



Queensland

Police Powers and Responsibilities and Other Acts Amendment Act 2006

Act No. 26 of 2006



Queensland

Police Powers and Responsibilities and Other Acts Amendment Act 2006

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Police Powers and Responsibilities and Other Acts Amendment Act 2006

Act No. 26 of 2006

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

[Assented to 1 June 2006]

The Parliament of Queensland enacts—

Part 1 Preliminary

1 Short title

This Act may be cited as the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*.

2 Commencement

- (1) This Act, other than the following provisions, commences on a day to be fixed by proclamation—
 - (a) sections 3, 8 to 25, 31 to 37 and 53;
 - (b) section 85, other than to the extent it inserts new sections 510, 512 and 513;
 - (c) section 86, to the extent it inserts schedule 3B;
 - (d) section 87(2), to the extent it inserts the definitions *prescribed place* and *regulated place*;
 - (e) parts 3 and 4;
 - (f) sections 107, 108 and 109;
 - (g) schedule 1, amendments 7 and 8;
 - (h) schedule 2, to the extent it amends the following—
 - (i) the *Cross-Border Law Enforcement Legislation Amendment Act 2005*;
 - (ii) the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.
- (2) Sections 13 to 17 commence on 1 July 2006.
- (3) Sections 18 to 23 and schedule 1, amendments 7 and 8 commence immediately after the commencement of section 7 of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.

- (4) Sections 24 and 25 commence immediately after the commencement of section 14 of the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.
- (5) Sections 31 and 32 commence immediately after the commencement of schedule 1, amendment 8 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.
- (6) If this section commences before the commencement of section 12 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, sections 3, 33(1), 34(1), 35 and 36 and section 85, to the extent it inserts new sections 512 and 513, commence immediately after the commencement of section 12 of that Act.
- (7) However, if this section commences after the commencement of section 12 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, sections 3, 33(1), 34(1), 35 and 36 and section 85, to the extent it inserts new sections 512 and 513, are taken to have commenced immediately after the commencement of section 12 of that Act.
- (8) If this section commences before the commencement of section 51¹ of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, sections 107, 108 and 109 commence immediately after the commencement of section 51 of that Act.
- (9) However, if this section commences after the commencement of section 51 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, sections 107, 108 and 109 are taken to have commenced immediately after the commencement of section 51 of that Act.
- (10) If this section commences before the commencement of section 69 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, part 4 commences immediately after the commencement of section 69 of that Act.
- (11) However, if this section commences after the commencement of section 69 of the *Cross-Border Law Enforcement*

¹ *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 51 (Replacement of pt 2, div 5 (Witness anonymity))

Legislation Amendment Act 2005, part 4 is taken to have commenced immediately after the commencement of section 69 of that Act.

- (12) Sections 33(2) and (3), 34(2) to (6) and 86, to the extent it inserts schedule 3B, commence immediately after the commencement of sections 33(1) and 34(1).
- (13) Sections 85, to the extent it inserts section 510, and 87(2), to the extent it inserts the definitions *prescribed place* and *regulated place*, and part 3 commence on the date of assent.
- (14) Section 37 commences on the later of the following—
 - (a) the date of assent;
 - (b) the commencement of the *Corrective Services Act 2006*, section 112.²
- (15) Section 53 commences, or is taken to have commenced, immediately after the commencement of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 13.³

Part 2 **Amendment of Police Powers and Responsibilities Act 2000**

3 Act amended in pt 2 and sch 1 and references

- (1) This part and schedule 1 amend the *Police Powers and Responsibilities Act 2000*.
- (2) Also, a reference in this part or schedule 1 to—
 - (a) sections 127 and 131 of the *Police Powers and Responsibilities Act 2000* is a reference to the provisions as renumbered and relocated by the *Cross-Border Law*

² *Corrective Services Act 2006*, section 112 (Arresting prisoner unlawfully at large)

³ *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 13 (Amendment of s 373 (Assistance in exercising powers))

Enforcement Legislation Amendment Act 2005, schedule 1; or

- (b) sections 132, 135, 141, 197ZI and 197ZK is a reference to the provisions as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.
- (3) In addition, a reference in this part or schedule 1 to section 59LP, 59LQ, 59LS, 59LU, 59LX, 59LY, 59Q or 59ZI, chapter 2D or section 367A of the *Police Powers and Responsibilities Act 2000* is a reference to the provisions as inserted by the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.
- (4) Subsections (2) and (3) and this subsection expire immediately after the last amendment of the provisions mentioned in subsection (2) or (3) commences.

4 Amendment of s 20 (Power to enter etc. for relevant laws)

- (1) Section 20(5)—
renumber as section 20(6).
- (2) Section 20(4)—
omit, insert—
- ‘(4) Each of the following persons is taken for this section to be a licence holder under a relevant law—
 - (a) a person who is required under the *Drugs Misuse Act 1986*, section 43D to keep a register;⁴
 - (b) a person who is required under the Road Use Management Act, section 133 to keep a register;⁵
 - (c) a person who is required under the *Health Act 1937*, or a regulation under that Act, to make a record in relation to a sale by retail of a substance that is a prescribed item.

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

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

Note—

At the time of enactment of this subsection, the *Health (Drugs and Poisons) Regulation 1996* requires a person who sells particular poisons by retail to make a record relating to those sales. Those poisons include pseudoephedrine as an S3 poison within the meaning of that regulation. If pseudoephedrine as an S3 poison were declared to be a prescribed item, the person selling it would be taken under paragraph (c) to be a licence holder under a relevant law.

- ‘(5) Also, each of the following places is taken for this section to be a place used under a licence under a relevant law—
- (a) a place used by a person to carry out activities for which entries must be made in a register as mentioned in subsection (4)(a) or (b);
 - (b) a place used by a person to carry out activities for which records must be made as mentioned in subsection (4)(c).’.

5 **Amendment of s 28 (Prescribed circumstances for searching persons without warrant)**

- (1) Section 28(a)(vi), ‘the police officer reasonably suspects’—

omit, insert—

‘that’.

- (2) Section 28(a)—

insert—

‘(vii)evidence of the commission of an offence against the Criminal Code, section 469⁶ that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or

(viii)evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17;⁷’.

⁶ Criminal Code, section 469 (Wilful damage)

⁷ *Summary Offences Act 2005*, section 17 (Graffiti instrument)

6 Amendment of s 30 (Prescribed circumstances for searching vehicles without warrant)

- (1) Section 30, ‘the vehicle may have in it something’—
omit, insert—
‘there is something in the vehicle’.
- (2) Section 30(g), first dot point—
omit, insert—
‘• the *Racing Act 2002*’.
- (3) Section 30(j), ‘the police officer reasonably suspects’—
omit, insert—
‘that’.
- (4) Section 30(k)—
renumber as section 30(m).
- (5) Section 30—
insert—
‘(k) may be evidence of the commission of an offence against the Criminal Code, section 469⁸ that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or
(l) may be evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17;⁹ or’.

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

- (1) Section 33(b), after ‘an offence’—
insert—
‘, including an extradition offence’.

⁸ Criminal Code, section 469 (Wilful damage)

⁹ *Summary Offences Act 2005*, section 17 (Graffiti instrument)

- (2) Section 33(c)(ii), ‘, 318D’—
omit.

8 Insertion of new s 35A

Chapter 2, part 4, before section 36—
insert—

‘35A Application of pt 4

‘This part applies in relation to the following places (*regulated places*)—

- (a) public places;
- (b) prescribed places that are not also public places.’.

9 Amendment of s 37 (When power applies to behaviour)

- (1) Section 37(1), ‘prescribed place’—
omit, insert—
‘regulated place’.
- (2) Section 37(2), (3) and (4)—
renumber as section 37(3), (5) and (6).
- (3) Section 37(5), as renumbered by subsection (2), ‘prescribed place’—
omit, insert—
‘regulated place’.
- (4) Section 37—
insert—
- ‘(2) If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person’s behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in the part of the public place at or near where the person then is.’.
- (5) Section 37—
insert—

‘(4) However, subsections (1)(b) and (3) do not limit subsection (1)(a), (c) and (d).’.

10 Amendment of s 38 (When power applies to a person’s presence)

(1) Section 38(1), ‘prescribed place’—

omit, insert—

‘regulated place’.

(2) Section 38(2) and (3)—

renumber as section 38(3) and (5).

(3) Section 38—

insert—

‘(2) If the regulated place is a public place, subsection (1) applies in relation to a person at or near the public place only if the person’s presence has or had the effect mentioned in subsection (1)(a), (b) or (c) in the part of the public place at or near where the person then is.’.

(4) Section 38—

insert—

‘(4) However, subsections (1)(b) and (3) do not limit subsection (1)(a) and (c).’.

11 Amendment of s 39 (Direction may be given to person)

Section 39(3)—

omit, insert—

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

(a) leave the regulated place and not return or be within the regulated place within a stated reasonable time of not more than 24 hours;

(b) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours;

- (c) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.’.

12 Replacement of ss 40–41

Sections 40 and 41—

omit, insert—

‘40 Review

- ‘(1) The CMC must review the use by police officers of powers under this part and prepare a report on the review.
- ‘(2) The review must be started as soon as practicable after 31 December 2007.
- ‘(3) The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.
- ‘(4) In the course of preparing the report, the CMC must consult with the Minister.
- ‘(5) The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.’.

13 Amendment of s 50 (Power for regulating traffic)

- (1) Section 50, heading, after ‘regulating’—

insert—

‘vehicular and pedestrian’.

- (2) Section 50(1) and (2), ‘, signal or order’—

omit.

- (3) Section 50(3)—

omit, insert—

- ‘(3) Without limiting subsection (1), a police officer may act under that subsection if the police officer reasonably suspects an

emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic and pedestrians.

Examples for subsection (3)—

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

(4) Section 50(4), ‘or (3)’—

omit.

14 Amendment of s 51 (Stopping vehicles for prescribed purposes)

Section 51(1), after ‘a train’—

insert—

‘or a vehicle being pulled by an animal’.

15 Amendment of s 56 (Power to require vehicle inspections)

(1) Section 56(1)—

omit, insert—

‘(1) If a police officer reasonably suspects a vehicle may not comply with a transport Act, the police officer may require either of the following to have the vehicle inspected at a stated reasonable time and place—

- (a) the owner of the vehicle;
- (b) if there is a registered operator for the vehicle and the registered operator, apart from being the registered operator, is not the owner of the vehicle—the registered operator for the vehicle.’

(2) Section 56—

insert—

‘(4) In this section—

owner, of a vehicle, has the meaning given under the Road Use Management Act, schedule 4.’

16 Amendment of s 57 (Power to prohibit use of vehicles)

(1) Section 57(1), after ‘owner’—

insert—

‘or, if there is a registered operator for the vehicle and the registered operator, apart from being the registered operator, is not the owner of the vehicle, its registered operator,’.

(2) Section 57(5), after ‘owner’—

insert—

‘or registered operator’.

(3) Section 57(8), definition *owner*, after ‘Act’—

insert—

‘, schedule 4’.

17 Amendment of s 58 (Power to prohibit persons driving)

(1) Section 58(1), ‘driver’—

omit, insert—

‘person in control’.

(2) Section 58(2), ‘driver’—

omit, insert—

‘person in control’.

(3) Section 58(2), ‘a vehicle’—

omit, insert—

‘the vehicle’.

18 Amendment of s 59LP (When application to be heard—vehicle related offence)

Section 59LP—

insert—

‘(3) However, if, after an application for a forfeiture order in relation to a vehicle related offence is made—

(a) the person to whom the application relates is found not guilty of 1 of the vehicle related offences or the proceeding for 1 of the offences is discontinued; and

(b) no motor vehicle has previously been impounded for a vehicle related offence committed within the relevant period on an application for an impounding order made in relation to that person for an offence to which the application for the forfeiture order relates;

the relevant court may hear and decide the application for the forfeiture order as if it were an application for an impounding order.

‘(4) An application to which subsection (3) applies is taken, for divisions 2 and 3, to be an application for an impounding order.’.

19 Amendment of s 59LQ (When application to be heard—motorbike noise order offence)

Section 59LQ—

insert—

‘(3) However, if, after an application for a forfeiture order in relation to a motorbike noise order offence is made—

(a) the person to whom the application relates is found not guilty of 1 of the motorbike noise order offences or the proceeding for 1 of the offences is discontinued; and

(b) no motorbike has previously been impounded for a motorbike noise order offence committed within the relevant period on an application for an impounding order made in relation to that person for an offence to which the application for the forfeiture order relates;

the relevant court may hear and decide the application for the forfeiture order as if it were an application for an impounding order.

- ‘(4) An application to which subsection (3) applies is taken, for divisions 2 and 3, to be an application for an impounding order.’.

20 Amendment of s 59LS (Consideration of application for forfeiture order)

Section 59LS(2)—

omit, insert—

- ‘(2) If—
- (a) under subsection (1), the relevant court orders the impounding of the motor vehicle to which the application relates; and
 - (b) a relevant court has previously made an impounding order under section 59LR for a vehicle related offence committed within the relevant period and forming the basis of the application;

the motor vehicle is impounded under subsection (1) for the vehicle related offence giving rise to the application for the forfeiture order and not for a vehicle related offence to which the impounding order under section 59LR relates.’.

21 Amendment of s 59LU (Consideration of application for forfeiture order)

Section 59LU(2)—

omit, insert—

- ‘(2) If—
- (a) under subsection (1), the relevant court orders the impounding of the motorbike to which the application relates; and
 - (b) a relevant court has previously made an impounding order under section 59LT for a motorbike noise order

offence committed within the relevant period and forming the basis of the application;

the motorbike is impounded under subsection (1) for the motorbike noise order offence giving rise to the application for the forfeiture order and not for the motorbike noise order offence to which the impounding order under section 59LT relates.’.

22 Amendment of s 59O (Powers for enforcing court order)

(1) Section 59O(2), ‘seize’—

omit, insert—

‘impound, or if the motor vehicle is forfeited to the State, take possession of,’.

(2) Section 59O—

insert—

‘(3) If the impounding order or forfeiture order authorises a police officer to enter a place for giving effect to the order as mentioned in subsection (2), power to enter the place includes, and is taken always to have included, power to re-enter the place as often as is reasonably necessary for the purpose.’.

23 Amendment of s 59Q (Release of motor vehicle impounded under section 59F)

(1) Section 59Q, heading, ‘**section 59F**’—

omit, insert—

‘**s 59F**’.

(2) Section 59Q(3), after ‘business hours’—

insert—

‘on a business day’.

(3) Section 59Q(4), definition *business hours*, ‘on any day’—

omit.

24 Amendment of s 59ZI (Power for regulating traffic)

- (1) Section 59ZI, heading, ‘traffic’—
omit, insert—
‘animal traffic’.
- (2) Section 59ZI(1), ‘, signal or order’—
omit.
- (3) Section 59ZI(1), ‘traffic’—
omit, insert—
‘animal traffic’.
- (4) Section 59ZI(2)—
omit, insert—
- ‘(2) Without limiting subsection (1), a police officer may act under that subsection if the police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct animal traffic and pedestrians.’.
- (5) Section 59ZI(3), ‘, signal or order’—
omit.

25 Insertion of new ch 2D, pt 3

Chapter 2D, after section 59ZI—

insert—

‘Part 3 Stopping animals for prescribed purposes

‘59ZJ Stopping animals for prescribed purposes

- ‘(1) A police officer may require the person in control of an animal, whether or not the animal is pulling a vehicle, to stop the animal for a prescribed purpose.
- ‘(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

- ‘(3) The prescribed purposes are as follows—
- (a) for enforcing a transport Act;
 - (b) to check whether the vehicle the animal is pulling or the person in control of the animal is complying with a transport Act;
 - (c) for monitoring or enforcing a liquor provision;
 - (d) for enforcing a contravention of law involving putting, dropping and leaving litter on a public place.
- ‘(4) For monitoring or enforcing a liquor provision, the police officer may exercise any of the following powers if the police officer reasonably suspects the exercise of the power may be effective for the purpose—
- (a) if the animal is pulling a vehicle—enter the vehicle and remain in it for the time reasonably necessary for the purpose;
 - (b) search anything on the animal or in the vehicle;
 - (c) photograph or film—
 - (i) the animal and anything on the animal; and
 - (ii) if the animal is pulling a vehicle, the vehicle or anything in it;
 - (d) if the animal is pulling a vehicle, inspect, measure or test the vehicle or anything in it;
 - (e) take samples of anything on the animal or in the vehicle;
 - (f) seize anything the officer reasonably suspects is evidence of the commission of an offence against a liquor provision;
 - (g) copy a document in something on the animal or in the vehicle;
 - (h) move the vehicle’s load.
- ‘(5) In this section—
- in*, for a vehicle, includes on the vehicle.

liquor provision means any of the following provisions—

- (a) the *Liquor Act 1992*, section 168B, 169 or 171;¹⁰
- (b) the *Aboriginal Communities (Justice and Land Matters) Act 1984*, section 35 or 45;¹¹
- (c) the *Community Services (Torres Strait) Act 1984*, section 101 or 110A.¹²

monitor, a liquor provision, means check whether the provision is being complied with.

