) does not stay the operation of the disease test order, unless the court otherwise orders.

‘(3) The court may not order a stay of a disease test order of more than 48 hours from the time the order appealed against is made.

‘(4) The court must hear and decide the appeal—

- (a) within 48 hours after the order appealed against is made; and
- (b) in the absence of the public; and
- (c) without adjourning the appeal.

‘(5) If the relevant person, or the relevant person’s lawyer, is present when the appeal is being heard, the relevant person or the lawyer may make submissions to the court, but not submissions that will unduly delay the consideration of the appeal.

‘(6) The court may allow or refuse to allow the appeal.

‘Taking blood and urine samples

‘327.(1) A police officer may ask a doctor or prescribed nurse to take a blood sample and a urine sample from a relevant person under a disease test order.

‘(2) When asking the doctor or nurse to take the sample, the police officer must produce for the doctor’s or nurse’s inspection a copy of the disease test order for the relevant person.

‘(3) It is lawful for the doctor or nurse to take a blood sample from the relevant person or ask the person to provide a urine sample.

‘(4) If help is needed for taking the sample, the doctor or nurse may ask other persons to give reasonably necessary help.

‘(5) It is lawful for the doctor or nurse and a person helping the doctor or nurse to use reasonably necessary force for taking the sample.

‘(6) The doctor or nurse must immediately send the sample to a unit of the health department with appropriate facilities for testing the sample for relevant diseases.

‘Division 3—General

‘Analysis of blood and urine samples

‘328.(1) It is lawful for an officer of the health department to analyse, or arrange for someone else to analyse, a blood sample or urine sample sent to a unit of the health department under section 327.

‘(2) Also, it is lawful for an officer of the health department to destroy blood or urine from a sample if it is not used for the analysis or a further analysis and the sample or any part of the sample used for the analysis.

‘Restriction on disclosure of results of analysis

‘329.(1) A person who conducts an analysis of a blood sample or urine sample under this part must not disclose the results of the analysis to any person other than the following—

- (a) the victim of the relevant offence;

- (b) the relevant person;
- (c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person;
- (d) a person providing counselling for the victim of the offence or the relevant person;
- (e) a person, nominated by the chief executive (health), who, as part of the person's duties, requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

‘(2) A person to whom information is disclosed under subsection (1) must not disclose information obtained under this part to a person other than—

- (a) the victim of the relevant offence; or
- (b) the relevant person; or
- (c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person; or
- (d) a person providing counselling for the victim of the offence or the relevant person; or
- (e) a person, nominated by the chief executive (health), who, as part of the person's duties requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

‘(3) Subsection (2) does not apply to the victim of the relevant offence or the relevant person, unless the disclosure is—

- (a) a public disclosure through the mass media by the victim of the results of the analysis and the identity of the relevant person; or
- (b) a public disclosure through the mass media by the relevant person of the results of the analysis and the identity of the victim.

‘Certain evidence inadmissible

‘330. In a proceeding, the making of an application for a disease test

order or the results of an analysis of a blood or urine sample under this part are not admissible in evidence.’.

Renumbering of ss 259-309

19. Sections 259 to 309—

renumber as sections 331 to 381.

Insertion of new s 371A (Power to seize potentially harmful things)

20. Chapter 9, as renumbered, part 5, before section 372, as renumbered—

insert—

‘Power to seize potentially harmful things

‘371A.(1) This section applies if a police officer finds a person in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person is inhaling, or is about to inhale, the thing.

‘(2) The police officer may ask the person to explain why the person is in possession of the potentially harmful thing.

‘(3) If the person does not give a reasonable explanation, the police officer may seize the potentially harmful thing.

‘(4) On the seizure of the potentially harmful thing, the thing is forfeited to the State.

‘(5) In this section—

“potentially harmful thing” means a thing—

- (a) that a person may lawfully possess; and
- (b) that is or contains a substance that may be harmful to a person if inhaled.

Examples—

1. Glue.

2. Paint.
3. A solvent.’.

Omission of ch 10 (as renumbered), pt 2, divs 3-5

- 21.** Chapter 10, as renumbered, part 2, divisions 3 to 5—
omit.

Renumbering of ss 318-336

- 22.** Sections 318 to 336—
renumber as sections 382 to 400.

Amendment of s 337 (Particular Acts do not apply to this division)

- 23.(1)** Section 337, ‘*Libraries and Archives Act 1988*’—
omit, insert—
‘Public Records Act’.
- (2)** Section 337—
renumber as section 401.

Renumbering of ss 338-355

- 24.** Sections 338 to 355—
renumber as sections 402 to 419.

Insertion of new ch 11 (as renumbered), pt 3

- 25.** After section 419, as renumbered—
insert—

‘PART 3—DEALING WITH THINGS IN THE POSSESSION OF POLICE SERVICE

‘Division 1—Preliminary

‘Application of pt 3

‘420.(1) This part applies to a thing that is lawfully in the possession of the police service (“**relevant thing**”), whether before or after the commencement of this section, because—

- (a) it was seized by a police officer; or
- (b) it was found by someone other than a police officer who gave it to a police officer as apparently lost property; or
- (c) it otherwise came into the possession of a police officer in the course of performing the officer’s functions.

‘(2) However, this part does not apply to—

- (a) a vehicle or animal that is seized under section 60;¹⁷ or
- (b) a sample of a person’s blood, urine or saliva or another substance taken or collected from a person’s body under chapter 8, part 3; or
- (c) a hair sample or mouth swab taken from a person under chapter 8, part 4 for DNA analysis; or
- (d) a blood or urine sample taken from a person under chapter 8, part 5; or
- (e) a specimen of blood or urine taken from or provided by a person under the Road Use Management Act, section 80.¹⁸

¹⁷ Section 60 (Removal of vehicles and animals from roads and other places)

¹⁸ Road Use Management Act, section 80 (Provisions with respect to breath tests and laboratory tests)

‘Object of pt 3

‘421. The object of this part is to ensure, as far as practicable, a relevant thing—

- (a) is retained by the police service only for as long as is reasonably necessary; and
- (b) is handled in an efficient, safe and accountable way.

‘Responsibilities of police officer taking possession of relevant thing

‘422.(1) A police officer who seizes or otherwise comes into possession of a relevant thing must ensure the thing is given to an appropriate property officer or delivered to a property point that is appropriate in the circumstances, as soon as reasonably practicable, unless—

- (a) the thing is earlier returned, destroyed or disposed of under this part; or
- (b) it is necessary to keep the thing for use during questioning or for an investigative procedure involving the thing.

‘(2) If the police officer keeps a thing under subsection (1)(b), the police officer must deliver the thing to an appropriate property officer or property point as soon as reasonably practicable after the reason for keeping it ends.

‘(3) Until the thing is delivered to the property officer or property point, the police officer is responsible for the safe keeping of the thing.

‘(4) The commissioner must—

- (a) ensure reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and
- (b) facilitate its lawful disposal or its return to its owner or the person who had lawful possession of it before it came into the possession of the police service.

‘(5) What are reasonable inquiries and efforts, must be decided having regard to the nature, condition and value of the relevant thing.

‘(6) Subsection (4) does not apply to the thing if the commissioner is satisfied it is inappropriate to return it to its owner or the person who had

lawful possession of it before it came into the possession of the police service.

Example for subsection (6)—

The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

Division 2—Return of seized things

‘Return of seized things

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

- (a) it is not required to be retained; and
- (b) it is lawful for the person to have possession of the thing.

‘(2) If appropriate, the police officer must take the steps reasonably necessary to minimise the need to retain the thing as evidence by, as soon as reasonably practicable—

- (a) photographing the thing or arranging for it to be photographed; or
- (b) arranging for any necessary test or examination of the thing; or
- (c) gathering any other available secondary evidence in relation to the thing seized.

‘(3) Despite subsection (1), a police officer may retain the thing for a reasonable time after it is seized if retention of the thing is necessary—

- (a) to prevent a person using the thing to cause harm to himself, herself or someone else; or
- (b) to prevent an offence or a breach of the peace happening; or
- (c) to prevent the thing being used for an act of domestic violence or associated domestic violence.

‘(4) This section does not apply to a thing that the commissioner is satisfied is inappropriate to return to its owner or the person who had lawful

possession of it before it was seized because of the nature or value of the thing or the circumstances of the offence to which it relates.

Examples for subsection (4)—

1. The commissioner may be satisfied it is not appropriate to return fibres taken from a carpet at a crime scene because the fibres have little or no value.

2. The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

‘Application by owner etc. for return of relevant things

‘424.(1) This section applies to a relevant thing—

- (a) that has been in the possession of the police service for at least 30 days; or
- (b) that is described in a notice given under section 439(4).¹⁹

‘(2) A person who claims to have a legal or equitable interest in the thing may apply to a magistrate for an order that the thing be delivered to the person.

‘(3) The person must give each of the following a copy of the application and notice of the day, time and place fixed for hearing the application—

- (a) the commissioner;
- (b) anyone else the person reasonably believes has a legal or equitable interest in the thing.

‘(4) The magistrate may order that the relevant thing be delivered to a person on the conditions, if any, the magistrate considers appropriate if satisfied—

- (a) the person may lawfully possess the thing; and
- (b) it is appropriate that the relevant thing be delivered to the person.

‘(5) However, the magistrate must not order the delivery of a relevant thing to the person if the magistrate is reasonably satisfied the thing—

¹⁹ Section 439 (Order for forfeiture of relevant things connected with offences)

- (a) may be evidence in a proceeding started in relation to the thing; or
- (b) is a thing used in or for manufacturing a dangerous drug; or
- (c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.

‘(6) This section does not apply to a relevant thing that is forfeited to the State under this or any other Act.

‘Application by police officer for order if ownership dispute

‘425.(1) This section applies if there is a dispute about the ownership of a relevant thing.

‘(2) A police officer may apply to a magistrate for an order declaring who is the owner of the thing.

‘(3) The police officer must give anyone the police officer reasonably believes has a legal or equitable interest in the thing a copy of the application and notice of the day, time and place fixed for hearing the application.

‘(4) The magistrate may make the order the magistrate considers appropriate.

‘(5) If the magistrate can not decide who owns the thing, the magistrate may make the orders the magistrate considers appropriate for the disposal of the thing.

‘Application for order in relation to seized things

‘426.(1) This section applies to a thing seized—

- (a) as evidence of the commission of an offence; or
- (b) to prevent a person using the thing to cause harm to himself, herself or someone else; or
- (c) to prevent an offence or a breach of the peace happening.

‘(2) Within 30 days after a police officer seizes the thing, the police officer must apply to a justice of the peace (magistrates court) or a magistrate (the “**issuer**”) for an order under section 427 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 its owner or the person who had lawful possession of the thing before it was seized; or
- (c) it has no intrinsic value; or

Example for subsection (2)(c)—

Samples of hair or blood taken from a crime scene that may be forensic evidence.

- (d) it is perishable and will perish before it can be returned to its owner or the person who had lawful 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 442 or another agency under an arrangement under section 443;²⁰ or
- (h) it is returned under section 423 or 424.²¹

‘(3) An application for an order under section 427 must also be made within 30 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 of the thing or the person who had lawful possession of the thing before it was seized is withdrawn.

‘(4) The application must be accompanied by any warrant under which

²⁰ Section 442 (Ministerial arrangements for transmission and return of seized things), section 443 (Commissioner may make arrangements)

²¹ Section 423 (Return of seized things) or 424 (Application by owner etc. for return of relevant thing)

the thing was seized.