‘59ZK Power to enable effective and safe exercise of other powers

- ‘(1) A police officer may require the person in control of an animal pulling a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this part in relation to the animal or vehicle.
- ‘(2) Also, a police officer may require the person in control of an animal pulling a vehicle, or a person who is on or has just left the animal or is in or on or has just left the vehicle, to do or not to do anything the police officer reasonably believes is necessary—
 - (a) to enable the police officer to safely exercise a power under a transport Act in relation to the animal or vehicle;
or
 - (b) to preserve the safety of the police officer, the person or other persons.

10 *Liquor Act 1992*, section 168B (Prohibition on possession of liquor in restricted area), 169 (Authority required for sale) or 171 (Carrying or exposing liquor for sale)

11 *Aboriginal Communities (Justice and Land Matters) Act 1984*, section 35 (Possession or consumption of alcohol in or on dry place) or 45 (Offences relating to homemade alcohol)

12 *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place) or 110A (Offences relating to homemade alcohol)

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

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

26 Amendment of s 71 (Order in search warrant about documents)

Section 71, after ‘magistrate’—

insert—

‘or a judge’.

27 Insertion of new s 71A

After section 71—

insert—

‘71A Order in search warrant about information necessary to access information stored electronically

- ‘(1) If the issuer is a magistrate or a judge, the issuer may, in a search warrant order the person in possession of access information for a storage device in the person’s possession or to which the person has access at the place—
- (a) to give a police officer access to the storage device and the access information necessary for the police officer to be able to use the storage device to gain access to stored information that is accessible only by using the access information; and
 - (b) to allow a police officer given access to a storage device to do any of the following in relation to stored information stored on or accessible only by using the storage device—
 - (i) use the access information to gain access to the stored information;
 - (ii) examine the stored information to find out whether it may be evidence of the commission of an offence;

- (iii) make a copy of any stored information that may be evidence of the commission of an offence, including by using another storage device.

‘(2) In this section—

access information means information of any kind that it is necessary for a person to use to be able to access and read information stored electronically on a storage device.

storage device means a device of any kind on which information may be stored electronically.

stored information means information stored on a storage device.’.

28 Amendment of s 73 (What search warrant must state)

(1) Section 73(1)(a)—

omit, insert—

‘(a) a police officer may exercise search warrant powers under the warrant; and’.

(2) Section 73(3), from ‘a magistrate’ to ‘section 71’—

omit, insert—

‘a magistrate or a judge makes an order under section 71 or 71A’.

29 Amendment of s 74 (Powers under search warrant)

(1) Section 74(1), ‘has the following powers’—

omit, insert—

‘may lawfully exercise the following powers’.

(2) Section 74(1)(j), after ‘relates’—

insert—

‘, whether or not the thing is seized under the warrant’.

30 Amendment of s 108 (What production order must state)

(1) Section 108(2)—

renumber as section 108(3).

(2) Section 108—

insert—

‘(2) Power to enter a place under a production order includes, and is taken always to have included, power to re-enter the place as often as is reasonably necessary for enforcing the order.’

31 Amendment of s 127 (What covert search warrant must state)

Section 127—

insert—

‘(g) a report in relation to the warrant must be made under section 131 and to whom the report must be made.’

32 Replacement of s 131 (Report on covert search)

Section 131—

omit, insert—

‘131 Report on covert search

‘(1) A police officer to whom a covert search warrant is issued, or who is primarily responsible for executing a covert search warrant, must make a report as required under this section.

‘(2) The report must be made to the Supreme Court judge who issued the warrant or to the public interest monitor as stated in the warrant.

‘(3) The report must be made within 7 days after the warrant is executed.

‘(4) If a report is given to the public interest monitor, the monitor may refer the report to a Supreme Court judge for the purpose of an order being made under subsection (5).

‘(5) If—

- (a) the report is made to a Supreme Court judge; or
- (b) the public interest monitor refers the report to a Supreme Court judge;

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

- ‘(6) On receiving a report, the judge may order that any thing seized under the warrant and any photograph taken during the search—
 - (a) be held by a police officer until any proceeding in which the thing may be evidence ends; or
 - (b) be dealt with in the way the judge orders.’.

33 Amendment of s 132 (Object of ch 5)

- (1) Section 132, ‘offences’—

omit, insert—

‘serious indictable offences’.

- (2) Section 132, ‘serious indictable offences’—

omit, insert—

‘controlled activity offences’.

- (3) Section 132—

insert—

- ‘(2) In this chapter—

controlled activity offence means—

- (a) a seven year imprisonment offence; or
- (b) an indictable offence mentioned in schedule 2;¹³ or
- (c) an indictable or simple offence mentioned in schedule 3B.¹⁴

13 Schedule 2 (Relevant offences for controlled operations and surveillance device warrants)

14 Schedule 3B (Additional controlled activity offences)

34 Amendment of s 135 (Authorised controlled activities)

- (1) Section 135(1)(a), from ‘an offence’—
omit, insert—
‘a serious indictable offence against a person; and’.
- (2) Section 135(1)(a), ‘a serious indictable offence’—
omit, insert—
‘a controlled activity offence’.
- (3) Section 135(1)(b)(i)—
omit, insert—
‘(i) 1 or more meetings between the police officer and a person, whether or not the meetings were the result of a written or oral communication with the person;’.
- (4) Section 135(2), after ‘inspector’—
insert—
(a *senior police officer*)’.
- (5) Section 135(4) and (5)—
renumber as section 132(6) and (7).
- (6) Section 135—
insert—
‘(4) However, the senior police officer may authorise a police officer to engage in a controlled activity only if, having regard to the nature or extent of the relevant controlled activity offence, authorising a controlled activity is appropriate in the particular circumstances.
(5) The authority must be written and state—
 - (a) the controlled activity the police officer is authorised to engage in; and
 - (b) the period, of not more than 7 days, for which the authority is in force.’.

35 Amendment of s 141 (Relationship to other laws and matters)

Section 141—

insert—

- ‘(8) In this section—
function includes power.’.

36 Amendment of s 197ZK (Relationship to other laws and matters)

Section 197ZK—

insert—

- ‘(9) In this section—
insert—
function includes power.’.

37 Amendment of s 199 (Arrest of escapees etc.)

Section 199(2)—

omit, insert—

- ‘(2) Also, it is lawful for a police officer to arrest, without warrant, a prisoner who is unlawfully at large within the meaning of the *Corrective Services Act 2006*, section 112.¹⁵
- ‘(3) Also, a police officer has the same powers as a corrective services officer has under a warrant under the *Corrective Services Act 2006*, section 112.’.

38 Amendment of s 203 (Arrest warrant application)

- (1) Section 203(2) and (3)—

renumber as section 203(3) and (5).

- (2) Section 203—

¹⁵ *Corrective Services Act 2006*, section 112 (Arresting prisoner unlawfully at large)

insert—

‘(2) The police officer may apply for the warrant whether or not a proceeding has been started against the person by complaint and summons or notice to appear.’.

(3) Section 203—

insert—

‘(4) If the application—

(a) relates to an offence other than an indictable offence;
and

(b) is made because the applicant reasonably believes proceeding or continuing to proceed against the person named in the application by complaint and summons or notice to appear would be ineffective;

the application must state the belief and the reasons for the belief.’.

39 Amendment of s 204 (Issue of arrest warrant)

After section 204(b), after ‘ineffective’—

insert—

‘, including because the person can not currently be located or served with a complaint and summons or notice to appear for the offence’.

40 Insertion of new s 205A

Chapter 6, part 2, after section 205—

insert—

‘205A Compliance with limitation of proceedings

‘(1) This section applies to an arrest warrant issued under section 204(b).

- ‘(2) For the *Justices Act 1886*, section 52¹⁶ or another provision of an Act that imposes a limitation of proceedings for the offence by reference to when a complaint was made for the offence or to when proceedings for the offence are started, a complaint is taken to be made, and the proceedings started, when the warrant is issued.’

41 Insertion of new s 207A

Chapter 6, part 4, before section 208—

insert—

‘207A Effect of release under pt 4

‘If an arrested person is released under this part, any charge of an offence for which the arrested person is released is discontinued.’

42 Amendment of s 211 (Additional case when arrest for minor drugs offence may be discontinued)

- (1) Section 211(1)(c), (d) and (e)—

renumber as section 211(1)(d), (e) and (f).

- (2) Section 211(1)—

insert—

‘(c) the person has not previously been sentenced to serve a term of imprisonment for an offence against the *Drugs Misuse Act 1986*, section 5, 6 or 8;¹⁷ and

- (3) Section 211(4), (5) and (6)—

omit, insert—

- ‘(4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.

- ‘(5) When making the offer, the police officer must give—

¹⁶ *Justices Act 1886*, section 52 (Limitation of proceedings)

¹⁷ *Drugs Misuse Act 1986*, section 5 (Trafficking in dangerous drugs), 6 (Supplying dangerous drugs) or 8 (Producing dangerous drugs)

- (a) the person; and
 - (b) if a support person is present when the offer is made, the support person;
- an oral or written explanation of the consequences of agreeing to attend a drug diversion assessment program.
- ‘(6) If the person agrees, the person must sign an agreement to attend and complete a drug diversion assessment program.
 - ‘(7) The agreement must include a provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—
 - (a) the person’s attendance at, and completion of, the program; or
 - (b) if the person failed to attend or complete the program—the person’s failure to attend or complete the program.
 - ‘(8) The police officer must—
 - (a) give the person a written requirement to attend and complete a drug diversion assessment program in accordance with the agreement; and
 - (b) inform the person that failure to comply with the requirement is an offence against section 445.¹⁸
 - ‘(9) Also, the police officer must give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.
 - ‘(10) 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.
 - ‘(11) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the police officer is satisfied subsections (6) and (8) have been complied with.’.

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

43 Amendment of s 214 (Notice to appear may be issued for offence)

(1) Section 214(4)—

renumber as section 214(5).

(2) Section 214—

insert—

‘(4) However, a notice to appear for an offence against the Road Use Management Act may be served on a person by registered post if it is served as provided for in the *Justices Act 1886*, section 56(2)(a) or (b).¹⁹

Note—

The *Justice Act 1886*, section 56(2)(a) and (b) authorises service in some cases at an address stated in a driver licence or a current certificate of registration for a motor vehicle.’.

44 Amendment of s 219 (Notice to appear equivalent to a complaint and summons)

(1) Section 219(3)—

omit, insert—

‘(3) If a prescribed police officer issues and serves a notice to appear on a person under section 225(2)(b), the police officer who arrested the person, and not the prescribed police officer, is taken to have started the proceeding against the person.’.

(2) Section 219—

insert—

‘(5) In this section—

prescribed police officer means a prescribed police officer under the *Bail Act 1980*, section 7.’.

¹⁹ *Justices Act 1886*, section 56 (Service of summonses)

45 Amendment of s 220 (Court may order immediate arrest of person who fails to appear)

- (1) Section 220(6)—
renumber as section 220(7).
- (2) Section 220(2)—
omit, insert—
- ‘(2) A document purporting to be a copy of the notice to appear signed by the police officer who served it, and stating the following is evidence of what it states—
- (a) if the notice to appear was served personally—
- (i) the date it is served; and
- (ii) when and where it was served;
- (b) if the notice to appear is served by registered post under section 214(4)—
- (i) the notice to appear was posted to the address stated in the notice by registered post; and
- (ii) when and where the notice to appear was posted; and
- (iii) the registered post identification number for the envelope containing the notice to appear.’.
- (3) Section 220—
insert—
- ‘(6) An adult who is arrested under a warrant issued under subsection (1)(b) is taken, for section 225, to have been arrested for the offence stated in the notice to appear.’.

46 Amendment of s 224 (Duty of police officer after arrest etc. of person)

Section 224(2)—

insert—

- ‘(f) is arrested under section 198(2) and is later released under section 208 without having been charged with the offence for which the person was arrested.’.

47 Amendment of s 229 (Application of pt 2)

(1) Section 229(a)—

omit, insert—

‘(a) is lawfully arrested for an indictable offence, including if the person is arrested under section 198(2) for questioning the person about the offence or investigating the offence.’.

(2) Section 229(b), ‘an offence’—

omit, insert—

‘a charge of an offence’.

(3) Section 229, example, ‘*Example*’—

omit, insert—

‘*Examples*’.

48 Amendment of s 318ZZB (Evidentiary provision)

(1) Section 318ZZB(1)—

omit, insert—

‘(1) A certificate signed by the commissioner and stating any of the following is evidence of what it states—

(a) on a stated day and at a stated time a stated police officer authorised the performance of a stated forensic procedure on a stated person;

(b) on a stated day and at a stated time a stated police officer or a stated watch-house officer used a stated device to generate a digital image of a fingerprint, footprint or palm print from a stated person;

(c) a stated police officer was on a stated day an authorised examiner;

(d) a stated person was on a stated day a DNA sampler;

(e) how a stated thing taken from a stated person as the result of the performance of a stated forensic procedure was handled and stored;

- (f) a stated person took or sent a stated thing taken as the result of the performance of a forensic procedure from a stated place to another stated place;
- (g) a stated person received a stated thing taken as the result of the performance of a forensic procedure at a stated place;
- (h) a certificate given under the *Evidence Act 1977*, section 95A²⁰ relates to a stated DNA sample taken from a stated person.

Note for subsection (1)(b)—

See section 397J for the power of a watch-house officer to take a person's identifying particulars.'

- (2) Section 318ZZB(2), '10 business days—
omit, insert—
 '20 business days'.
- (3) Section 318ZZB(3), '3 business days'—
omit, insert—
 '15 business days'.

49 Amendment of s 371AB (Powers for reportable deaths)

- (1) Section 371AB(4), after 'The officer may'—
omit, insert—
 'search for and'.
- (2) Section 371AB(5) and (6)—
renumber as section 371AB(6) and (7).
- (3) Section 371AB—
insert—
- '(5) However, a police officer may not search the place under subsection (4) if the police officer reasonably believes the death was from natural causes.'

²⁰ *Evidence Act 1977*, section 95A (DNA evidentiary certificate)

50 Insertion of new ch 9, pt 5, div 1 hdg

Chapter 9, part 5, before section 371A—

insert—

‘Division 1 Potentially harmful things’.

51 Insertion of new ch 9, pt 5, div 2, hdg

Chapter 9, part 5, before section 372—

insert—

‘Division 2 Other miscellaneous powers’.

52 Amendment of s 372A (Police actions after domestic violence order is made)

(1) Section 372A(4), ‘subsection (3)(a)’—

omit, insert—

‘subsection (4)(a)’.

(2) Section 372A(4) and (5)—

renumber as section 372A(5) and (6).

(3) Section 372A(2) and (3)—

omit, insert—

‘(2) If the respondent was not in court when the court made the domestic violence order, the clerk of the court must give the order to a member of the police service at the police station nearest the place where the respondent lives.

‘(3) The officer in charge of the police station must ensure a police officer gives the order to the respondent as soon as practicable.

‘(4) The police officer who gives the order to the respondent must—

(a) if the order is given to the respondent at the respondent’s place of residence—take all steps necessary to ensure the respondent’s weapons licence and weapon are seized immediately; and

- (b) in any other case—make arrangements to ensure the respondent’s weapons licence and weapon are surrendered to a police officer as soon as practicable.’.

53 Amendment of s 373 (Assistance in exercising powers)

- (1) Section 373(5) and (6), as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 13—
renumber as section 373(7) and (8).
- (2) Section 373—
insert—
- ‘(5) Also, if the stated action is to help the police officer search the place, the assistant may search the place to the extent authorised by the police officer whether or not a police officer is present while the assistant is searching the place.
- ‘(6) However, the assistant may not help search a dwelling unless a police officer is present while the assistant helps in the search.’.

54 Insertion of new ss 377B–377C

Chapter 9, part 5, after section 377A—
insert—

‘377B Power to examine seized things

‘To remove doubt, it is declared that a power to seize a thing under this Act includes and always has included—

- (a) power to examine the thing; and
(b) power to arrange for someone else to examine the thing.

‘377C Extent of power to examine seized things

‘Without limiting section 377B, power to examine a thing seized under this Act includes, and always has included, a power to do something that is reasonably necessary for, or as part of, a scientific or other investigative procedure involving

the thing, even though doing the thing may damage the thing or destroy it.

Examples—

- performing an analysis involving the thing
- making an appraisal of the thing
- inspecting the thing
- perusing the thing
- scanning the thing
- sifting the thing’.

55 Replacement of s 380 (Receipt for seized property)

Section 380—

omit, insert—

‘380 Receipt for seized property

- ‘(1) If a police officer seizes anything under this Act or a warrant, the police officer must, as soon as is reasonably practicable after seizing the thing—
- (a) if the person from whom it is seized is present—give or cause to be given to the person a receipt for the thing; or
 - (b) if the occupier of the premises is not present—leave a receipt for the thing in a conspicuous place.
- ‘(2) However, if the police officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (1), but only for so long as—
- (a) the police officer continues to have the reasonable suspicion; and
 - (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep it under observation.
- ‘(3) The receipt may be for a single thing or for all things seized from the person or the place.

- ‘(4) Also, the receipt must describe the thing seized and include any other information required under the responsibilities code.
- ‘(5) This section does not apply if the police officer reasonably believes—
- (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned; or
 - (c) the thing has no value other than as evidence of the commission of an offence.

Examples for subsection (5)(c)—

blood, saliva, semen, hair, impressions, paint, glass, fibres, ballistic items, fire debris, vehicle identification plates, trace evidence’.

56 Amendment of s 387 (Removal of clothing for search)

Section 387(1), from ‘outer clothing’—

omit, insert—

‘outer clothing from the upper or lower part of the body.’.

57 Amendment of s 390 (If video cameras monitor place where person is searched)

- (1) Section 390(1), after ‘is searched’—

insert—

‘*(place of search)*’.

- (2) Section 390(2)—

renumber as section 390(3).

- (3) Section 390—

insert—

- ‘(2) However, if, for safety or operational reasons, a video camera used to monitor the place of search can not be turned off without turning off a video camera used to monitor another place, the monitor for the video camera for the place of search must, if it is reasonably practicable, be turned off or used to monitor another place while the person is being searched.’.

58 Amendment of s 391 (Safeguards for directions or requirements)

- (1) Section 391(1), heading, and subsection (1)—
omit, insert—

‘391 Safeguards for oral directions or requirements

- ‘(1) This section applies if a police officer gives someone an oral direction or makes an oral requirement under this Act.’.
- (2) Section 391(3), ‘a reasonable’—
omit, insert—
‘a further reasonable’.

59 Insertion of new ch 11, pt 1, div 1, hdg

Chapter 11, part 1, before section 396—
insert—

**‘Division 1 Persons in custody at
watch-houses’.**

60 Amendment of s 397 (Transfer of persons in watch-houses)

- (1) Section 397(c), (d) and (e)—
renumber as section 397(d), (e) and (f).
- (2) Section 397—
insert—
‘(c) to a court cell; or’.
- (3) Section 397—
insert—
- ‘(2) In this section—
court cell means a place attached to or near a court that is used for detaining prisoners of the court.

Note—

For the power to hold persons who are not prisoners of the court in a court cell, see the *Corrective Services Act 2006*, section 310.’.

61 Insertion of new ch 11, pt 1, div 2

Chapter 11, part 1, after section 397—

insert—

‘Division 2 Watch-house officer’s functions and powers

‘Subdivision 1 Functions

‘397A Functions of watch-house officers

- ‘(1) A watch-house officer has the functions and powers conferred on a watch-house officer by this Act.
- ‘(2) Subsection (1) applies subject to any directions of the commissioner or the watch-house manager for the watch-house and the terms of the person’s appointment that are consistent with any Act applicable to a watch-house officer.
- ‘(3) To remove doubt, it is declared that a watch-house officer is not taken to be a police officer merely because the watch-house officer has, under this chapter, some of the same functions and powers as a police officer.
- ‘(4) Also, this division does not limit the powers of a police officer to do something a police officer may otherwise do under this Act in relation to a person in custody at a watch-house.

‘Subdivision 2 Powers for screening of entrants to watch-houses

‘397B Power to require reasons for entry to watch-houses

‘A watch-house officer may require an entrant to a watch-house to state the entrant’s reason for being in, or about to enter, the watch-house.

‘397C Use of electronic screening devices in watch-houses

- ‘(1) This section applies if the system for the security of a watch-house involves the use of 1 or more of the following electronic screening devices—
- (a) a walk-through detector;
 - (b) an X-ray machine;
 - (c) a hand held scanner.
- ‘(2) A watch-house officer may ask the entrant to do 1 or more of the following—
- (a) to walk through a walk-through detector;
 - (b) to pass the entrant’s belongings through an X-ray machine;
 - (c) to allow the watch-house officer to pass a hand held scanner in close proximity to the entrant;
 - (d) to allow the watch-house officer to pass a hand held scanner in close proximity to the entrant’s belongings.

‘397D Watch-house officer may ask entrant to remove outer garment etc.

- ‘(1) This section applies if—
- (a) a watch-house officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant’s belongings, whether or not the entrant or belongings have been subjected to electronic screening; and

- (b) the watch-house officer tells the entrant the reasons for making the request.
- ‘(2) The watch-house officer may ask the person to do 1 or more of the following—
- (a) allow the watch-house officer to inspect the entrant’s belongings;
 - (b) remove 1 or more outer garments worn by the entrant as stated by the watch-house officer and allow the watch-house officer to inspect the garments;
 - (c) remove all articles from the entrant’s clothing and allow the watch-house officer to inspect them;
 - (d) open an article for inspection and allow the watch-house officer to inspect it;
 - (e) open a vehicle or a part of it for inspection and allow the watch-house officer to inspect it;
 - (f) remove an article from the vehicle as specified by the watch-house officer and allow the watch-house officer to inspect it.
- ‘(3) A watch-house officer may touch a garment the entrant is wearing only if the watch-house officer is the same sex as the entrant.
- ‘(4) In this section—
- inspect*, an article, includes handle the article, open it and examine its contents.

‘397E Direction by watch-house officer to leave watch-house

‘A watch-house officer may direct an entrant to leave a watch-house immediately, and to take the entrant’s belongings out of the watch-house, if the entrant fails—

- (a) to state the person’s reasons for being in or about to enter the watch-house; or
- (b) to allow a watch-house officer to exercise a power under section 397C or 397D.

‘397F Seizure of proscribed things

‘A watch-house officer may seize a proscribed thing found in the possession of a person in a watch-house, unless the person is lawfully in possession of it in the course of the person’s trade, business or calling.

‘397G Refusal of entry to and removal from watch-house

- ‘(1) This section applies if a person fails to comply with a request made or a direction given under this subdivision or fails to satisfy a watch-house officer that the person has a good and lawful reason to be in a particular watch-house.
- ‘(2) If the person is in the watch-house, the watch-house officer may remove the person from the watch-house.
- ‘(3) If the person is about to enter the watch-house, the watch-house officer may prevent the person from entering the watch-house.

‘Subdivision 3 Powers relating to persons in custody in or reporting to watch-house

‘397H Watch-house officer may require person to state name and address

- ‘(1) Section 32, to the extent it applies to prescribed circumstances mentioned in section 33 that are circumstances in which a police officer may exercise a power under this Act in relation to a person at a watch-house applies to a watch-house officer in the same way as it applies to a police officer.²¹
- ‘(2) For section 32, a reference in section 33 to a police officer includes a reference to a watch-house officer.

²¹ Section 32 (Person may be required to state name and address), section 33 (Prescribed circumstances for requiring name and address)

‘397I Watch-house officer may search person in custody at watch-house

- ‘(1) A watch-house officer may search and re-search a person to whom chapter 8 applies if the person is in custody at a watch-house.
- ‘(2) A watch-house officer may seize from the person anything found during the search that the watch-house officer reasonably suspects may provide evidence of the commission of an offence.
- ‘(3) Also, the watch-house officer may take and retain, while the person is in custody—
 - (a) anything that may endanger anyone’s safety, including the person’s safety; or
 - (b) anything that may be used for an escape; or
 - (c) anything else the watch-house officer reasonably considers should be kept in safe custody while the person is in custody.

‘397J Watch-house officer may take identifying particulars of person at watch-house

- ‘(1) A provision of chapter 8A that authorises a police officer to take the identifying particulars of a person, generally or in the following circumstances, is taken also to authorise a watch-house officer to take the identifying particulars of a person in those circumstances—
 - (a) the person is in custody at a watch-house;
 - (b) the person reports to the watch-house to enable a police officer to take the person’s identifying particulars under an identifying particulars notice or an order of a court.
- ‘(2) The provision applies to the watch-house officer in the same way as it applies to a police officer.
- ‘(3) Also, the watch-house officer is taken to be a qualified person for chapter 8A for taking identifying particulars.
- ‘(4) A provision of this Act that applies to a police officer who is taking the identifying particulars of a person applies to a

watch-house officer in the same way as it applies to a police officer.

‘397K Commissioner may authorise watch-house officer to take DNA samples of person at watch-house

- ‘(1) This section applies to a watch-house officer only if the commissioner is satisfied the watch-house officer—
 - (a) has the necessary experience or expertise to be able to take DNA samples; or
 - (b) has satisfactorily completed a course of training approved by the commissioner for the purpose.
- ‘(2) The commissioner may authorise the watch-house officer to take DNA samples from—
 - (a) a person in custody at a watch-house; or
 - (b) a person who reports to the watch-house to enable a police officer to take the person’s identifying particulars under an identifying particulars notice or an order of a court.
- ‘(3) Also, sections 318ZH and 318ZI apply to the watch-house officer while performing the functions of a qualified person for taking a DNA sample.

‘397L Power to use force against individual at watch-house

- ‘(1) It is lawful for a watch-house officer exercising or attempting to exercise a power under this Act against a person at a watch-house to use reasonably necessary force to exercise the power.
- ‘(2) Also, it is lawful for a watch-house officer to use reasonably necessary force to prevent a person in custody at a watch-house from escaping from lawful custody.
- ‘(3) The force a watch-house officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person’s death.

‘397M Power to use force—transfer etc. of person in custody to or from court cell or other place

- ‘(1) It is lawful for a watch-house officer who is authorised by a watch-house manager to transfer a person in custody to a court cell to use reasonably necessary force—
- (a) to transfer a person in custody from the watch-house to a court cell; or
 - (b) to transfer a person in custody from a court cell to a watch-house; or
 - (c) to ensure a person in custody in a court cell appears before a court and is returned to the court cell if the person is not otherwise released; or
 - (d) to ensure a person in custody does not escape from lawful custody while the person is being transferred to or held in the court cell, while in court, or while being returned to the watch-house.
- ‘(2) Also, it is lawful for a watch-house officer who is authorised by a watch-house manager for the purpose to escort a person in custody to use reasonably necessary force—
- (a) to escort a person in custody to a place other than a watch-house to enable the person to receive medical, dental, optical or other health related treatment; and
 - (b) to escort a person in custody from a place where the person is taken to receive medical, dental, optical or other health related treatment to the watch-house; and
 - (c) to ensure a person in custody does not escape from lawful custody while the person is being escorted to or from the watch-house and while the person is receiving any necessary treatment at the place to which the person is taken under escort.
- ‘(3) The force a watch-house officer may exercise under this section—
- (a) includes force that is reasonably necessary—
 - (i) to prevent someone else from helping the person in custody escape from lawful custody; and

- (ii) to prevent someone the watch-house officer reasonably considers should not be given access to the person in custody from gaining access to the person in custody; and
- (b) does not include force likely to cause grievous bodily harm to a person or the person's death.

'Subdivision 4 Provisions about exercise of particular powers

'397N Search of persons

'The provisions of this Act applying to a search by a police officer of a person in custody, including the power to seize anything found during the search, apply, with necessary changes, to the search by a watch-house officer of a person in custody at a watch-house in the exercise of a power under this part.

'397O Property seized during search etc.

- '(1) This section applies in relation to property seized by a watch-house officer at a watch-house, whether under section 397F or because of a search of a person in custody (*seized property*).
- '(2) The provisions of this Act stating the responsibilities of a police officer in relation to seized property apply, with necessary changes, to the watch-house officer who seized the property.

'397P Giving directions and making requirements

- '(1) This section applies if a watch-house officer who is exercising a power of a police officer because of this part in relation to an entrant to a watch-house or a person in custody at a watch-house—
 - (a) gives the person a direction; or
 - (b) make a requirement of the person.

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

Maximum penalty—40 penalty units.

- ‘(3) Section 391 applies to the giving of a direction or the making of the requirement in the same way as it applies to a police officer when giving an oral direction or making an oral requirement.

‘397Q Making entries in registers

- ‘(1) This section applies if—

- (a) a watch-house officer does something under this part; and
- (b) the act were done by a police officer, the act would be an enforcement act that the police officer would have to enter in the register of enforcement acts under part 2.

- ‘(2) The watch-house officer must make the entry.

‘397R Responsibilities code

‘If a provision of the responsibilities code applies to a police officer in relation to a function or power also conferred on a watch-house officer under this part, the provision also applies, with necessary changes, to the watch-house officer in relation to the function or power.

‘397S Custody continues while person in custody is being transferred or escorted by watch-house officer

‘To remove doubt, it is declared that a person in the custody of a watch-house manager at a watch-house does not stop being in custody of the watch-house manager only because—

- (a) the person is being transferred by a watch-house officer to or from a court cell; or
- (b) the person is being escorted by a watch-house officer to or from a place other than a watch-house including, but not limited to, for receiving necessary health care.’.

62 Amendment of s 415 (Persons to be given copy of information in register)

- (1) Section 415(2), after ‘about the act’—

insert—

‘to the extent it describes the actions taken or information directly obtained while doing the enforcement act.’.

- (2) Section 415, example, ‘*Example*’—

omit, insert—

‘*Examples*’.

- (3) Section 415, after the example—

insert—

² Information about the name of a complainant or informant or medical information obtained from a person other than the person to whom the enforcement act was done is not information that describes the actions taken by the person doing the enforcement act.’.

63 Amendment of s 416 (Restriction on disclosure of certain information)

- (1) Section 416(4), ‘Despite subsection (1)’—

omit, insert—

‘However’.

- (2) Section 416(4), from ‘chief executive officer’, first mention, to ‘subsection (2)’—

omit, insert—

‘chief executive officer under section 415 for information to which this section applies that is the subject of a direction given under subsection (2)’.

64 Amendment of s 420 (Application of pt 3)

- (1) Section 420(2)(b)—

renumber as section 420(2)(c).

- (2) Section 420(2)(a)—

omit, insert—

- ‘(a) a vehicle that is impounded under chapter 2B or 11A or seized under section 59Y;²² or
 - (b) an animal seized under section 60;²³ or’.
- (3) Section 420(3), first appearing, to (5)—
renumber as section 420(3) to (6).

65 Insertion of new ss 422A–422B

Part 3, division 1, after section 422—

insert—

‘422A Particular provision about handling animals in the possession of the police service

- ‘(1) This section applies to a relevant thing that is in the possession of the police service if the relevant thing is an animal.
- ‘(2) The police service must handle the animal in an efficient, safe and accountable way including by keeping the animal in a way that has appropriate regard to—
 - (a) the animal’s welfare and the welfare of other animals in the possession of the police service at the place where the animal is kept; and
 - (b) relevant animal husbandry practices.
- ‘(3) In this section—
animal, includes offspring of an animal, born while the animal is in the possession of the police service.

22 Chapter 2B (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences) or 11A (Provisions about evading police officers) or section 59Y (Removal of vehicles from roads and other places)

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

‘422B Forfeiture in particular cases

‘If this part applies to a thing and the commissioner is satisfied the thing has no value, the thing is forfeited to the State.’.

66 Replacement of ch 11, pt 3, div 2, hdg

Chapter 11, part 3, division 2, heading—
omit, insert—

‘Division 2 Return of relevant things’.

67 Amendment of s 423 (Return of seized things)

(1) Section 423, heading and subsections (1) and (2)—
omit, insert—

‘423 Return of relevant things

- ‘(1) Unless a justice otherwise orders, a police officer must return a relevant thing to the owner of the thing or the person who had lawful possession of the thing before it came into the possession of the police service if the police 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 the thing is evidence of the commission of an offence and a police officer considers it 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.’.

- (2) Section 423(3), after ‘subsection (1),’—
insert—
‘if a police officer seized the relevant thing.’
- (3) Section 423(4), ‘to a thing’—
omit, insert—
‘to a relevant thing’.
- (4) Section 423(4), after ‘it was seized’—
insert—
‘or came into the possession of the police service’.

68 Insertion of new s 423A

After section 423—

insert—

‘423A Application by owner etc. for return of relevant thing

- ‘(1) This section applies to a relevant thing—
- (a) that has been in the possession of the police service for at least 30 days and is not the subject of an application under section 424; or
 - (b) that is described in a notice given under section 439(4).²⁴
- ‘(2) A person who claims to have a legal or equitable interest in the relevant thing may apply in writing to the commissioner for the return of the thing to the person or for the delivery of the thing to someone else named in the application as the person to whom the thing may be delivered (the *nominee*).
- ‘(3) The commissioner may require the applicant to give to the commissioner the additional information the commissioner considers reasonably necessary to enable the commissioner to properly consider the application.

²⁴ Section 439 (Order for forfeiture of relevant things connected with offences)

- ‘(4) After considering the application and any additional information given to the commissioner under subsection (3), the commissioner may—
 - (a) return the thing to the applicant; or
 - (b) deliver the thing to the nominee as requested by the applicant; or
 - (c) refuse to return the thing.
- ‘(5) However, the commissioner may only return a thing under subsection (4) if the commissioner is satisfied—
 - (a) the applicant may lawfully possess the thing; and
 - (b) it is appropriate that the thing be delivered to the person.
- ‘(6) If the commissioner proposes to deliver the relevant thing to the applicant’s nominee, the commissioner must also be satisfied that the nominee may lawfully possess the thing.’.