‘(5) However, if no application is to be made because subsection (2)(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

‘427.(1) After considering the application, the issuer may, in relation to the seized thing, order—

- (a) that it be kept in the possession of a police officer until the end of—
 - (i) any investigation in relation to 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
- (e) for a thing seized for a reason mentioned in section 426(1)(b) or (c), that it be dealt with in the way decided by the commissioner; or
- (f) that it be disposed of or destroyed; or
- (g) that it be dealt with by way of a proceeding under section 424 or

425²² 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 the time for which a police officer may keep possession of documents seized as evidence.

‘Disposal of seized things at end of proceeding

‘**428.(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 section 424 or 425 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.

‘Commissioner to decide way of destruction or disposal

‘**429.(1)** This section applies if an order is made for the disposal or destruction of a thing under section 425, 427 or 428.

‘(2) Subject to any direction in the order, the commissioner must decide how the thing is to be disposed of or destroyed.

‘(3) 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.

²² Section 424 (Application by owner etc. for return of relevant things) or 425 (Application by police officer for order if ownership dispute)

2. The commissioner may give stolen clothes to a charitable organisation whose charter is to assist the poor.

‘Division 3—Dealing with dangerous drugs etc.

‘Application of div 3

‘430. This division applies if a police officer seizes a thing the police officer reasonably suspects is any of the following (“**drug evidence**”)—

- (a) a dangerous drug;
- (b) a thing intended for use, or that was used, in the commission of an offence against the *Drugs Misuse Act 1986*, part 2.²³

‘Destruction of drug evidence soon after seizure

‘431.(1) A police officer may destroy drug evidence where it is found or move drug evidence, or arrange for it to be removed, to another place where it can safely be destroyed if—

- (a) a police officer is satisfied it is not reasonably practicable to—
 - (i) to take it to a property point; or
 - (ii) to keep it at a police station; and
- (b) the police officer reasonably believes that unless it is destroyed there is a risk it may be used in the commission of an offence.

Example for paragraph (a)(i)—

It may be necessary to destroy a large plantation of cannabis sativa plants after taking samples of the plants because it is impracticable to transport them to a property point for storage and leaving them where they are may lead to them being used in the commission of an offence.

‘(2) Also, a police officer may destroy drug evidence where it is found or move drug evidence, or arrange for it to be removed, to another place where it can safely be destroyed if it may be dangerous to take it, or any part of it, to a property point or to keep it at a police station.

²³ *Drugs Misuse Act 1986*, part 2 (Drug trafficking)

‘(3) However, before destroying drug evidence under subsection (1) or (2), a police officer must—

- (a) photograph the drug evidence where it is found; and
- (b) for a dangerous drug, if practicable—
 - (i) weigh it, or for plants, count the number of plants; and
 - (ii) retain a representative sample of the dangerous drug.

‘(4) Subsections (1) and (2) apply even though—

- (a) a proceeding for an offence of which the drug evidence may be relevant has not been started or decided; and
- (b) notice of the proposed destruction of the drug evidence has not been given under section 432.

‘Destruction of dangerous drug after notice

‘432.(1) This section applies to a dangerous drug—

- (a) that is not destroyed under section 431 or forfeited under an order of a court under the *Drugs Misuse Act 1986*, section 32;²⁴ and
- (b) for which an analyst’s certificate has been given under the *Drugs Misuse Act 1986*.

‘(2) A police officer may give the person from whom a dangerous drug was seized—

- (a) a written notice in the approved form (“**destruction notice**”) stating—
 - (i) within 30 days after the notice is given, the person may give the commissioner a written notice requiring the commissioner to make a representative sample of the dangerous drug available to a stated appropriately qualified person (“**independent analyst**”) for analysis; and
 - (ii) the person must pay the costs of the independent analysis; and

²⁴ *Drugs Misuse Act 1986*, section 32 (Forfeiture of dangerous drugs)

(iii) if the person does not give the commissioner written notice within the 30 days, the commissioner may destroy the drug evidence; and

(b) a copy of the analyst's certificate.

'(3) If the person requires the commissioner to make a sample available to an independent analyst, the person must advise the commissioner in writing of that fact and the name and address of the analyst.

'(4) The commissioner may make a sample of the drug evidence available to the independent analyst for analysis within 7 days at a place decided by the commissioner and on the conditions the commissioner considers appropriate.

'(5) If the commissioner is not satisfied the independent analyst has the qualifications necessary to analyse the dangerous drug, the commissioner may require the person given the destruction notice to nominate another person to be an independent analyst within 30 days.

'(6) If the person does not give the commissioner a written notice nominating an independent analyst within the time allowed under subsection (2) or (5), the commissioner may destroy the dangerous drug in the way the commissioner considers appropriate.

'(7) If the commissioner makes a sample of the dangerous drug available to the independent analyst, the commissioner may destroy the dangerous drug at least 7 days after the sample is made available to the independent analyst, unless the person gives to the commissioner written notice disputing the analysis in the analyst's certificate given to the person under subsection (2)(b).

'Destruction of things used in the administration of a dangerous drug

'433.(1) If the commissioner is reasonably satisfied a thing seized—

- (a) has been used in the administration, consumption or smoking of a dangerous drug; and
- (b) is no longer required as evidence in a proceeding;

the commissioner may destroy the thing in a way that prevents the thing being used in the commission of an offence.

‘(2) If the commissioner disposes of a thing that is a hypodermic syringe or needle in a way required under the *Drugs Misuse Regulation 1987*, the thing is taken to have been destroyed.²⁵

‘Division 4—Dealing with weapons

‘Disposal of weapons

‘**434.(1)** At any time after the appointed day, a police officer may deliver a relevant thing that is a weapon that has not been forfeited to the State—

- (a) if a police officer is satisfied a person is the owner of the weapon, or would be lawfully entitled to possess it if that person complies with the *Weapons Act 1990*—
 - (i) to the owner or person lawfully entitled to possess it; or
 - (ii) if the owner or person lawfully 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 to a person under section 427 or 428²⁶—to that person.

‘(2) However, a weapon may be delivered to a person mentioned in subsection (1) only if that person satisfies the police officer who holds or has custody of the weapon that the person may lawfully possess the weapon.

‘(3) If the weapon has not been delivered to any person under subsection (1) within 3 months after the appointed day or the longer period the commissioner decides in a particular case, the weapon is forfeited to the State.

²⁵ *Drugs Misuse Regulation 1987*, section 9 (Prescribed procedures for the disposal of hypodermic syringes and needles).

²⁶ Section 427 (Orders issuer may make in relation to seized thing) or 428 (Disposal of seized thing at end of proceeding)

‘What is the appointed day for disposal of weapons under s 434

‘435. The “**appointed day**” for disposal of weapons is—

- (a) for a weapon seized because of a contravention or suspected contravention of the *Weapons Act 1990*, the later of the following—
 - (i) the day all proceedings relating to the offence or suspected offence are finally decided;
 - (ii) the day 6 months after the day the weapon was seized; or
- (b) otherwise, the day the weapon was seized.

‘Division 5—Dealing with other things

‘Perishable things

‘436.(1) This section applies to a relevant thing that is perishable if—

- (a) the thing can not be returned to its owner or the person who had lawful possession of it before it came into the possession of the police service; or
- (b) its owner or the person who had lawful possession of the thing before it came into the possession of the police service can not be contacted to obtain directions about how to deal with the thing.

‘(2) The commissioner may dispose of the thing in a way that—

- (a) does not cause an actual or apparent conflict of interest in the commissioner or someone in a position to influence how the thing may be disposed of; and

Example for subsection (2)(a)—

A conflict of interest may be apparent if a friend, relative or business associate of a person in a position to influence how a thing may be disposed of may benefit from the disposal of the thing.

- (b) benefits the community generally or a community group.

Example for subsection (2)(b)—

Vegetables that are suspected of being stolen may be given to a community

organisation running a kitchen to feed the homeless.

‘(3) If the commissioner reasonably suspects the relevant thing is unfit for human consumption or it is impracticable to dispose of the thing in a way that satisfies subsection (2), the commissioner must dispose of it in a way that does not cause danger to anyone or the community generally.

‘Division 6—Forfeiture

‘Application of div 6

‘437. This division applies to a relevant thing that has not been forfeited to the State.

‘Order for forfeiture of particular relevant things

‘438.(1) The commissioner may order the forfeiture to the State of a relevant thing that has been in the possession of the police service for at least 60 days.

‘(2) The commissioner may order the forfeiture of the relevant thing only if—

- (a) the commissioner is satisfied—
 - (i) the owner of the thing can not be found after reasonable inquiries; or
 - (ii) having regard to the nature, condition and value of the thing, it is not reasonable to make inquiries about its owner; or

Examples for paragraph (a)—

1. The owner of the thing has migrated to another country.
2. The thing is a small amount of liquor that does not have a high value.

- (b) the commissioner is unable, after making reasonable efforts, to return the thing to its owner.

Example for paragraph (b)—

The owner of the thing refuses to take possession of the thing.

‘(3) At least 30 days before the order for forfeiture may be made, the

commissioner must give notice to the owner in writing or, if the owner is not known, by advertisement in a newspaper circulating generally throughout the State that, unless the relevant thing is claimed, an order for its forfeiture to the State will be made under this section.

‘(4) Subsection (3) does not apply if the cost of giving the notice is more than the value of the relevant thing.

‘(5) This section does not apply to a relevant thing mentioned in section 439.

‘Order for forfeiture of relevant things connected with offences

‘**439.(1)** This section applies to a relevant thing if the commissioner is satisfied—

- (a) the thing has been used in the commission of an offence; or
- (b) it is necessary to retain the thing to prevent it being used in the commission of an offence; or
- (c) possession of the thing is an offence unless authorised, justified or excused by law.

‘(2) The commissioner may order the forfeiture to the State of the relevant thing.

‘(3) However, the commissioner may order the forfeiture of the relevant thing only if the commissioner is satisfied reasonable steps have been taken to give, a notice under subsection (4).

‘(4) The notice—

- (a) must be given to—
 - (i) the owner in writing, or if the owner is not known, by advertisement in a newspaper circulating generally throughout the State; or
 - (ii) the person who appeared to have possession of it before it was seized; and
- (b) must describe the relevant thing and state—
 - (i) that the thing may be forfeited to the State; and

- (ii) that an application may be made to a magistrate under section 424²⁷ for an order for the return of the thing; and
- (iii) that, if an application is not made to a magistrate within 28 days after the notice is given, the commissioner may order that the thing be forfeited to the State.

‘(5) Subsection (3) does not apply if the cost of giving the notice is more than the value of the relevant thing.

‘(6) If the person applies under section 424 to a magistrate, the commissioner may not order the forfeiture of the relevant thing, unless the magistrate refuses to order the delivery of the thing to the applicant or the application is withdrawn, whichever happens first.

‘Division 7—Dealing with forfeited things

‘Application of div 7

‘440.(1) This division applies to a thing in the possession of the police service that is forfeited, or ordered to be forfeited, to the State under this or any other Act.

‘(2) However, this part applies to a forfeited thing only after all proceedings relating to the offence or suspected offence for which the thing was forfeited are finally decided.