69 Replacement of s 424 (Application by owner etc. for return of relevant things)

Section 424—

omit, insert—

‘424 Application by owner etc. for court order for return of relevant thing

- ‘(1) This section applies to a relevant thing—
 - (a) that has been in the possession of the police service for 30 days and is not returned under section 423A; or
 - (b) that is described in a notice given under section 439(4).
- ‘(2) However, this section does not apply to a relevant thing that is forfeited to the State under an Act.
- ‘(3) A person who claims to have a legal or equitable interest in the relevant thing may apply to a magistrate for an order that the thing be returned to the person or to someone else named in the application as the person to whom the thing may be delivered (the *nominee*).

- ‘(4) 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.
- ‘(5) The magistrate may order that the relevant thing be returned 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 thing be returned to the person.
- ‘(6) If the magistrate proposes to order that the relevant thing be delivered to the applicant’s nominee, the magistrate must also be satisfied that the nominee may lawfully possess the thing.
- ‘(7) The magistrate must not order the return of a relevant thing to the person or the person’s nominee if the magistrate is reasonably satisfied the thing—
- (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.’.

70 Amendment of s 425 (Application by police officer for order if ownership dispute)

Section 425(1)—

omit, insert—

- ‘(1) This section applies if there is a dispute about the ownership of a relevant thing, whether the dispute is between—
- (a) two or more persons, each of whom claims to be the owner of the thing; or

- (b) a police officer and a person who claims to be the owner of the thing.’.

71 Amendment of s 426 (Application for order in relation to seized things)

Section 426(2)(h)—

omit, insert—

‘(h) it is returned under section 423, 423A or 424.²⁵’.

72 Amendment of s 427 (Orders issuer may make in relation to seized thing)

- (1) Section 427(1), after ‘issuer’—

insert—

‘under section 426’.

- (2) Section 427(2), after ‘issuer’, first mention—

insert—

‘under section 426’.

- (3) Section 427(2), as amended—

renumber as section 427(3).

- (4) Section 427—

insert—

- ‘(2) Also, if the seized thing is an animal, the issuer under section 426 may order—

- (a) if the issuer is satisfied the animal is breeding stock—that the animal be held by a named person until the end of the proceeding for the charge of an offence in which the animal is evidence; or

25 Section 423 (Return of relevant things), 423A (Application by owner etc. for return of relevant thing) or 424 (Application by owner etc. for court order for return of relevant thing)

- (b) if the issuer is satisfied the animal is not breeding stock and the ownership of the animal can not be decided—that the animal be sold in the way directed by the issuer and the proceeds of the sale, after paying any costs of the sale, be paid to the consolidated fund.’.

73 Insertion of new ss 427A–427D

After section 427—

insert—

‘427A Cost recovery for animal held by commissioner under order under s 427

- ‘(1) This section applies if, because of an order under section 427(2), an animal in the possession of the police service is held by the commissioner until the end of a proceeding for a charge of an offence in which the animal is evidence.
- ‘(2) If the person who appears to be the owner of the animal is known, the commissioner may, by letter of demand, require the person to pay to the commissioner within a stated reasonable time, of at least 28 days, the commissioner’s stated reasonable costs of keeping the animal.
- ‘(3) The commissioner must not give the person the letter of demand unless the commissioner first gives the person written notice of the commissioner’s intention to require the person to pay the costs and a reasonable time, of at least 14 days, to state why the person should not be required to pay the costs.
- ‘(4) If—
- (a) after considering any representations made by the person, the commissioner gives the person the letter of demand; and
- (b) the person fails to pay the amount stated in the letter of demand within the time stated in the letter of demand;
- the amount payable becomes a debt payable to the State and may be recovered in a court having jurisdiction for the amount.
- ‘(5) The letter of demand must inform the person—

- (a) of the consequences of failing to reply to the letter of demand; and
 - (b) that the person may appeal against the letter of demand to a Magistrates court.
- ‘(6) Nothing in this section stops the owner of an animal voluntarily surrendering ownership of the animal to the State under section 427B.
- ‘(7) In this section—
animal, includes offspring of an animal, born while the animal is in the possession of the police service.

‘427B Voluntary surrender of animal to State

- ‘(1) A person who is given a letter of demand under section 427A may agree to surrender the animal to which the letter of demand relates to the State.
- ‘(2) The agreement must be written and witnessed by a person who may witness a statutory declaration.
- ‘(3) If the State agrees to the surrender of the animal—
- (a) the animal becomes the property of the State; and
 - (b) the commissioner may sell or dispose of the animal in the way the commissioner considers appropriate.
- ‘(4) If the commissioner sells the animal, the proceeds of the sale after paying any costs of the sale must be applied as follows—
- (a) in payment of the commissioner’s costs of keeping the animal while in the possession of the police service;
 - (b) in payment of any balance to the consolidated fund.

‘427C Appeal if letter of demand given under s 427A

- ‘(1) Within 28 days after being given a letter of demand under section 427A, a person dissatisfied with the demand may appeal to a Magistrates Court against the demand.
- ‘(2) Subsection (1) applies whether or not the amount stated in the letter of demand is more than the maximum amount that may

be recovered in a personal action in the civil jurisdiction of a Magistrates Court.

- ‘(3) The appeal must be started by—
 - (a) filing a written notice of appeal with the Magistrates Court; and
 - (b) serving a copy of the notice on the commissioner.
- ‘(4) On the filing of the notice of appeal, section 427A(4) stops having effect.

‘427D Deciding appeal

- ‘(1) In deciding the appeal, the Magistrates Court—
 - (a) is not bound by the rules of evidence; and
 - (b) must comply with natural justice.
- ‘(2) The Magistrates Court may—
 - (a) confirm the commissioner’s decision; or
 - (b) set aside the commissioner’s decision; or
 - (c) set aside the commissioner’s decision and substitute another decision the court considers appropriate.
- ‘(3) If the Magistrates Court confirms the commissioner’s decision, section 427A(4) has effect in relation to the confirmed decision as if the date for payment of the amount required to be paid under the letter of demand were a date that is 28 days after the date of the Magistrates Court’s decision.
- ‘(4) If the Magistrates Court substitutes, for the commissioner’s decision, another decision requiring the payment of an amount—
 - (a) the amount payable must be paid within 28 days of the decision; and
 - (b) if any part of the amount is not paid, section 427A(4), to the extent it relates to the recovery of an unpaid amount, applies to the amount.’.

74 Replacement of ch 11, pt 3, div 3

Chapter 11, part 3, division 3—

omit, insert—

**‘Division 3 Dealing with controlled drugs,
dangerous drugs etc.**

‘Subdivision 1 Preliminary

‘430 Application of div 3

‘This division applies if—

- (a) a police officer seizes drug matter; or
- (b) drug matter otherwise comes into the possession of the police service.

‘431 Definition for div 3

‘In this division—

drug matter means—

- (a) a controlled drug under the *Health Act 1937*; or
- (b) a controlled substance under the *Drugs Misuse Act 1986*; or
- (c) a dangerous drug; or
- (d) a thing intended for use, or that was used, in the commission of a drug offence.

**‘Subdivision 2 General provisions about
destruction of drug matter**

‘432 Destruction of drug matter soon after it is seized etc.

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

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

Example for paragraph (a)—

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

- ‘(2) Also, a police officer may destroy drug matter where it is found, or move it, or arrange for it to be moved 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.
- ‘(3) Drug matter that is a hypodermic syringe or needle and is disposed of in a way required under the *Drugs Misuse Regulation 1987* is taken to have been destroyed.²⁶
- ‘(4) This section applies even though—
 - (a) a proceeding for an offence in which the drug matter may be relevant has not been started or, if started, has not been decided; and
 - (b) any notice of the proposed destruction of the drug matter that is required to be given under section 433D has not been given.

‘433 Steps police officer must take before destroying drug matter under s 432

- ‘(1) Before destroying drug matter under section 432, a police officer must photograph the drug matter where it is found.

²⁶ *Drugs Misuse Regulation 1987*, section 3 (Prescribed procedures for the disposal of hypodermic syringes and needles)

- ‘(2) For drug matter other than a thing intended for use, or that was used, in the commission of a drug offence, the police officer must, if practicable—
 - (a) weigh the drug matter, or for plants, count the number of plants; and
 - (b) retain a representative sample of the drug matter.
- ‘(3) This section does not apply to drug matter if section 433A applies to the drug matter.

‘433A Alternative to destruction if drug matter is thing used in the commission of a drug offence

- ‘(1) This section applies despite section 432.
- ‘(2) If the commissioner is reasonably satisfied drug matter in the possession of the police service is a thing used or intended for use in the commission of a drug offence that may be destroyed under section 432, the commissioner may direct that the thing first be photographed and then disposed of in the way the commissioner considers appropriate instead of destroying it under section 432.

Example—

The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.

‘Subdivision 3 Destruction of drug matter if notice required

‘433B Application of sdiv 3

‘This subdivision applies to drug matter that is not destroyed under subdivision 2.

‘433C Definitions for sdiv 3

‘In this subdivision—

analyst's certificate means a certificate of a kind mentioned in the *Drugs Misuse Act 1986*, section 128.²⁷

destruction notice see section 433D.

drug matter does not include a thing intended for use, or that was used, in the commission of a drug offence.

independent analyst see section 433E.

'433D Destruction notice may be given to person

- '(1) A police officer may give a person the police officer reasonably suspects has committed an offence in which drug matter is involved a written notice under this section (***destruction notice***).
- '(2) A destruction notice given to a person whose name and location are known must be in the approved form.
- '(3) However, if the person's name and location are not known or the person can not be located, the destruction notice may be given by making the information required to be stated in the approved form available on the police service website to the extent the information is known.
- '(4) A destruction notice given to a child under subsection (3) must not identify the child but must be given in a way that is enough for the child or the child's lawyer to identify the notice as relating to the child and the offence of which the drug matter is evidence.
- '(5) Also, a destruction notice given to a person under subsection (3) is taken to have been given to the person as soon as it may be viewed by a person using the Internet, whether or not the person to whom the notice relates knows the notice has actually been made accessible.

'433E What destruction notice must state

'A destruction notice in relation to particular drug matter must state the following—

²⁷ *Drugs Misuse Act 1986*, section 128 (Analyst's certificate)

- (a) that the commissioner possesses an analyst's certificate relating to the drug matter;
- (b) what the analyst's certificate states the drug matter is;
- (c) that within 30 days after the notice is given, the person may, by written notice (*analysis request*), require the commissioner to make a representative sample of the drug matter available to an appropriately qualified person (*independent analyst*) for analysis;
- (d) that the analysis request must state the name, address and qualifications of the independent analyst;
- (e) that if the person gives the commissioner an analysis request and the commissioner makes a representative sample of the drug matter available under section 433F for analysis by an independent analyst, the person must pay the costs of the independent analyst's analysis of the representative sample;
- (f) that, if the person does not give the commissioner an analysis request within the 30 days, the commissioner may destroy the drug matter.

'433F Making sample of drug matter available

- '(1) If, after receiving an analysis request, the commissioner is satisfied the independent analyst named in the analysis request has the qualifications necessary to analyse the drug matter, the commissioner may make a representative sample of the drug matter available to the independent analyst for analysis, within 5 business days, at a time and place decided by the commissioner and on the conditions the commissioner considers appropriate.
- '(2) However, if the commissioner is not satisfied the independent analyst has the qualifications necessary to analyse the drug matter, the commissioner may require the person who made the analysis request to name another independent analyst within 30 days.
- '(3) If, within the 30 days, the person names another independent analyst and the commissioner is satisfied the independent analyst has the qualifications necessary to analyse the drug

matter, the commissioner may make a representative sample available to the independent analyst under subsection (1).

‘433G When drug matter may be destroyed

- ‘(1) The commissioner may destroy drug matter to which a destruction notice relates if the person given the destruction notice does not name an independent analyst to analyse a representative sample within the time stated in the destruction notice or under 433F.
- ‘(2) Also, if the commissioner makes a representative sample of drug matter available to an independent analyst under section 433F(1), the commissioner may destroy the drug matter from which the representative sample was made available at the end of 10 business days after the day the commissioner made the representative sample available to the independent analyst.
- ‘(3) However, if, within the 5 business days after the independent analyst completes the analysis, the person to whom the destruction notice is given gives to the commissioner a written notice disputing the analysis in the analyst’s certificate, the commissioner must not destroy the drug matter until any proceeding for the offence to which the analyst’s certificate relates is finally decided.
- ‘(4) This section does not limit section 443I.²⁸.

75 Amendment of s 435 (What is the appointed day for disposal of weapons under s 434)

- (1) Section 435(b)—
renumber as section 435(c).
- (2) Section 435—
insert—
 ‘(b) for a weapon given to a police officer under the *Weapons Act 1990*, section 29B because of the making of a

28 Section 443I (Keeping dangerous drug for use in police service training)

domestic violence order—3 months after the day the protection order is made against the person; or’.

76 Amendment of s 438 (Order for forfeiture of particular relevant things)

- (1) Section 438(4), ‘Subsection (3) does not’—
omit, insert—
‘Subsections (3) and (4) do not’.
- (2) Section 438(4), as amended, and (5)—
renumber as section 438(5) and (6).
- (3) Section 438(3)—
omit, insert—
- ‘(3) At least 30 days before the order for forfeiture is made, the commissioner must give the owner of the relevant thing a written notice stating that unless the thing is claimed, an order for its forfeiture to the State will be made under this section.
- ‘(4) If the owner of the relevant thing is not known, the notice may be given—
 - (a) by advertisement in a newspaper circulating generally throughout the State; or
 - (b) on the police service website.’.

77 Amendment of s 441 (Dealing with forfeited things)

- (1) Section 441(3)(b), after ‘the thing’—
insert—
‘and doing anything necessary to prepare it for sale’.
- (2) After section 441(3), as an example—
insert—
‘Example for paragraph (b)—
cleaning the hard drive of a seized computer’.

- (3) Section 441(4)—
omit.

78 Insertion of new ch 11, pt 3, div 9

Chapter 11, part 3, after section 443—
insert—

‘Division 9 Evidentiary provisions

‘443AA Evidentiary provision about particular things in the possession of the police service

- ‘(1) This section applies in relation to a running statement.
- ‘(2) A certificate signed by the commissioner and stating a document attached to the certificate is a copy of a running statement is evidence of what is stated.
- ‘(3) Also, the copy of the running statement is evidence of what is stated in the running statement.
- ‘(4) If, in a criminal proceeding, the prosecuting authority intends to rely on the certificate, it must, at least 14 business days before the hearing day, give a copy of the certificate to the defendant or the defendant’s lawyer.
- ‘(5) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 10 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.
- ‘(6) If the defendant acts under subsection (5), the certificate stops being evidence of the matter challenged.
- ‘(7) In this section—

hearing day means the day the hearing of the criminal proceeding starts.

prosecuting authority means the entity responsible for prosecuting the criminal proceeding.

running statement means a document that identifies itself as a running statement relating to a relevant thing in the possession

of the police service that is evidence of the commission of an offence sufficiently identified in the running sheet to connect it to the proceedings in which the certificate is evidence and including the following—

- (a) where and when the relevant thing was found;
- (b) who found the relevant thing;
- (c) the name of each person to whom the thing was given after it was found;
- (d) before the relevant thing was given to each person who had possession of it, the relevant thing was kept secure from tampering;
- (e) how the thing was dealt with by each person who had possession of it including, but not limited to, how, when and by whom it was transported from person to person or place to place.’.

79 Insertion of new ch 11A

After chapter 11, part 5—

insert—

‘Chapter 11A Provisions about evading police officers

‘Part 1 Preliminary

‘Division 1 Explanation

‘443V Explanation of ch 11A

- ‘(1) Drivers of motor vehicles sometimes fail to stop when directed to do so by a police officer using a police service motor vehicle to attempt to intercept another motor vehicle when the police officer reasonably believes the driver, or someone else in the other motor vehicle, is committing or has committed an offence.

- ‘(2) A driver’s failure to stop may be based on a desire to avoid prosecution for an offence.
- ‘(3) There may be many reasons why a police officer gives a direction requiring a driver to stop, including, but not limited to, because—
 - (a) the driver is driving dangerously; or
 - (b) the driver is driving a motor vehicle reported as having been stolen; or
 - (c) the driver is driving a motor vehicle that has been used in the commission of an offence; or
 - (d) the police officer proposes to perform a breath test on the driver under the Road Use Management Act.
- ‘(4) This chapter—
 - (a) provides for an offence called an evasion offence; and
 - (b) makes particular provision to help police officers in the investigation of evasion offences; and
 - (c) enables a court to order the impoundment or forfeiture of a motor vehicle after the court finds the driver of a motor vehicle guilty of an evasion offence.