‘Dealing with forfeited things

‘441.(1) On the forfeiture of a thing to the State, the thing becomes the property of the State and may, subject to any direction given under the *Police Service Administration Act 1990*, section 4.6,²⁸ be dealt with by the commissioner as the commissioner considers appropriate.

‘(2) Without limiting subsection (1), the commissioner may destroy or

²⁷ Section 424 (Application by owner etc. for return of relevant things)

²⁸ *Police Service Administration Act 1990*, section 4.6 (Communications between Minister and commissioner)

dispose of the thing.

‘(3) If the thing is sold, it must be sold by auction and the proceeds of the sale are to be paid—

- (a) first, in meeting the expenses of the sale; and
- (b) second, in meeting the expenses of the seizure and storage of the thing; and
- (c) third, to the consolidated fund or, if the proceeds relate to a thing forfeited under section 438, the unclaimed moneys fund kept under the *Public Trustee Act 1978*.

‘(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 destruction or disposal.

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.

‘Division 8—Arrangements about relevant things

‘Ministerial arrangements for transmission and return of seized things

‘442.(1) The Minister may enter into arrangements with a Minister of State for 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, or a proceeding for 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 who seized

it, 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, or a proceeding for 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 relevant 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), unless it can lawfully be returned to its owner, is a thing for which an application may be made under section 426.²⁹

‘Commissioner may make arrangements

‘443. The commissioner may, under an arrangement between the commissioner and the chief executive of a department or the chief executive officer of another agency, transfer the possession of a relevant thing to the chief executive or chief executive officer if, in the circumstances, it would be appropriate for the thing to be dealt with under another Act.

Example—

It may be appropriate for the commissioner to transfer the possession of explosives to the chief executive of the department responsible for the administration of the *Explosives Act 1999* for safe keeping or destruction of the explosives.’.

Renumbering of ss 356-393

26. Sections 356 to 393—

renumber as sections 444 to 481.

²⁹ Section 426 (Application for order in relation to seized things)

Amendment of sch 1 (Acts not affected by this Act)

27. Schedule 1—

insert—

‘*Child Protection Act 1999*

Transport Operations (Road Use Management) Act 1995, section 80³⁰’.

Amendment of sch 3 (Acts amended after assent)

28.(1) Schedule 3, amendments of the Bail Act 1980, amendment 3, ‘under this section.’—

omit, insert—

‘under this section.

‘**(1B)** If either of the following happens, the police officer may release the person without bail—

- (a) a person charged with being drunk in a public place is released into the care of a person at a place of safety under the *Police Powers and Responsibilities Act 2000*, section 210;³¹
- (b) a person charged with a minor drugs offence within the meaning of the *Police Powers and Responsibilities Act 2000*, schedule 4 signs an agreement to attend a drug diversion assessment program under section 211³² of that Act.’.

(2) Schedule 3, amendments of the *Criminal Justice Act 1989*—

insert—

2. Section 140(1)—

omit, insert—

³⁰ *Transport Operations (Road Use Management) Act 1995*, section 80 (Provisions with respect to breath tests and laboratory tests)

³¹ *Police Powers and Responsibilities Act 2000*, section 210 (Additional case when arrest for being drunk in a public place may be discontinued)

³² *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

‘140.(1) The chairperson may delegate the chairperson’s powers under this Act or the *Police Powers and Responsibilities Act 2000*, chapter 11, part 2 (other than section 345(1)(c)), to a director of the commission.’

(3) Schedule 3, amendments of the *Domestic Violence (Family Protection) Act 1989*, amendment 3, ‘insert—’—

omit, insert—

‘omit, insert—’.

(4) Schedule 3, amendments of the *Environmental Protection Act 1994*, before amendment 1—

insert—

‘1A. Section 132(2)—

omit.’.

(5) Schedule 3, amendment of the *Jury Act 1995*, before amendment 1—

insert—

‘1A. Section 12(3), after ‘Subsection’—

insert—

‘(2)’.

(6) Schedule 3, amendments to the *Police Service Administration Act 1990—*

insert—

‘4A. Section 10.15—

omit.’.

(7) Schedule 3—

insert—

‘GAMING MACHINE AND OTHER LEGISLATION AMENDMENT ACT 1999

1. Section 85, definition “authorised person” as proposed to be inserted in section 123 of the *Gaming Machine Act 1991*, paragraph (e)—

omit.’.

Amendment of sch 4 (Dictionary)

29.(1) Schedule 4, definitions “**police officer**” and “**weapon**”—

omit.

(2) Schedule 4—

insert—

“**approving officer**” see section 173(2).

“**chapter 5 criminal activity**” see section 165.

“**chief executive (health)**” means the chief executive of the health department.

“**CJC officer**” means a person who is—

(a) an officer of the CJC under the *Criminal Justice Act 1989*, section 67; or

(b) an officer or employee of a declared law enforcement agency.

“**commissioned officer**”, for chapter 8, part 4, see section 307.

“**committee**”, for chapter 5, means the controlled operations committee.

“**Confiscation Act**” means the *Crimes (Confiscation) Act 1989*.

“**controlled activity**” see sections 190 and 191.

“**controlled operation**” see section 173.

“**controlled operations committee**” means the controlled operations committee established under section 167.

“covert operative” means a police officer or another person named in an approval under section 178 as a covert operative.

“disease test order” see section 322.

“DNA database” means an approved database in which the results of a DNA analysis under a law of the Commonwealth or a State is stored for use only for investigations being conducted by law enforcement agencies.

“DNA sample” see section 296.

“DNA sample notice” see section 308.

“DNA sampler”, for chapter 8, part 4, see section 297.

“drug diversion assessment program” means a drug diversion assessment program provided by, or conducted with the approval of, the chief executive (health).

“health department” means the department within which the *Health Act 1937* is administered.

“independent member”, of the controlled operations committee, means the member who is a retired District Court or Supreme Court judge.

“minor drugs offence”—

- (a) means an offence against the *Drugs Misuse Act 1986*, section 9, 10(1) or 10(2)(a) involving—
 - (i) possessing not more than 50 grams of cannabis sativa; or
 - (ii) possessing a thing for use, or that has been used, for smoking cannabis sativa; but
- (b) does not include an offence mentioned in paragraph (a) if the possession is an element of an offence against the *Drugs Misuse Act 1986* involving production or supply of cannabis sativa or trafficking in cannabis sativa.

“misconduct offence” means alleged or suspected criminal conduct that may be—

- (a) official misconduct under the *Criminal Justice Act 1989*; or
- (b) misconduct under the *Police Service Administration Act 1990*.

“nurse” means a person who is registered under the *Nursing Act 1992* as a registered nurse.

“otherwise unlawful activity” means an unlawful act or omission of a person for which—

- (a) apart from chapter 5, it would be unlawful for the person to do or omit; and
- (b) because of chapter 5, it would be lawful for the person to do or omit.

“place of safety” see section 210.

“police officer” includes—

- (a) for chapter 9, part 3—
 - (i) an aboriginal police officer; and
 - (ii) an island police officer; and
- (b) for chapter 5, part 2, a police officer of a police force or service of another State or the Commonwealth; and
- (c) other than for chapter 5, part 2, a police officer of any State or the Commonwealth who is, for the time being, performing duties for another police service.

“prescribed nurse” means a nurse who is employed in the health department.

“property officer” means—

- (a) a member of the police service appointed by the commissioner as a property officer; or
- (b) an officer of a government entity appointed as a property officer under an arrangement between the commissioner and the chief executive officer of the entity.

“property point” means a place lawfully used by the police service as a place for the storage of relevant things.

“Public Records Act” means—

- (a) until the commencement of the *Public Records Act 2000*,

section 14³³—the *Libraries and Archives Act 1988*; or

- (b) from the commencement of the *Public Records Act 2000*, section 14—the *Public Records Act 2000*.

“registrar-general” means the registrar-general under the *Registration of Births, Deaths and Marriages Act 1962*.

“relevant disease” means a communicable disease prescribed under a regulation.

“relevant thing”, for chapter 11, part 3, see section 420.

“restricted item” means an item prescribed as a restricted item under the *Weapons (Categories) Regulation 1997*.

“take”, for chapter 8, part 4 or 5, includes “collect”.

“weapon”—

- (a) for chapter 11, part 3—includes antique firearm and restricted item; and
- (b) otherwise—see *Weapons Act 1990*, section 5.34’.

(3) Schedule 4, definition “enforcement act”—

insert—

- ‘(j) the discontinuance of an arrest for a minor drugs offence under section 211;
- (k) the entry of a place to find out whether domestic violence is occurring, or has occurred, at the place.’.

(4) Schedule 4, definition “outer garment”, after ‘coat’—

³³ *Public Records Act 2000*, section 14 (Public authority must ensure particular records remain accessible)

³⁴ The *Weapons Act 1990*, section 5 defines ‘weapon’ as follows—

“weapon” means—

- (a) a firearm; or
- (b) another thing prescribed under a regulation; or
- (c) a thing that would be a weapon mentioned in paragraph (a) or (b), if it were not temporarily inoperable or incomplete; but does not include an antique firearm.

insert—

‘, shirt’.

(5) Schedule 4, definition “prescribed place”, paragraph (b)(xi)—
renumber as paragraph (b)(xii).

(6) Schedule 4, definition “prescribed place”, paragraph (b)—
insert—

‘(xi) a war memorial; or’.

(7) Schedule 4, definition “time out”, paragraph (k), from ‘for an examination’—

omit, insert—

‘for—

- (i) an examination of the person under this Act by a doctor or dentist; or
- (ii) the taking of a DNA sample by a DNA sampler; or
- (iii) the taking of a blood or urine sample under chapter 8, part 5, by a doctor or nurse.’.

PART 3—AMENDMENT OF DRUGS MISUSE ACT 1986

Act amended in pt 3

30. This part amends the *Drugs Misuse Act 1986*.

Amendment of s 32 (Forfeiture of dangerous drugs)

31.(1) Section 32(1), from ‘anything’ to ‘alleged to be,’—

omit, insert—

‘a thing, or any part of it, is any of the following.’.

(2) Section 32(3), ‘pursuant to subsection (1) shall be’—

omit, insert—

‘under subsection (1) or (3) is, unless the contrary is proved,’.

(3) Section 32(6)—

omit.

(4) Section 32(1A), (3) and (5)—

renumber as section 32(2), (6) and (9).

(5) Section 32(2)—

omit, insert—

‘(3) If, in a proceeding against a person for a charge of an offence against a provision of part 2, the person admits to a court either of the following in relation to a thing the charge alleges is or contains a dangerous drug, the court may order that the thing be forfeited to the State—

- (a) the identity and quantity of the dangerous drug;
- (b) the quantity, but not the identity of the thing alleged to be a dangerous drug.

‘(4) If the court makes an order on an application under subsection (1) or (3), in relation to a thing that is or contains a dangerous drug, the court must, in its order, make a finding of fact as to—

- (a) the identity of the dangerous drug; and
- (b) the quantity of the thing ordered to be forfeited.

‘(5) However, the court may not make an order of fact as to the identity of a dangerous drug unless, under subsection (3), the person charged admits the identity of the dangerous drug.’.

(6) Section 32(4)—

omit, insert—

‘(7) Subsection (6) applies in relation to an order made under subsection (1) on or after the commencement of this subsection only if a representative sample of the thing forfeited is retained for analysis and, if required, production before a court in a proceeding for a charge of an

offence to which the thing relates.