‘Division 2 Interpretation

‘443W Definitions for ch 11A

‘In this chapter—

alarm includes a horn, a siren and another audible warning device.

corresponding law, in relation to a transport Act, means a corresponding law under the Road Use Management Act.

declaration, in relation to an evasion offence to which an evasion offence notice relates, means a statutory declaration stating any of the following—

- (a) the name of the person believed to be using the motor vehicle involved in the evasion offence when the offence happened;
- (b) the motor vehicle was being illegally used when the evasion offence happened;
- (c) the name of the driver of the motor vehicle involved in the evasion offence when the offence happened is not known and the nature of the inquiries made to find out who was driving the motor vehicle when the offence was committed;
- (d) the motor vehicle involved in the evasion offence was sold before the evasion offence happened and when and to whom it was sold.

evasion offence means an offence against section 443ZD(2).²⁹

forfeiture order see section 443ZI.³⁰

impounding order see section 443ZH.³¹

nominated person, in relation to an evasion offence, means the person nominated by either of the following as the driver of the motor vehicle involved in the evasion offence when the offence was committed—

- (a) the owner of the motor vehicle;
- (b) a person nominated in a declaration given under an evasion offence notice.

owner, of a motor vehicle—

- (a) generally, means—
 - (i) if there is only 1 owner of the motor vehicle—the person in whose name the motor vehicle is registered under a transport Act or a corresponding law; or
 - (ii) if there is more than 1 owner of the motor vehicle—the first of the persons in whose name the

²⁹ Section 443ZD (Offence for driver of motor vehicle to fail to stop motor vehicle)

³⁰ Section 443ZI (Application for forfeiture order for evasion offence)

³¹ Section 443ZH (Application for impounding order for evasion offence)

motor vehicle is registered under a transport Act or a corresponding law; or

- (b) for a proceeding for an impounding order or a forfeiture order, includes a holder of a security interest registered for the motor vehicle under the *Motor Vehicles and Boats Securities Act 1986*.

prescribed period, in relation to an application for a forfeiture order, means the relevant period and any period from the end of the relevant period to and including the day on which the application is heard and decided.

relevant court, in relation to an application for an impounding order or a forfeiture order under this chapter, means—

- (a) the Magistrates Court for the Magistrates Court district, or division of the district, nearest the place where the evasion offence to which the application relates happened; or
- (b) if the driver of the motor vehicle is a child—a Childrens Court constituted by a magistrate sitting in the Magistrates Court district, or division of the district, nearest the place where the evasion offence to which the application relates happened.

relevant period, in relation to an evasion offence to which an application for a forfeiture order relates, means the period of 3 years before the commission of the evasion offence giving rise to the application for the forfeiture order.

stop, when used in relation to a direction given to a driver of a motor vehicle under this chapter, includes remain at the place where the driver stops the motor vehicle until the driver is allowed to proceed or is otherwise dealt with according to law.

warning light see section 443Y.³²

‘443X Giving a direction for ch 11A

- ‘(1) For this chapter, a police officer gives a direction to the driver of another motor vehicle if—

32 Section 443Y (What is a *warning light* for ch 11A)

- (a) the police officer is in or on a police service motor vehicle that is being used to attempt to intercept the motor vehicle the driver is driving; and
 - (b) the driver of the police service motor vehicle brings that motor vehicle to a position in relation to the other motor vehicle where the driver or another police officer in or on the police service motor vehicle can give the driver of the other motor vehicle a direction to stop the other motor vehicle; and
 - (c) the police officer signals to the driver of the other motor vehicle to stop the motor vehicle—
 - (i) by giving a physical or audible signal; or
 - (ii) by displaying a warning light or warning lights and sounding an alarm.
- ‘(2) For subsection (1), a police officer gives a direction to the driver of a motor vehicle when whichever of the following first happens—
- (a) the police officer gives a physical or audible signal to the driver of the motor vehicle;
 - (b) the police officer displays the warning lights and sounds an alarm fitted to the police service motor vehicle being used to attempt to intercept the motor vehicle.

‘443Y What is a *warning light* for ch 11A

‘A *warning light* is any of the following displayed by a police officer while using a police service motor vehicle to attempt to intercept another motor vehicle—

- (a) flashing blue and red lights;
- (b) a flashing blue light;
- (c) another flashing light, including alternately flashing headlights and alternately flashing tail-lights.

‘443Z When a person is charged for this chapter in relation to an evasion offence if proceeding for the offence is started by notice to appear or arrest

- ‘(1) This section applies for this chapter if a proceeding for an evasion offence is started against a person by notice to appear or arrest.
- ‘(2) If the proceeding is started by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.
- ‘(3) If the proceeding is started by arrest, the person is taken to be charged with having committed the offence when the person is arrested.

‘443ZA Impounding or forfeiture of motor vehicle is in addition to other punishment

‘The impounding or forfeiture of a motor vehicle under this chapter arising out of the commission of an evasion offence is in addition to any other penalty that may be imposed on the person for the evasion offence.

‘443ZB Interaction between ch 2B and this chapter

- ‘(1) This section applies if, before a police officer can impound a motor vehicle under chapter 2B³³ for a prescribed offence, the driver of the motor vehicle commits an evasion offence.
- ‘(2) If an application for an impounding order for the motor vehicle can not be made under chapter 2B but may be made under this chapter, an application for an impounding order for the motor vehicle may be made under this chapter.
- ‘(3) If an application for an impounding order for the motor vehicle may be made under chapter 2B or this chapter, an application for an impounding order for the motor vehicle may be made under chapter 2B or this chapter.

33 Chapter 2B (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences)

- ‘(4) If an application for a forfeiture order for the motor vehicle can not be made under chapter 2B but may be made under this chapter, an application for a forfeiture order for the motor vehicle may be made under this chapter.
- ‘(5) If an application for a forfeiture order for the motor vehicle may be made under chapter 2B or this chapter, an application for a forfeiture order for the motor vehicle may be made under chapter 2B or this chapter.

‘Division 3 Relationship with Consumer Credit Code

‘443ZC Relationship with Consumer Credit Code

‘Nothing in this chapter affects the right of a credit provider to repossess a motor vehicle under the Consumer Credit Code and sell it.

‘Part 2 Offences and related provisions

‘Division 1 Offences

‘443ZD Offence for driver of motor vehicle to fail to stop motor vehicle

- ‘(1) This section applies if, in the exercise of a power under an Act, a police officer using a police service motor vehicle gives the driver of another motor vehicle a direction to stop the motor vehicle the driver is driving.
- ‘(2) The driver of the motor vehicle must stop the motor vehicle as soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances.

Maximum penalty—200 penalty units or 3 years imprisonment.

- ‘(3) An offence against subsection (2) is an evasion offence.
- ‘(4) For subsection (2), it is sufficient evidence of the commission of the offence if the evidence is that the driver, in failing to stop, took action to avoid being intercepted by a police officer.
- ‘(5) Also, for subsection (2) it is immaterial that the driver had a mistaken belief that the motor vehicle from which the police officer was giving the direction was an emergency vehicle unless the driver proves, on the balance of probabilities, that a reasonable person in the circumstances would have believed the motor vehicle was an emergency vehicle.
- ‘(6) This section does not limit section 51.³⁴
- ‘(7) In this section—

emergency vehicle means a motor vehicle driven by a person performing functions as an ambulance officer or fire officer who drives the motor vehicle in the course of his or her duties as an ambulance officer or fire officer for any of the following—

- (a) the Queensland Ambulance Service;
- (b) an ambulance service of another State;
- (c) the Queensland Fire and Rescue Authority;
- (d) a fire brigade or service of another State.

‘Division 2 Matters about investigation of evasion offence

‘443ZE When evasion offence notice may be given to owner of motor vehicle involved in offence

- ‘(1) This section applies if, on the investigation of an evasion offence, it appears to a police officer investigating the offence that giving the owner of the motor vehicle involved in the

³⁴ Section 51 (Stopping vehicles for prescribed purposes)

offence a notice under this section may help in the investigation.

- ‘(2) The police officer may give the owner a notice (*evasion offence notice*) requiring the owner, within 4 business days, to state the name of the person the owner believes was using the motor vehicle when the evasion offence happened.
- ‘(3) If the owner is an individual, the evasion offence notice must be given to the owner personally.
- ‘(4) When giving the owner the notice, the police officer must explain to the owner what the notice requires and the consequences of not complying with the notice.
- ‘(5) The notice must identify the motor vehicle involved in the evasion offence and state—
 - (a) when and where the offence was committed; and
 - (b) the name and address, when the offence was committed, of the person in whose name the motor vehicle was registered under a transport Act or a corresponding law; and
 - (c) that the owner must comply with the requirement within 4 business days unless the owner has a reasonable excuse; and
 - (d) that the owner may comply with the requirement by giving the commissioner a signed declaration within the 4 business days; and
 - (e) the nature of the declarations the owner may give; and
 - (f) that if the owner is a corporation the declaration must be signed by an executive officer of the corporation.
- ‘(6) This section applies to a nominated person in the same way as it applies to an owner.

‘443ZF Who may be prosecuted for evasion offence if no response to evasion offence notice

- ‘(1) This section applies only if—
 - (a) a police officer gives an evasion offence notice to a person under section 443ZE; and

- (b) the person given the notice does not give a police officer a declaration as required under that section within the time required under that section.
- ‘(2) The person is taken to have been the driver of the motor vehicle involved in the evasion offence to which the evasion offence notice relates even though the actual offender may have been someone else.
- ‘(3) If the actual offender is someone else, subsection (2) does not affect the liability of the actual offender, but the person and the actual offender can not both be punished for the offence.
- ‘(4) In a proceeding for an evasion offence, started against a person because of this section, it is a defence for the person to prove, on the balance of probabilities that the person was not the driver of the motor vehicle involved in the offence when the offence happened.

‘Division 3 Evidentiary provisions

‘443ZG Evidentiary provision

- ‘(1) In a proceeding for an evasion offence a certificate signed by the commissioner and stating that on a stated day a stated person was the owner of a stated motor vehicle is evidence of what it states.
- ‘(2) Also, an allegation or statement in a notice to appear or complaint alleging or stating any of the following is evidence of what it alleges or states—
 - (a) that a person is or is not or was or was not at any time or date mentioned in the notice to appear or complaint the owner of a stated motor vehicle;
 - (b) that a person is or is not or was or was not at any time or date mentioned in the notice to appear or complaint of, or under, or over a stated age;
 - (c) that a thing is or was a motor vehicle or of a particular class or description of motor vehicle.

- ‘(3) In addition, in a proceeding, it is not necessary for the entity responsible for prosecuting the evasion offence to call as a witness for the prosecution a person who gave a declaration that named a person other than the defendant as the driver of the motor vehicle involved in the offence.

‘Part 3 Obtaining impounding and forfeiture orders

‘Division 1 Application provisions

‘443ZH Application for impounding order for evasion offence

- ‘(1) This section applies if a person who has not previously been found guilty of an evasion offence is charged with an evasion offence and an application under section 443ZI can not be made for a forfeiture order for the motor vehicle involved in the offence.
- ‘(2) A police officer may apply to the relevant court in the approved form for an order that the motor vehicle involved in the offence be impounded and held at a holding yard for a period of not more than 3 months (*impounding order*).
- ‘(3) Subsection (2) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

‘443ZI Application for forfeiture order for evasion offence

- ‘(1) This section applies if—
- (a) a person is charged with an evasion offence; and
 - (b) the person—

- (i) has previously been found guilty of 1 evasion offence committed on a previous occasion within the relevant period; or
 - (ii) has previously been charged with an evasion offence committed within the relevant period and the charge of that offence has not been decided.
- ‘(2) A police officer may apply to the relevant court in the approved form for an order that the motor vehicle involved in the offence be forfeited to the State (*forfeiture order*).
- ‘(3) Subsection (2) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

‘Division 2 Orders if offence not decided

‘443ZJ Orders on application for impounding order if evasion offence not decided

- ‘(1) This section applies if—
- (a) an application is made to a relevant court for an impounding order in relation to a motor vehicle involved in an evasion offence; and
 - (b) the proceeding on the charge of the evasion offence in relation to which the application is made has not been decided.
- ‘(2) The court must adjourn the application until the person to whom the application relates has been found guilty of the offence.

‘443ZK Orders on application for forfeiture order if evasion offence not decided

- ‘(1) This section applies if—
- (a) an application is made to a relevant court for a forfeiture order for a motor vehicle involved in an evasion offence; and

- (b) any proceeding on a charge of an evasion offence or evasion offences in relation to which the application is made has not been decided.
- ‘(2) If the person to whom the application relates has not been found guilty of evasion offences committed on 2 occasions within the relevant period, the court must adjourn the application until the person has been found guilty of evasion offences committed on at least 2 occasions within the prescribed period.

‘Division 3 Advice of date of hearing

‘443ZL Advice to owner of date of hearing

- ‘(1) As soon as reasonably practicable after a date is set for the hearing of an application for an impounding order or a forfeiture order in relation to a motor vehicle, a police officer must give the person to whom the application relates and each owner of the motor vehicle written notice of the date, time and place of the hearing.
- ‘(2) If the person to whom the application relates or the owner is a child and it is reasonably practicable to do so, notice must also be given to the child’s parent or guardian.

‘Part 4 Deciding applications

‘Division 1 Where and when application may be heard

‘443ZM Where application is to be decided

‘An application for an impounding order or a forfeiture order must be heard and decided by the relevant court.

‘443ZN When application to be heard

- ‘(1) An application for an impounding order in relation to an evasion offence must be heard and decided as soon as possible after the person to whom the application relates is found guilty of 1 evasion offence.
- ‘(2) An application for a forfeiture order in relation to an evasion offence must be heard and decided as soon as possible after the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.
- ‘(3) However, if, after an application for a forfeiture order is made—
 - (a) the person to whom the application relates is found not guilty of 1 of the evasion offences or the proceeding for 1 of the offences is discontinued; and
 - (b) no motor vehicle has previously been impounded for an evasion offence on an application made in relation to that person for an offence to which the application for the forfeiture order relates;the relevant court may hear and decide the application for the forfeiture order as if it were an application for an impounding order.
- ‘(4) An application for a forfeiture order to which subsection (3) applies is taken, for divisions 2 and 3, to be an application for an impounding order.

‘Division 2 Consideration of applications

‘443ZO Consideration of application for impounding order

- ‘(1) On the hearing of an application for an impounding order for an evasion offence, the relevant court may order that the motor vehicle be impounded for a stated period, of not more than 3 months if the person to whom the application relates has been found guilty of 1 evasion offence.

Note—

Section 443ZY makes provision for enforcing the order.

- ‘(2) Despite subsection (1), the relevant court may make an order under section 443ZQ for the performance by the person of community service as decided by the court.
- ‘(3) If the person was a child when the evasion offence was committed, the relevant court must consider whether to make a costs order under section 443ZR.

‘443ZP Consideration of application for forfeiture order

- ‘(1) On the hearing of an application for a forfeiture order for an evasion offence, the relevant court may order that the motor vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.
- ‘(2) If—
 - (a) under subsection (1), the relevant court orders the impounding of the motor vehicle to which the application relates; and
 - (b) a relevant court has previously made an impounding order under section 443ZO for an evasion offence committed within the relevant period and forming the basis of the application;

the motor vehicle is impounded under subsection (1) for the evasion offence giving rise to the application for the forfeiture order and not for the evasion offence to which the impounding order under section 443ZO relates.
- ‘(3) Despite subsection (1), the relevant court may make an order under section 443ZQ for the performance by the person to whom the application relates of community service as decided by the court.
- ‘(4) On the making of a forfeiture order for a motor vehicle—
 - (a) the vehicle becomes the property of the State; and

- (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles and Boats Securities Act 1986* against a person other than the State by taking possession of the vehicle is extinguished.

‘Division 3 Other provisions about applications and orders

‘Subdivision 1 Community service orders

‘443ZQ Community service instead of impounding or forfeiture order

- ‘(1) This section applies if—
 - (a) the relevant court is satisfied impounding or forfeiting a motor vehicle will cause severe financial hardship to an owner or usual driver of the motor vehicle; and
 - (b) the person to whom the application relates was an adult when he or she committed the offence, or the last offence, to which the application relates.
- ‘(2) The court may, instead of ordering the impounding or forfeiture of the motor vehicle, order the person to perform not more than 240 hours community service.
- ‘(3) An order made under subsection (2)—
 - (a) is taken to be an order under the *Penalties and Sentences Act 1992* for the performance of community service under a fine option order under that Act; and
 - (b) is taken to have been made in the proceeding for the evasion offence giving rise to the application for the impounding order or forfeiture order.

‘Subdivision 2 Costs orders if child found guilty of evasion offence

‘443ZR Costs order if child found guilty of evasion offence

- ‘(1) This section applies if the relevant court makes an impounding order and the person to whom the application relates was a child when he or she committed the evasion offence in relation to which the order is made.
- ‘(2) The relevant court must consider whether the child has the capacity to pay the costs of removing and keeping the motor vehicle and, if the court considers the child has the capacity to pay those costs, may order the child to pay the costs of removing and keeping the motor vehicle.
- ‘(3) If, after considering any submissions made by the child or the child’s parent, the relevant court considers the child does not have the capacity to pay the costs of removing and keeping the motor vehicle, the relevant court may call on the child’s parent under applied section 258 to show cause under applied section 259, as directed by the court, why the parent should not pay the costs of removing and keeping the motor vehicle.
- ‘(4) The relevant court may, under applied section 259, order the child’s parent to pay the costs of removing and keeping the motor vehicle.
- ‘(5) In this section—
 - applied section 258* means the *Juvenile Justice Act 1992*, section 258, as applied by section 443ZS.
 - applied section 259* means the *Juvenile Justice Act 1992*, section 259, as applied by section 443ZS.
 - parent* includes a guardian other than the chief executive (child safety).

‘443ZS Application of applied sections for s 443ZR

- ‘(1) This section states how applied sections 258 and 259 apply for section 443ZR.
- ‘(2) Applied section 258 applies as if—

- (a) subsections (1) and (9) were omitted; and
 - (b) a reference in the applied section—
 - (i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (ii) to the prosecution were a reference to the applicant for the impounding order or forfeiture order.
- ‘(3) Applied section 259 applies as if—
- (a) a reference in the applied section—
 - (i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (ii) to the prosecution were a reference to the applicant for the impounding order; and
 - (b) a reference in applied section 259(4) to a show cause hearing is a reference to the hearing and determination of the issue of whether a parent should be ordered, under applied section 259(5), to pay the costs of removing and keeping a motor vehicle impounded under this chapter; and
 - (c) applied section 259(4), to the extent it mentions the director of public prosecutions, does not apply; and
 - (d) the expression in applied section 259(5) ‘of the matters mentioned in section 258(1)(a), (b) and (c)’ read instead as ‘that the parent should be ordered to pay the costs of removing and keeping a motor vehicle impounded under the *Police Powers and Responsibilities Act 2000*, chapter 11A’.
- ‘(4) Also, in relation to an order made under applied section 259(5)—
- (a) the *Juvenile Justice Act 1992*, section 260 does not apply to that order; and

- (b) the order is taken instead to be an order fining a person for an offence for the purposes of the *State Penalties Enforcement Act 1999*, section 34.³⁵

‘Subdivision 3 Offences

‘443ZT Motor vehicle not to be sold etc. before charge of offence is decided

- ‘(1) This section applies if a proceeding for an evasion offence is started against the driver or owner of a motor vehicle involved in the offence.
- ‘(2) The owner of the motor vehicle must not modify or sell or otherwise dispose of the motor vehicle before the proceeding is decided.
- Maximum penalty—40 penalty units.
- ‘(3) In this section—
- modify*, a motor vehicle, includes remove the engine or gearbox from the motor vehicle.

‘443ZU Offence to remove motor vehicle impounded under court order

‘A person must not unlawfully remove a motor vehicle impounded under an impounding order under this chapter from a holding yard.

Maximum penalty—40 penalty units.

³⁵ *State Penalties Enforcement Act 1999*, section 34 (Default in paying fine, penalty or other amount under court order)

‘Subdivision 4 General

‘443ZV Defence

‘In a proceeding for an impounding order or a forfeiture order under this chapter, it is a defence for an owner of the vehicle to prove that the evasion offence happened without the knowledge and consent of the owner.

Example—

A parent lends a motor vehicle to his or her child to visit friends and the child commits an evasion offence in the vehicle. If the relevant court is satisfied, on evidence tendered or submissions made by the parent, that the child committed the offence without the knowledge and consent of the parent, the court may refuse to order the impounding or forfeiture of the motor vehicle.

‘443ZW Counting the occasions

- ‘(1) For sections 443ZI, 443ZK, 443ZN(2) and 443ZP, for an occasion of the commission of an offence to be counted in addition to another occasion counted, an occasion must be a separate occasion, that is, an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.
- ‘(2) In section 443ZI, a reference to an evasion offence committed on a previous occasion is a reference to an evasion offence committed on an occasion before the occasion of the evasion offence giving rise to the application for the forfeiture order.
- ‘(3) Subject to subsections (1) and (2), for a decision under section 443ZI, 443ZK, 443ZN(2) or 443ZP of whether or not a person has, or has previously, been charged with, or found guilty of, an evasion offence committed on a previous occasion or any occasion or occasions, the following do not matter—
 - (a) whether or not any finding of guilt relied on relates to a charge heard and decided together with another charge or other charges relating to another or other findings of guilt being relied on;
 - (b) whether or not findings of guilt relied on relate to charges that were heard and decided in the order in

which the occasions of the commission of offences to which they related happened;

- (c) whether or not any occasion of the commission of an offence, or any charge or any finding of guilt, relied on happened before or after any occasion of the commission of an offence, charge or finding of guilt also relied on.

Example—

An offender commits evasion offences on 1 January (offence 1) and 1 May (offence 2). The offender is charged with offence 1 on 15 January and offence 2 on 14 May. The offender is convicted of offence 2 on 15 June and offence 1 on 1 October. When a court considers the application for impoundment or forfeiture on 1 December, for the purpose of counting the occasions mentioned in subsection (1), there are 2 occasions the court may rely on to make an order.

- ‘(4) For a decision under sections 443ZO or 443ZP, the following do not matter—

- (a) whether or not any finding of guilt relied on is for an offence in relation to which the application was originally started;

Example for paragraph (a)—

An application may relate to particular evasion offences but before the application is decided, the driver is found guilty of another evasion offence. The court may rely on the latter finding of guilt when making an order under the sections mentioned.

- (b) whether or not any finding of guilt relied on in an application relates to an offence committed before or after the application was started.

‘443ZX Appeal

- ‘(1) An order made against a person under section 443ZQ for the performance of community service may be appealed against as a sentence imposed on the person.
- ‘(2) A person may appeal against any other order of a relevant court to the District Court within 28 days after the order is made.

‘443ZY Powers for enforcing court order

- ‘(1) This section applies if a relevant court, on an application under this chapter for an impounding order or forfeiture order for a motor vehicle, makes an impounding order or a forfeiture order for the motor vehicle.
- ‘(2) For giving effect to an impounding order or a forfeiture order, the court may, in the order, authorise a police officer, without warrant, to enter any place the police officer reasonably suspects is a place where the motor vehicle may be found, and—
 - (a) for an impounding order—search for and impound the motor vehicle; or
 - (b) for a forfeiture order—search for and take possession of the motor vehicle for the State.
- ‘(3) If an impounding order or forfeiture order authorises a police officer to enter a place for giving effect to the order as mentioned in subsection (2), power to enter the place under the order includes power to re-enter the place as often as is reasonably necessary for the purpose.
- ‘(4) For impounding or taking possession of a motor vehicle under an order of a court, a police officer may—
 - (a) stop the motor vehicle if it is moving, whether or not the motor vehicle is on a road; or
 - (b) require the driver of the motor vehicle if it is stationary to remain at the place where it is stopped for the time reasonably necessary; or
 - (c) direct the person who has the key necessary to move the motor vehicle—
 - (i) to give the key to a police officer; or
 - (ii) if the motor vehicle is in a dwelling, to move the motor vehicle out of the dwelling and give the key to a police officer; or
 - (d) if it is necessary to enter the motor vehicle to impound or take possession of it, enter the motor vehicle to impound or take possession of it; or

- (e) enter a place, other than the part of a place that is a dwelling, and stay for a reasonable time at the place; or
 - (f) do anything else reasonably necessary to impound or take possession of the motor vehicle.
- ‘(5) A police officer may exercise a power under subsection (4)(a) or (b) before or after a police officer seizes or takes possession of the motor vehicle.

‘443ZZ Duties of police officer after impounding or seizing motor vehicle

- ‘(1) After impounding a motor vehicle under an impounding order or taking possession of a motor vehicle under a forfeiture order, a police officer must move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way the police officer considers appropriate.
- ‘(2) If the motor vehicle is impounded, the police officer must give the owner of the motor vehicle a notice stating—
- (a) how the owner of the motor vehicle may recover the motor vehicle; and
 - (b) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of ownership of the motor vehicle; and
 - (c) that if the owner was the driver of the motor vehicle when the offence for which the motor vehicle was impounded happened, the owner will be required to pay the costs of removing and keeping the motor vehicle; and
 - (d) that if the owner was not the driver of the motor vehicle when the offence for which the motor vehicle was impounded happened, the driver will be required to pay the costs of removing and keeping the motor vehicle; and
 - (e) the penalty for unlawfully removing the motor vehicle from the place where it is held.

‘443ZZA Police officer may authorise tow

- ‘(1) This section applies if a police officer arranges for a motor vehicle impounded or forfeited to the State under division 2 to be moved to a holding yard.
- ‘(2) A police officer may sign a towing authority for the motor vehicle.
- ‘(3) The driver of a tow truck towing the motor vehicle under a towing authority must tow the motor vehicle to—
 - (a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard—the holding yard; or
 - (b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.
- ‘(4) In this section—
towing authority means—
 - (a) a towing authority under the *Tow Truck Act 1973*; or
 - (b) another document authorising a person to tow a motor vehicle.

‘Part 5 Other provisions

‘Division 1 Liability for costs of impounding

‘443ZZB Liability to pay costs of impounding—adult driver

- ‘(1) This section applies in relation to a motor vehicle impounded for an evasion offence.
- ‘(2) If the motor vehicle was impounded because an adult driver was found guilty of an evasion offence and the driver was not the owner of the motor vehicle, the driver is liable to pay the costs of removing and keeping the motor vehicle.

- ‘(3) If the motor vehicle was impounded because the owner was found guilty of an evasion offence, the owner is liable to pay the costs of removing and keeping the motor vehicle.

‘443ZZC Liability to pay costs—child driver

- ‘(1) This section applies in relation to a motor vehicle impounded for an evasion offence if the driver or owner of the motor vehicle was a child when he or she committed the offence for which it was impounded.
- ‘(2) The child is liable to pay the costs of removing and keeping the motor vehicle if the relevant court orders under section 443ZR that the child pay the costs.
- ‘(3) However, if the relevant court orders, under section 443ZR, the child’s parent to pay the costs of removing and keeping the motor vehicle, the child’s parent is liable to pay the costs of removing and keeping the motor vehicle.

‘443ZZD Payment of costs if motor vehicle not recovered

- ‘(1) This section applies if a person who is entitled to recover a motor vehicle after a period of impoundment ends fails to recover the motor vehicle after the period ends.
- ‘(2) The driver is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends.

‘443ZZE Registration of costs under State Penalties Enforcement Act 1999

- ‘(1) If an adult who is liable to pay costs under this division fails to pay the costs, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—
- (a) the commissioner were the registrar of a court; and
- (b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.

- ‘(2) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.³⁶
- ‘(3) For this section, the adult who fails to pay the costs under this division fails to pay the costs if—
- (a) the commissioner obtains an order for payment of costs against the person; and
 - (b) the commissioner gives the person a copy of the order and a letter of demand for payment of the costs; and
 - (c) the person fails to pay the costs within 28 days after receiving the copy of the order and the letter of demand or the longer period agreed to by the commissioner.

‘Division 2 Release of impounded motor vehicle

‘443ZZF Release of motor vehicle impounded under court order

- ‘(1) This section applies if a motor vehicle is impounded under a court order under part 4, division 2.
- ‘(2) When the period for which the motor vehicle is impounded ends, the owner of the motor vehicle is entitled to recover the motor vehicle from the holding yard at which it is kept.
- ‘(3) At the request of the owner, the person holding the motor vehicle must release the motor vehicle to the owner, or a person appointed in writing by the owner, at the first reasonably practicable opportunity, during business hours on a business day, after the request is made.
- ‘(4) In this section—
business hours means 8a.m. to 5p.m.

36 *State Penalties Enforcement Act 1999*, section 34 (Default in paying fine, penalty or other amount under court order)

**‘Division 3 Sale, transfer or disposal of
impounded or forfeited motor
vehicle**

**‘443ZZG Sale of motor vehicle if not recovered after
impounding ends**

- ‘(1) If, within 2 months after a period of impounding of a motor vehicle ends, the owner of the motor vehicle does not recover it, the commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.
- ‘(2) Notice of the proposed sale or disposal must be given by advertisement in a newspaper circulating in the locality where the vehicle was impounded.
- ‘(3) Also, the commissioner must give written notice of the proposed sale or disposal of the motor vehicle to the owner.

**‘443ZZH Voluntary transfer of ownership of motor vehicle to
State**

- ‘(1) This section applies despite section 443ZT.

Note—

Under section 443ZT it is an offence for the owner of a motor vehicle that is the subject of an impounding order or forfeiture order application to modify, sell or otherwise dispose of the vehicle before the application is decided.

- ‘(2) The owner of a motor vehicle to which section 443ZT applies may agree to transfer ownership of the vehicle to the State.
- ‘(3) The agreement must be written and witnessed by a person who may witness a statutory declaration.
- ‘(4) If the State agrees in writing to the transfer of the motor vehicle—
 - (a) the motor vehicle becomes the property of the State; and
 - (b) the commissioner may sell or dispose of the motor vehicle and anything in or on it in the way the commissioner considers appropriate.

‘443ZZI Disposal of forfeited motor vehicle

‘The commissioner may dispose of a motor vehicle forfeited to the State under this part in the way the commissioner considers appropriate, including by selling it.

‘443ZZJ Application of proceeds of sale

- ‘(1) This section applies if the commissioner decides to sell a motor vehicle under section 443ZZG or 443ZZI.
- ‘(2) The proceeds of the sale are to be applied in the following order—
 - (a) in payment of the expenses of the sale;
 - (b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle’s impounding;
 - (c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the *Motor Vehicles and Boats Securities Act 1986*—in payment of the amount owing to the holder of the security interest;
 - (d) if the motor vehicle is sold under section 443ZZG—in payment of any balance to the owner;
 - (e) if the motor vehicle is sold under section 443ZZI—in payment to the consolidated fund.

‘Division 4 Other provisions

‘443ZZK Protection from liability

- ‘(1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle during the impounding of the motor vehicle.
- ‘(2) If subsection (1) prevents liability attaching to a police officer, liability attaches instead to the State.
- ‘(3) Also, if a police officer signs a towing authority under section 443ZZA for the motor vehicle, the State is not liable for any damage, loss or depreciation to the motor vehicle while it is

being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the motor vehicle.

‘443ZZL Third party protection from forfeiture order

- ‘(1) A person, other than the defendant, who did not appear at the hearing of an application for a forfeiture order and has an interest in the motor vehicle forfeited to the State under the order may apply to the relevant court for an order under subsection (6).
- ‘(2) Subsection (1) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- ‘(3) Unless the relevant court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.
- ‘(4) The relevant court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant’s neglect.
- ‘(5) Unless the relevant court gives leave, a person who was given notice of the application for the forfeiture order can not apply to the court for an order under subsection (6).
- ‘(6) On an application, an order may be made—
 - (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant’s interest in the motor vehicle; and
 - (b) directing the State—
 - (i) if the motor vehicle is still vested in the State—to transfer the motor vehicle to the applicant; or
 - (ii) if the motor vehicle is no longer vested in the State—to pay to the applicant the value of the applicant’s interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest under section 443ZZJ(2)(c).

- ‘(7) The relevant court must, and may only, make the order if it is satisfied—
- (a) the applicant has or, apart from the forfeiture, would have a genuine interest in the motor vehicle; and
 - (b) the relevant evasion offence happened without the knowledge and consent of the applicant.
- ‘(8) For all applications, including applications for leave to apply—
- (a) the applicant must give notice of the making of the application to the commissioner; and
 - (b) the party given notice is a party to the application.
- ‘(9) In this section—
- defendant*** means the person found guilty of the evasion offence because of which the forfeiture order was made.
- relevant court*** means the relevant court to which the application for the forfeiture order was made.
- relevant evasion offence*** means the evasion offence because of which the forfeiture order was made.

‘443ZZM Review

- ‘(1) The CMC must review the use by police officers of powers under this chapter and prepare a report on the review.
- ‘(2) The review must be started as soon as practicable after 30 June 2009.
- ‘(3) The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.
- ‘(4) In the course of preparing the report, the CMC must consult with the Minister.
- ‘(5) The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.’

80 Replacement of s 447 (Assistance at fire or chemical incidents)

Section 447—

omit, insert—

‘447 Helping at fire or hazardous materials emergency

‘(1) It is the duty of a police officer who is present at a fire or hazardous materials emergency to give a fire officer who is performing functions and exercising powers under the *Fire and Rescue Service Act 1990* reasonably necessary help.

‘(2) In this section—

fire officer has the meaning given by the *Fire and Rescue Service Act 1990*, schedule 6.

hazardous materials emergency has the meaning given by the *Fire and Rescue Service Act 1990*, schedule 6.’.

81 Insertion of new s 447B

After section 447A—

insert—

‘447B Disposal of clothing of deceased person

‘(1) This section applies in relation to the clothing of a deceased person if a police officer is present when the clothing is removed from the deceased person’s body.

‘(2) If a police officer considers it would be inappropriate to give the clothing to a relative of the deceased person, for example, because it is damaged, soiled or stained, the police officer may dispose of the clothing, including by destroying it.