‘(8) If a court finds a person guilty of an offence against a provision of part 2, whether or not a conviction is recorded for the offence, any of the following that is alleged to be involved in the offence is forfeited to the State—

- (a) a dangerous drug for which an order was not made under subsection (1) or (3);
- (b) a chemical used or intended to be used in or for manufacturing a dangerous drug;
- (c) property contaminated by a chemical used in or for manufacturing a dangerous drug.’.

PART 4—AMENDMENT OF JUSTICES ACT 1886

Act amended in pt 4

32. This part amends the *Justices Act 1886*.

Amendment of s 39 (Power of court to order delivery of certain property)

33.(1) Section 39(1)(a), ‘the police or’—

omit.

(2) Section 39(1), ‘a police officer,’—

omit.

(3) Section 39—

insert—

‘**(6)** In this section—

“**public officer**”, other than in relation to a thing seized by a police officer that is in the possession of the crime commission or the criminal justice commission, does not include a police officer.’.

PART 5—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Act amended in pt 5

34. This part amends the *Juvenile Justice Act 1992*.

Amendment of s 19 (Police officer to consider alternatives to proceeding against child)

35. Section 19(1)—

insert—

‘(d) to offer the child the opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 211.³⁵’.

Amendment of s 226 (Preservation of confidentiality)

36.(1) Section 226(1)(b) and (c)—

renumber as section 226(1)(c) and (d).

(2) Section 226(1)—

insert—

³⁵ *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

‘(b) for the purpose of the *Police Powers and Responsibilities Act 2000*, section 211;³⁶ or’.

PART 6—AMENDMENT OF POLICE SERVICE ADMINISTRATION ACT 1990

Act amended in pt 6

37. This part amends the *Police Service Administration Act 1990*.

Amendment of s 10.1 (Improper disclosure of information)

38.(1) Section 10.1(1), after paragraph (a), second mention—
insert—

‘(aa) the information is about a person offered an opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 211³⁷ and the disclosure is made to the chief executive of the department within which the *Health Act 1937* is administered; or’.

(2) Section 10.1(1)(a) to (d), including section 10.1(1)(aa), as inserted—
renumber as section 10.1(1)(a) to (g).

³⁶ *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

³⁷ *Police Powers and Responsibilities Act 2000*, section 211 (Additional case when arrest for minor drugs offence may be discontinued)

PART 7—AMENDMENT OF PROSTITUTION ACT 1999

Act amended in pt 7

39. This part amends the *Prostitution Act 1999*.

Amendment of s 60 (Powers after entry)

40. Section 60(2), from ‘subsection (1)(b)’—

omit, insert—

‘subsection (1)(b), the *Police Powers and Responsibilities Act 2000*, chapter 10, part 2³⁸ applies to the document or thing as if it were seized under that Act.’

Amendment of s 75 (Exception to soliciting offences—police officers)

41. Section 75(1), from ‘written instructions’—

omit, insert—

‘an authority given under the *Police Powers and Responsibilities Act 2000*, chapter 5, part 3.³⁹’

Amendment of sch 3 (Amendment of other Acts and regulations)

42. Schedule 3, amendments of *Police Powers and Responsibilities Act 1997*—

omit.

³⁸ *Police Powers and Responsibilities Act 2000*, chapter 10 (Other standard safeguards), part 2 (Safeguards for things seized)

³⁹ *Police Powers and Responsibilities Act 2000*, chapter 5 (Controlled operations and controlled activities), part 3 (Controlled activities)

SCHEDULE

MINOR AMENDMENTS OF POLICE POWERS AND RESPONSIBILITIES ACT 2000

section 3

1. Section 29(2)(b), ‘163’—

omit, insert—

‘198’.

2. Section 32(3), ‘357’—

omit, insert—

‘447’.

3. Section 32(4), ‘357’—

omit, insert—

‘447’.

4. Section 79(2), ‘315’—

omit, insert—

‘424 or 425’.

5. Section 80(3), ‘315’—

omit, insert—

‘424 or 425’.

SCHEDULE (continued)

- 6. Section 163(1)(i), ‘356 or 357’—**
omit, insert—
‘444 or 445’.
- 7. Section 163(2), ‘chapter 6’—**
omit, insert—
‘chapter 7’.
- 8. Section 171(3), ‘chapter 6’—**
omit, insert—
‘chapter 7’.
- 9. Section 181(1), ‘180’—**
omit, insert—
‘217’.
- 10. Section 182(2)(b), ‘357’—**
omit, insert—
‘445’.
- 11. Section 183(1), ‘184’—**
omit, insert—
‘221’.
- 12. Section 186(1)(b), from ‘nominated by’—**
omit, insert—

SCHEDULE (continued)

‘nominated by that chief executive for the purpose, who holds an office within the department for which the chief executive has responsibility.’.

13. Section 187(1)(c), ‘165 or 166’—

omit, insert—

‘200 or 201’.

14. Section 187(2)(b), ‘chapter 6’—

omit, insert—

‘chapter 7’.

15. Section 188, ‘chapter 6’—

omit, insert—

‘chapter 7’.

16. Section 189(1)(a), ‘167’—

omit, insert—

‘202’.

17. Section 194, from ‘nominated by’—

omit, insert—

‘nominated by that chief executive for the purpose, who holds an office within the department for which the chief executive has responsibility.’.

18. Section 197(3), ‘192(b)—

omit, insert—

‘229(b)’.

SCHEDULE (continued)

19. Section 198(1), ‘197’—

omit, insert—

‘234’.

20. Section 204, ‘200’—

omit, insert—

‘237’.

21. Section 226(3), ‘227’—

omit, insert—

‘264’.

22. Section 228(1), ‘226 or 227(7)’—

omit, insert—

‘263 or 264(7)’.

23. Section 229(1), ‘226 and 227’—

omit, insert—

‘263 and 264’.