‘(3) Clothing disposed of under subsection (2) is taken to have been forfeited to the State immediately before its disposal.’.

82 Amendment of s 448 (Assistance to courts, etc.)

(1) Section 448(3)—

renumber as section 448(4).

(2) Section 448—

insert—

- ‘(3) Also, it is the duty of a watch-house officer to comply with any lawful direction, request, or order of the tribunal and any reasonable request the judge or other presiding officer may lawfully make that relates to the presence or conduct of a person transferred under section 397 from a watch-house to a court cell who is present before the tribunal.’.

83 Amendment of s 455 (Compensation)

Section 455(1)—

omit, insert—

- ‘(1) This section applies if a person suffers loss because—
- (a) a police officer exercises powers under this Act; or
 - (b) an assistant exercises powers under this Act in accordance with a request of a police officer given under section 373.’.

84 Insertion of new s 459A

After section 459—

insert—

‘459A Renumbering of Act

- ‘(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.
- ‘(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a ***relevant provision***) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the ***uncommenced provision***), with the following intent for the relevant provision—
- (a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—

- (i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and
 - (ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);
- (b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.
- ‘(3) Without limiting the *Reprints Act 1992*, section 43(4), each reference in this Act, and each reference in another Act mentioned in schedule 3A to a provision of the Act renumbered under subsection (1), is amended, when the renumbering happens, by omitting the reference to the previous number and inserting the new number.
- ‘(4) This section and schedule 3A expire on the later of the following—
- (a) the day after the commencement of the last numbering or renumbering of a provision done under the section;
 - (b) 30 June 2007.
- ‘(5) In this section—
- amending Act*** means an Act that amends this Act.

85 Insertion of new ch 13, pt 7

Chapter 13—

insert—

is as valid and effective as if this section had commenced before the commencement of the extension regulation.

- ‘(5) Anything else done under the extension regulation has effect.

‘511 Transitional provision for former s 432

‘Section 432, as in force immediately before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 74, continues to apply in relation to a drug destruction notice given under section 432 as if the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 74 had not been enacted.³⁷

‘512 Controlled activities

- ‘(1) To remove any doubt, it is declared that a controlled activity that was purportedly authorised under section 190, as in force immediately before the commencement of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 12 for an offence other than a serious indictable offence is and always has been as validly authorised as it would have been had the offence for which the controlled activity was authorised been a serious indictable offence.
- ‘(2) Also, to remove any doubt, it is declared that anything done because of a purported authorisation of a controlled activity mentioned in subsection (1) that would have been lawfully done if the thing had been done under a validly authorised controlled activity in relation to a serious indictable offence is taken to have been lawfully done.

‘513 Transitional regulation-making power

- ‘(1) A regulation (*transitional regulation*) may prescribe as controlled activity offences for chapter 5 offences that are not already controlled activity offences.

³⁷ *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 68 (Replacement of ch 11, pt 3, div 3)

- ‘(2) A transitional regulation must declare it is a transitional regulation.
- ‘(3) This section and any transitional regulation made under it expire 12 months after this section commences.’.

86 Insertion of new schs 3A–3B

After schedule 3—

insert—

‘Schedule 3A Renumbered cross-references

section 459A

Aboriginal Communities (Justice and Land Matters) Act 1984

1 Section 13

Animal Care and Protection Act 2001

1 Section 154

Australian Crime Commission (Queensland) Act 2003

1 Section 29(14)

Bail Act 1980

- 1 Section 7
- 2 Section 14
- 3 Section 23
- 4 Section 29A

Commission for Children and Young People and Child Guardian Act 2000

- 1 Schedule 4

Community Services (Torres Strait) Act 1984

- 1 Section 75

Coroners Act 2003

- 1 Section 13
- 2 Section 15
- 3 Section 18

Corrective Services Act 2006

- 1 Section 20
- 2 Section 104
- 3 Section 112
- 4 Section 202
- 5 Section 206
- 6 Section 210
- 7 Section 327
- 8 Section 405

Crime and Misconduct Act 2001

- 1 Section 40
- 2 Section 138
- 3 Section 139
- 4 Section 146
- 5 Section 255
- 6 Section 270
- 7 Section 317
- 8 Section 376
- 9 Section 377
- 10 Section 379
- 11 Section 381
- 12 Section 382

Criminal Proceeds Confiscation Act 2002

- 1 Section 44
- 2 Section 212
- 3 Section 213
- 4 Section 238
- 5 Section 239
- 6 Schedule 6

Domestic and Family Violence Protection Act 1989

- 1 Schedule

Drugs Misuse Act 1986

- 1 Section 122A

Education (General Provisions) Act 1989

- 1 Section 117

Education (Queensland College of Teachers) Act 2005

- 1 Schedule 3

Evidence Act 1977

- 1 Section 21AD
- 2 Section 21C
- 3 Section 21G
- 4 Section 137

Freedom of Information Act 1992

- 1 Schedule 3

Justices Act 1886

- 1 Section 47

Juvenile Justice Act 1992

- 1 Section 11
- 2 Section 13

- 3 Section 43
- 4 Section 49
- 5 Section 50
- 6 Section 69
- 7 Section 168
- 8 Section 289
- 9 Section 323
- 10 Section 328
- 11 Schedule 4

Legal Profession Act 2004

- 1 Section 323

Local Government (Aboriginal Lands) Act 1978

- 1 Section 30

Liquor Act 1992

- 1 Section 187A

Marine Parks Act 2004

- 1 Section 52

Mental Health Act 2000

- 1 Section 25
- 2 Section 30
- 3 Section 508
- 4 Section 513
- 5 Section 515
- 6 Section 568

Penalties and Sentences Act 1992

- 1 Section 15C

Police Service Administration Act 1990

- 1 Section 1.4
- 2 Section 5.17
- 3 Section 5A.2
- 4 Section 5AA.14
- 5 Section 10.1

Prostitution Act 1999

- 1 Section 60
- 2 Section 65
- 3 Section 75

Public Health Act 2005

- 1 Section 318

Public Safety Preservation Act 1986

- 1 Section 27
- 2 Section 41
- 3 Section 42

State Penalties Enforcement Act 1999

- 1 Section 151

Summary Offences Act 2005

- 1 Section 11
- 2 Section 15

3 Section 27

4 Section 28

Terrorism (Preventative Detention) Act 2005

1 Section 23

2 Section 29

3 Schedule

Tow Truck Act 1973

1 Section 4

2 Section 4C

3 Section 38

4 Section 43

Weapons Act 1990

1 Section 168C

Youth Participation in Education and Training Act 2003

1 Section 21

‘Schedule 3B Additional controlled activity offences

section 132

Part 1 Indictable offences

1 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 398 (Punishment of stealing) if the offence does not involve punishment as a special case
- section 406 (Bringing stolen goods into Queensland)
- section 408C(1) (Fraud) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence
- section 408D (Computer hacking and misuse) if, in the circumstances of the offence, the offence is a crime but is not a seven year imprisonment offence
- section 444A (Killing animals with intent to steal)
- section 444B (Using registered brands with criminal intention)
- section 445 (Unlawfully using stock)
- section 446 (Suspicion of stealing stock)
- section 447 (Illegal branding)
- section 448 (Defacing brands) if the offence does not involve punishment as a special case
- section 448A (Having in possession stock with defaced brand)

- section 469 (Wilful damage) if the offence does not involve punishment as a special case
- section 488 (Forgery and uttering)
- section 514(1) (Personation in general)
- section 541 (Conspiracy to commit crime) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence
- section 542 (Conspiracy to commit other offences)
- section 544 (Accessories after the fact to crimes)
- section 545 (Accessories after the fact to misdemeanours and some other offences) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence.

2 Drugs Misuse Act 1986

An offence against the following provisions of the *Drugs Misuse Act 1986*—

- section 10(1) (Possessing things) if the offence involves possession of a thing for use, or that has been used, in connection with the commission of a crime relating to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A
- section 11(1) (Permitting use of place) if the offence involves permitting the use of a place for the commission of a crime in relation to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 2A.

3 Weapons Act 1990

An offence against the *Weapons Act 1990*, section 50(1) (Possession of weapons) involving circumstances to which paragraph (c)(ii) of the penalty applies.

Part 2 **Simple offences**

4 **Animal Care and Protection Act 2001**

An offence against the following provisions of the *Animal Care and Protection Act 2001*—

- section 21 (Participation in prohibited event)
- section 22 (Presence at prohibited event).

5 **Criminal Code**

An offence against the following provisions of the Criminal Code—

- section 408D (Computer hacking and misuse) if, in the circumstances of the offence, the offence is not a crime
- section 426 (Unlawful entry of vehicle).

6 **Criminal Proceeds Confiscation Act 2002**

An offence against the *Criminal Proceeds Confiscation Act 2002*, section 252 (Possession etc. of property suspected of being tainted property).

7 **Drugs Misuse Act 1986**

An offence against the *Drugs Misuse Act 1986*, section 10A (Possessing suspected property).

8 **Explosives Act 1999**

An offence against the following provisions of the *Explosives Act 1999*—

- section 11 (Offence in relation to unauthorised and prohibited explosives)
- section 34 (Authority required to possess explosives)
- section 36 (Bringing or sending certain explosives into and out of the State)

- section 38 (Explosive to be manufactured under authority)
- section 42 (Unauthorised sales of explosives)
- section 44 (Authority needed to store explosives).

9 Prostitution Act 1999

An offence against the *Prostitution Act 1999*, section 73 (Public soliciting for purposes of prostitution).

10 Weapons Act 1990

An offence against the following provisions of the *Weapons Act 1990*—

- section 35 (Acquisition of weapons)
- section 36 (Sale or disposal of weapons)
- section 50 (Possession of weapons) involving circumstances to which paragraph (c)(iii) of the penalty applies)
- section 61 (Shortening firearms)
- section 62 (Modifying construction or action of firearms)
- section 64 (Obtaining weapons by deceit)
- section 66 (Dispatch of weapons).’.

87 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions *entrant, forfeiture order, impounding order, modify, place of safety, post-prison community based release order, prescribed indictable offence, prescribed period, prescribed place, public official, relevant court* and *relevant period*—

omit.

(2) Schedule 4—

insert—

‘alarm, for chapter 11A, see section 443W.

animal, for chapter 2D, part 2, see the Road Use Management Act, schedule 4.

entrant, to a state building, a special event site or a watch-house, means a person who is about to enter or is at the building, site or watch-house.

evasion offence, for chapter 11A, see section 443W.

extradition offence see section 206.³⁸

fingerprint means an image or impression of friction ridge detail from the palmar surface of a person’s hand and includes a digital image of the friction ridge detail from the palmar surface of the person’s hand.

forfeiture order, other than in relation to a forfeiture proceeding—

- (a) for chapter 2B, see section 59A; or
- (b) for chapter 11A, see section 443W.

impounding order—

- (a) for chapter 2B, see section 59A; or
- (b) for chapter 11A, see section 443W.

modify a motor vehicle—

- (a) for chapter 2B, see section 59A; or
- (b) for chapter 11A, see section 443ZT.

prescribed period—

- (a) for chapter 2B—see section 59A; or
- (b) for chapter 11A—see section 443W.

prescribed place, for chapter 2, part 4, means—

- (a) a shop; or
- (b) a child-care centre; or
- (c) a pre-school centre; or

- (d) a primary, secondary or special school; or
- (e) premises licensed under the *Liquor Act 1992*; or
- (f) a railway station and any railway land around it; or
- (g) a mall; or
- (h) the part of the corporation area under the *South Bank Corporation Act 1989* declared to be the site under that Act; or
- (i) a licensed venue under the *Racing Act 2002*; or
- (j) an automatic teller machine; or
- (k) a war memorial;

but, in relation to soliciting for prostitution, does not include any area in a licensed brothel that can not be viewed from outside the brothel.

public official means—

- (a) for a government entity—a person who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for the entity; or
- (b) for an entity other than a government entity or a local government—a person who is declared under a regulation under this Act to be a public official in relation to inspection, investigation or other enforcement functions the person is appointed or authorised to perform under an authorising law for the entity; or
- (c) for chapter 1, part 3, division 2³⁹—an authorised person under the *Local Government Act 1993*; or
- (d) otherwise—a person who is declared by another Act to be a public official for this Act.

registered operator has the meaning given by the Road Use Management Act, schedule 4.

39 Chapter 1 (Preliminary), part 3 (Appointment as, and helping public officials), division 2 (Helping public officials)

regulated place see section 35A.⁴⁰

relevant court—

- (a) for chapter 2B, see section 59A; or
- (b) for chapter 11A, see section 443W.

relevant period—

- (a) for chapter 2B—see section 59A; or
- (b) for chapter 11A—see section 443W.

stop, for chapter 11A, see section 443W.

warning light, for chapter 11A, see section 443W.

watch-house officer see the *Police Service Administration Act 1990*, section 1.4.⁴¹.

- (3) Schedule 4, definition *cash dealer*, ‘*Transactions*’—
omit, insert—
‘*Transaction*’.
- (4) Schedule 4, definition *covert act*, paragraph (b), after
‘monitoring order,’—
insert—
‘a suspension order,’.
- (5) Schedule 4, definition *DNA sampler*, paragraph (b) and (c)—
renumber as paragraphs (c) and (d).
- (6) Schedule 4, definition *DNA sampler*—
insert—
‘(b) a watch-house officer authorised under section 397K to
take DNA samples; or’.
- (7) Schedule 4, definition *enforcement act*—
insert—

⁴⁰ Section 35A (Application of pt 4)

⁴¹ *Police Service Administration Act 1990*, section 1.4 (Definitions)

- ‘(1a) the detention of a person under section 371B.⁴²’.
- (8) Schedule 4, definition *identifying particulars offence*, paragraph (b)—
insert—
 ‘• *Prostitution Act 1999*, section 73’.
- (9) Schedule 4, definition *identifying particulars offence—*
insert—
 ‘(c) an extradition offence.’.
- (10) Schedule 4, definition *minor drugs offence*, paragraph (a), from ‘10(2)(a)’—
omit, insert—
 ‘10(2) involving either or both of the following—
 (a) possessing not more than 50 grams of cannabis sativa;
 (b) possessing a thing for use, or that has been used, for smoking cannabis sativa; but’.
- (11) Schedule 4, definition *owner*, after ‘chapter 2B’—
insert—
 ‘or 11A’.
- (12) Schedule 4, definition *owner*, after ‘corresponding law’—
insert—
 ‘, within the meaning of the Road Use Management Act, schedule 4,’.
- (13) Schedule 4, definition *photograph*, after ‘an image’—
insert—
 ‘, whether digitally or in another way’.
- (14) Schedule 4, definition *police establishment*, after ‘a police’—
insert—
 ‘station or police’.

42 Section 371B (Dealing with persons affected by potentially harmful things)

- (15) Schedule 4, definition *potentially harmful thing*, paragraph (a), ‘*Example*’—
omit, insert—
‘Examples’.
- (16) Schedule 4, definition *property tracking document*, paragraph (b)(ii), ‘*that*’—
omit.
- (17) Schedule 4, definition *weapon*, paragraph (b), ‘*section 5*’—
omit, insert—
‘schedule 2’.

Part 3 **Amendment of Criminal Code**

88 **Act amended in pt 3**

This part amends the Criminal Code.

89 **Amendment of s 340 (Serious assaults)**

Section 340—

insert—

- ‘(2A) For subsection (1)(b), the circumstances in which a person assaults a police officer include, but are not limited to, circumstances in which the person bites, spits on or throws a bodily fluid or faeces at a police officer.’

Part 4 **Amendment of Crime and Misconduct Act 2001**

90 **Act amended in pt 4 and references**

- (1) This part amends the *Crime and Misconduct Act 2001*.
- (2) A reference in this part to chapter 3, part 6A and sections 381 and 382 is a reference to the provisions as inserted by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 69.

91 **Omission of ch 3, pt 6A, div 5 (Special provisions about creating identity documents)**

Chapter 3, part 6A, division 5—
omit.

92 **Insertion of new ch 3, pt 6B**

Chapter 3, after part 6A—
insert—

‘Part 6B **Assumed identities**

‘Division 1 **Preliminary**

‘146O Purpose of pt 6B

‘The main purpose of this part is to facilitate investigations and intelligence gathering in relation to misconduct offences.

‘146P How purpose is achieved

‘The purpose is to be achieved primarily by providing for the lawful acquisition and use of an assumed identity.