24. Section 231, heading, ‘212-216, 222 and 224’—

omit, insert—

‘249-253, 259 and 261’.

SCHEDULE (continued)

25. Section 231(1), ‘212 to 216, 222 and 224’—

omit, insert—

‘249 to 253, 259 and 261’.

26. Section 251, example 1, ‘163’—

omit, insert—

‘198’.

27. Section 262(b), ‘260 or 261’—

omit, insert—

‘332 or 333’.

28. Section 265, ‘357’—

omit, insert—

‘445’.

29. Section 280(2), ‘357’—

omit, insert—

‘445’.

30. Section 290(1)(b), ‘289’—

omit, insert—

‘361’.

SCHEDULE (continued)

31. Section 291(1), ‘290(2)(b)(i)’—

omit, insert—

‘362(2)(b)(i)’.

32. Section 293, ‘290’—

omit, insert—

‘362’.

33. Section 323(2), ‘279’—

omit, insert—

‘351’.

34. Section 333(e), ‘chapter 6’—

omit, insert—

‘chapter 7’.

35. Section 340(1), ‘339’—

omit, insert—

‘403’.

36. Section 352(2), ‘351’—

omit, insert—

‘415’.

SCHEDULE (continued)

37. Section 354(2), ‘339 or 349’—

omit, insert—

‘403 or 413’.

38. Section 355(1), ‘339 or 349’—

omit, insert—

‘403 or 413’.

39. Section 355(1), ‘354’—

omit, insert—

‘418’.

40. Section 381, ‘287’—

omit, insert—

‘359’.

41. Section 382(2), ‘299’—

omit, insert—

‘371’.

42. Schedule 1, ‘163 and chapter 6’—

omit, insert—

‘198 and chapter 7’.

SCHEDULE (continued)

43. Schedule 2, heading, ‘373’—

omit, insert—

‘461’.

44. Schedule 3, heading, ‘373’—

omit, insert—

‘461’.

45. Schedule 3, amendment 2 to Bail Act 1980, ‘chapter 6—

omit, insert—

‘chapter 7’.

46. Schedule 3, amendment 5 to Bail Act 1980, ‘165’—

omit, insert—

‘200’.

47. Schedule 3, amendment 9 to Bail Act 1980, ‘165’—

omit, insert—

‘200’.

48. Schedule 3, amendment 17 to Domestic Violence (Family Protection) Act 1989, ‘308’—

omit, insert—

‘380’.

SCHEDULE (continued)

49. Schedule 4, definition “arrest warrant”, ‘168’—

omit, insert—

‘203’.

50. Schedule 4, definition “assistant”, ‘301’—

omit, insert—

‘373’.

51. Schedule 4, definition “authorised person”, ‘chapter 8’—

omit, insert—

‘chapter 9’.

52. Schedule 4, definition “authorised person”, ‘273’—

omit, insert—

‘345’.

53. Schedule 4, definition “detention period”, ‘197(4)’—

omit, insert—

‘234(4)’.

54. Schedule 4, definition “detention period”, ‘200’—

omit, insert—

‘237’.

SCHEDULE (continued)

- 55. Schedule 4, definition “electronic screening”, ‘260 or 277’—**
omit, insert—
‘332 or 349’.
- 56. Schedule 4, definition “enforcement act”, paragraph (a) ‘chapter 8’—**
omit, insert—
‘chapter 9’.
- 57. Schedule 4, definition “enforcement act”, paragraphs (f) and (g), ‘chapter 6’—**
omit, insert—
‘chapter 7’.
- 58. Schedule 4, definition “entity”, ‘chapter 10’—**
omit, insert—
‘chapter 5 and in chapter 11’.
- 59. Schedule 4, definition “final nuisance direction”, ‘299’—**
omit, insert—
‘371’.
- 60. Schedule 4, definition “identifying particulars notice”, from ‘see’—**
omit, insert—
‘see section 272’.

SCHEDULE (continued)

- 61. Schedule 4, definition “initial nuisance direction”, ‘298’—**
omit, insert—
‘370’.
- 62. Schedule 4, definition “list of support persons and interpreters”, ‘230’—**
omit, insert—
‘267’.
- 63. Schedule 4, definition “noise abatement direction”, ‘288’—**
omit, insert—
‘360’.
- 64. Schedule 4, definition “notice to appear”, ‘177(2)’—**
omit, insert—
‘214(2)’.
- 65. Schedule 4, definition “prescribed authority”, ‘363’—**
omit, insert—
‘451’.
- 66. Schedule 4, definition “question”, ‘chapter 6’—**
omit, insert—
‘chapter 7’.

SCHEDULE (continued)

- 67. Schedule 4, definition “register of covert acts”, ‘339’—**
omit, insert—
‘402’.
- 68. Schedule 4, definition “register of enforcement acts”, ‘349’—**
omit, insert—
‘412’.
- 69. Schedule 4, definition “relevant person”, paragraph (d), ‘196’—**
omit, insert—
‘233’.
- 70. Schedule 4, definition “relevant person”, paragraphs (e) and (f)—**
omit, insert—
‘(e) for chapter 7, part 3—see section 246; and
(f) for chapter 8, part 3—see section 276.’.
- 71. Schedule 4, definition “removal order”, ‘193’—**
omit, insert—
‘230’.
- 72. Schedule 4, definition “special event”, ‘chapter 8’—**
omit, insert—
‘chapter 9’.

SCHEDULE (continued)

73. Schedule 4, definition “time out”, paragraph (a), chapter 6’—

omit, insert—

‘chapter 7’.

74. Schedule 4, definition “walk-through detector”, ‘chapter 8’—

omit, insert—

‘chapter 9’.

75. Schedule 4, definition “X-ray machine”, ‘chapter 8’—

omit, insert—

‘chapter 9’.