‘146Q Definitions for pt 6B

‘In this part—

acquire, an assumed identity, means acquire evidence, or take steps to acquire evidence, of the identity.

agency means—

- (a) an issuing agency; or
- (b) the commission.

authorised civilian means a person, other than a commission officer, who is authorised under an authority to acquire or use an assumed identity.

authorised identity officer means a commission officer who is authorised under an authority to acquire or use an assumed identity.

authorised person means—

- (a) an authorised civilian; or
- (b) an authorised identity officer.

authority means an authority granted under section 146T⁴³ to acquire or use an assumed identity, including the authority as varied under section 146W.⁴⁴

birth certificate approval see section 146Y.⁴⁵

conduct includes any act or omission.

doing a thing, includes failing to do the thing.

evidence, of identity, means a document or other thing, including, for example, a driver licence, birth certificate, credit card or identity card, that evidences or indicates, or can be used to evidence or indicate, a person’s identity or any aspect of a person’s identity.

government issuing agency, in relation to an authority, means an entity that—

43 Section 146T (Deciding application)

44 Section 146W (Variation or cancellation of authority)

45 Section 146Y (Approval for creation of birth certificate for assumed identity)

- (a) is named in the authority; and
- (b) issues evidence of identity as part of performing any function of the government.

issuing agency means—

- (a) a government issuing agency; or
- (b) a non-government issuing agency.

non-government issuing agency, in relation to an authority, means an entity, other than a government issuing agency, that—

- (a) is named in the authority; and
- (b) issues evidence of identity.

officer, of an agency, includes a person employed or engaged in the agency.

supervisor, of an authorised civilian, means the authorised commission officer, appointed under section 146T(3), who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

use an assumed identity, includes representing, whether expressly or impliedly, or by saying or doing something, the identity to be real when it is not.

‘146R Relationship to other laws

‘The Public Records Act and the *Freedom of Information Act 1992* do not apply to activities or records under divisions 2 to 7.

‘Division 2 Authorities for assumed identities

‘146S Application for authority to acquire or use assumed identity

- ‘(1) A commission officer may apply to the chairperson for an authority for the officer or another person to do either or both of the following—

- (a) acquire an assumed identity;
 - (b) use an assumed identity.
- ‘(2) A separate application must be made for each assumed identity to be acquired or used.
- ‘(3) An application—
- (a) must be in writing in the form decided by the chairperson; and
 - (b) must contain all of the following information—
 - (i) the applicant’s name;
 - (ii) if a person other than the applicant is to be authorised to acquire or use an assumed identity—that person’s name;
 - (iii) if the person mentioned in subparagraph (ii) is not a commission officer—the name and rank or position of the person proposed to be appointed as supervisor, and an explanation of why it is necessary for a person who is not a commission officer to acquire or use the assumed identity;
 - (iv) details of the proposed assumed identity;
 - (v) reasons for the need to acquire or use an assumed identity;
 - (vi) details, to the extent known, of the investigation or intelligence gathering exercise in which the assumed identity will be used;
 - (vii) details of any issuing agencies and the types of evidence to be issued by them.
- ‘(4) The chairperson may require the applicant to give additional information about the application the chairperson considers appropriate for consideration of the application.

‘146T Deciding application

- ‘(1) After considering an application for an authority to acquire or use an assumed identity, and any additional information given under section 146S(4), the chairperson—

- (a) may grant an authority to acquire or use the assumed identity, with or without conditions; or
 - (b) may refuse the application.
- ‘(2) The chairperson must not grant an authority to acquire or use an assumed identity unless the chairperson is satisfied on reasonable grounds of all of the following—
- (a) the assumed identity is necessary for the purposes of an investigation or intelligence gathering in relation to a misconduct offence;
 - (b) the risk of abuse of the assumed identity by the authorised person under the authority is minimal;
 - (c) if the application is for authorisation of an assumed identity for a person who is not a commission officer—it would be impossible or impracticable in the circumstances for a commission officer to acquire or use the assumed identity for the purpose sought.
- ‘(3) If an authority is granted for an authorised civilian, the chairperson must appoint an authorised commission officer to supervise the acquisition or use of the assumed identity by the authorised civilian.
- ‘(4) An authority may also authorise—
- (a) an application to the independent member for a birth certificate approval; or
 - (b) a request under section 146ZB.⁴⁶
- ‘(5) A separate authority is required for each assumed identity.

‘146U Form of authority

- ‘(1) An authority must be—
- (a) in writing in the form decided by the chairperson; and
 - (b) signed by the person granting it.
- ‘(2) An authority must state all of the following—

⁴⁶ Section 146ZB (Request for evidence of assumed identity)

- (a) the name of the person granting the authority;
 - (b) the date of the authority;
 - (c) details of the assumed identity under the authority;
 - (d) details of the evidence of the assumed identity that may be acquired under the authority;
 - (e) the conditions, if any, to which the authority is subject;
 - (f) why the authority is granted;
 - (g) if the authority relates to an authorised identity officer—the name of the official;
 - (h) if the authority relates to an authorised civilian—
 - (i) the name of the authorised civilian; and
 - (ii) the name of the civilian’s supervisor under the authority; and
 - (iii) the period, of not more than 3 months, for which the authority remains in force.
- ‘(3) The authority also must state the following—
- (a) whether it authorises an application to the independent member for a birth certificate approval;
 - (b) each issuing agency to which a request may be made under section 146ZB.⁴⁷

‘146V Period of authority

- ‘(1) An authority for an authorised identity officer remains in force until cancelled under section 146W.
- ‘(2) An authority for an authorised civilian remains in force until the end of the period stated in the authority under section 146U(2)(h)(iii), unless the authority is sooner cancelled under section 146W.

⁴⁷ Section 146ZB (Request for evidence of assumed identity)

‘146W Variation or cancellation of authority

- ‘(1) The chairperson—
 - (a) may vary or cancel the authority at any time; and
 - (b) must cancel the authority if satisfied, on a review under section 146X or otherwise, that use of the assumed identity under the authority is no longer necessary.
- ‘(2) The chairperson must give written notice of the variation or cancellation to—
 - (a) the authorised person to whom the authority relates; and
 - (b) if the authorised person is an authorised civilian—the authorised person’s supervisor.
- ‘(3) The notice must state the reasons for the variation or cancellation.
- ‘(4) The variation or cancellation has effect on—
 - (a) the day the notice is given to the authorised person; or
 - (b) if a later day is stated in the notice—the later day.

‘146X Review of authority

- ‘(1) The chairperson must, at least once a year, review each authority granted by the chairperson and in force under this chapter.
- ‘(2) The purpose of a review is to decide whether use of the assumed identity under the authority is still necessary.
- ‘(3) If the chairperson is satisfied on a review that use of the assumed identity is no longer necessary, the chairperson must cancel the authority under section 146W.
- ‘(4) If the chairperson is satisfied on a review that use of the assumed identity is still necessary, the chairperson must record the chairperson’s opinion, and the reasons for it, in writing.

‘Division 3 Evidence of assumed identities

‘Subdivision 1 Creation of birth certificates for assumed identities

‘146Y Approval for creation of birth certificate for assumed identity

- ‘(1) The chairperson may apply to the independent member for authority to create a birth certificate (a *birth certificate approval*) for an assumed identity for an authorised person.
- ‘(2) The application must be written and include enough information to enable the independent member to properly consider whether the birth certificate approval should be granted.
- ‘(3) The independent member may grant the birth certificate approval only if satisfied granting the approval is justified having regard to the nature of the activities undertaken or to be undertaken by the authorised person under the authority for the assumed identity.
- ‘(4) A birth certificate approval granted under this section must be written, signed by the independent member, and state that a named commission officer is authorised under this section to create a birth certificate for the purpose of concealing the identity of an authorised person.

‘146Z Giving effect to birth certificate approval

- ‘(1) On the production to the registrar-general, for inspection, of a birth certificate approval—
 - (a) the commission officer named in the approval may create a birth certificate as authorised under the approval; and
 - (b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.
- ‘(2) The commission officer must, if practicable, give the registrar-general at least 3 days notice of the day the officer

intends to create the birth certificate under the birth certificate approval.

‘146ZA Destruction of birth certificate created under s 146Z

- ‘(1) This section applies in relation to a birth certificate created under a birth certificate approval (a *created birth certificate*).
- ‘(2) As soon as practicable after the authority for an assumed identity to which the created birth certificate relates is cancelled, the chairperson—
 - (a) must cause the created birth certificate to be destroyed; and
 - (b) must notify the registrar-general that the created birth certificate is no longer being used and has been destroyed.

‘Subdivision 2 Other provisions about evidence of assumed identities

‘146ZB Request for evidence of assumed identity

- ‘(1) This section applies if an authority authorises a request under this section.
- ‘(2) The chairperson may ask the chief executive officer of an issuing agency stated in the authority to—
 - (a) produce evidence of an assumed identity in accordance with the authority; and
 - (b) give evidence of the assumed identity to the authorised person named in the authority.
- ‘(3) The request must state a reasonable period for compliance with the request.
- ‘(4) A request can not be made under this section for the creation of a birth certificate or a certified copy of a marriage certificate.
- ‘(5) In this section—

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

‘146ZC Government issuing agency to comply with request

‘The chief executive officer of a government issuing agency who receives a request under section 146ZB must comply with the request within the reasonable period stated in the request.

‘146ZD Non-government issuing agency may comply with request

‘The chief executive officer of a non-government issuing agency who receives a request under section 146ZB may comply with the request.

‘146ZE Cancelling evidence of assumed identity

‘(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity under this part must cancel the evidence if directed in writing to do so by the chairperson.

‘(2) In this section—

cancel includes delete or alter an entry in a record of information.

‘Subdivision 3 Protections and indemnities

‘146ZF Protection from criminal responsibility—officer of issuing agency

‘(1) A person who does something under subdivision 1 or 2 that, apart from this section, would be an offence, is not criminally responsible for the offence, if the thing is done to give effect to a birth certificate approval.

‘(2) Also, the chief executive officer, or an officer, of an issuing agency who does something that, apart from this section, would be an offence, is not criminally responsible for the

offence if the thing is done to comply with a request under section 146ZB or a direction under section 146ZE.

‘146ZG Indemnity for issuing agency and officers in relation to creation of birth certificates

- ‘(1) This section applies if a birth certificate approval is produced to the registrar-general under section 146Z.⁴⁸
- ‘(2) The commission must indemnify the registrar-general, or an officer of the registrar-general, for any civil liability incurred by the registrar-general or officer, including reasonable costs, if—
 - (a) the liability is incurred because of something done by the registrar-general or officer to comply with section 146Z; and
 - (b) the requirements, if any, prescribed under a regulation have been met.

‘146ZH Indemnity for issuing agency and officers in relation to other evidence of assumed identities

- ‘(1) This section applies if the chairperson makes a request under section 146ZB or gives a direction under section 146ZE to the chief executive officer of an issuing agency.
- ‘(2) The commission must indemnify the issuing agency, or an officer of the agency, for any civil liability incurred by the agency or officer, including reasonable costs, if—
 - (a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty; and
 - (b) the requirements, if any, prescribed under a regulation have been met.

48 Section 146Z (Giving effect to birth certificate approval)

‘146ZI Protection from criminal responsibility for particular ancillary conduct

- ‘(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (*ancillary conduct*), for which a person may be criminally responsible because it involves conduct engaged in by another person for which the other person would, apart from section 146ZF, be criminally responsible (the *related conduct*).

Note—

The Criminal Code, section 7(1)(b) and (c) makes provision for a person who aids or enables the commission of an offence, and the Criminal Code, chapter 56, makes provision for conspiracy.

- ‘(2) Despite any other Act or law, a person who engages in ancillary conduct that is an offence, whether or not the person is an authorised person or an officer of an issuing agency, is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct the person believed the related conduct was being engaged in, or would be engaged in, by an authorised person or an issuing officer of an agency.

‘Division 4 Effect of authorities

‘146ZJ Assumed identity may be acquired and used

- ‘(1) An authorised identity officer may acquire or use an assumed identity if the acquisition or use is—
- (a) in accordance with an authority; and
 - (b) in the course of duty.
- ‘(2) An authorised civilian may acquire or use an assumed identity if the acquisition or use is in accordance with—
- (a) an authority; and
 - (b) the directions of the authorised civilian’s supervisor.

‘146ZK Protection from criminal responsibility—authorised person

‘If an authorised person does something that, apart from this section, would be an offence, the authorised person is not criminally responsible for the offence if—

- (a) the thing is done in the course of acquiring or using an assumed identity under an authority; and
- (b) the thing is done—
 - (i) for an authorised identity officer—in the course of duty; or
 - (ii) for an authorised civilian—in accordance with the directions of the authorised civilian’s supervisor; and
- (c) doing the thing would not be an offence if the assumed identity were the authorised person’s real identity.

‘146ZL Indemnity for authorised person

‘(1) This section applies if the chairperson grants an authority.

‘(2) The commission must indemnify the authorised person under the authority against any civil liability, including reasonable costs, incurred by the person, because of something done by the person if—

- (a) the thing is done in the course of acquiring or using an assumed identity under the authority; and
- (b) the thing is done—
 - (i) for an authorised identity officer—in the course of duty; or
 - (ii) for an authorised civilian—in accordance with the directions of the authorised civilian’s supervisor; and
- (c) the requirements, if any, prescribed under a regulation have been met.

- ‘(3) This section does not limit the *Police Service Administration Act 1990*, section 10.5.⁴⁹

‘146ZM Particular qualifications

- ‘(1) Sections 146ZK and 146ZL do not apply to anything done by an authorised person if—
- (a) a particular qualification is needed to do the thing; and
 - (b) the person does not have the qualification.
- ‘(2) Subsection (1) applies whether or not the authorised person has acquired, as evidence of an assumed identity, a document that indicates that the person has the qualification.

‘146ZN Effect of being unaware of variation or cancellation of authority

- ‘(1) If an authority to acquire or use an assumed identity has been varied in a way that limits its scope, this part continues to apply to the authorised person to whom the authority relates as if it had not been varied in that way, for as long as the person—
- (a) is unaware of the variation; and
 - (b) is not reckless about the existence of the variation.
- ‘(2) If an authority to acquire or use an assumed identity has been cancelled, this part continues to apply to the authorised person to whom the authority related as if it had not been cancelled, for as long as the person—
- (a) is unaware of the cancellation; and
 - (b) is not reckless about the existence of the cancellation.
- ‘(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—
- (a) the person is aware of a substantial risk that the variation or cancellation has happened; and

⁴⁹ *Police Service Administration Act 1990*, section 10.5 (Liability for tort generally)

- (b) having regard to the circumstances known to the person, it is unjustifiable to continue to use the assumed name in a way that was, but may no longer be, authorised by the authority because of the variation or cancellation.

‘Division 5 Misuse of assumed identity and information

‘146ZO Misuse of assumed identity

- ‘(1) An authorised identity officer commits an offence if—
 - (a) the official intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the officer’s authority; and
 - (b) the official knows that, or is reckless as to whether, the acquisition or use is not—
 - (i) in accordance with the officer’s authority; or
 - (ii) in the course of duty.

Maximum penalty—2 years imprisonment.

- ‘(2) An authorised civilian commits an offence if—
 - (a) the person intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the person’s authority; and
 - (b) the person knows that, or is reckless as to whether, the acquisition or use is not in accordance with—
 - (i) the person’s authority; or
 - (ii) the directions of the person’s supervisor under the authority.

Maximum penalty—2 years imprisonment.

- ‘(3) This section does not limit section 213.⁵⁰

‘146ZP Disclosing information about assumed identity

- ‘(1) A person commits an offence if—
- (a) the person intentionally, knowingly or recklessly discloses any information; and
 - (b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not the other person’s real identity; and
 - (c) the person knows that, or is reckless as to whether, the disclosure is not made—
 - (i) in connection with the administration or execution of this part; or
 - (ii) for the purposes of any legal proceeding arising out of or otherwise related to this part or of any report of the proceedings; or
 - (iii) in accordance with any requirement imposed by law.

Maximum penalty—2 years imprisonment.

- ‘(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—
- (a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence gathering in relation to misconduct; or
 - (b) knows that, or is reckless as to whether, the disclosure of the information—
 - (i) endangers or will endanger the health or safety of any person; or
 - (ii) prejudices or will prejudice the effective conduct of an investigation or intelligence gathering in relation to misconduct.

Maximum penalty—10 years imprisonment.

- ‘(3) This section does not affect section 213.

‘Division 6 Reporting and record keeping

‘146ZQ Report about authorities for assumed identities etc.

- ‘(1) As soon as practicable after the end of each financial year, the chairperson must give to the parliamentary commissioner a written report containing the following information in relation to the commission for the financial year—
- (a) the number of authorities granted;
 - (b) a general description of the activities undertaken by authorised persons when using assumed identities under this part;
 - (c) the number of applications for an authority that were refused;
 - (d) a statement about whether or not any fraud or other unlawful activity was identified by an audit under section 146ZS;
 - (e) any other information relating to authorities, assumed identities or the administration of this part that the parliamentary commissioner considers appropriate.
- ‘(2) The report must not contain information that, if made public, could reasonably be expected to—
- (a) endanger a person’s safety; or
 - (b) prejudice an investigation or prosecution; or
 - (c) compromise any law enforcement agency’s operational activities or methodologies.
- ‘(3) The parliamentary commissioner must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.
- ‘(4) This section does not limit section 64.⁵¹

51 Section 64 (Commission’s reports—general)

‘146ZR Record keeping

- ‘(1) The chairperson must keep appropriate records about the commission’s operations under this part.
- ‘(2) The records must contain all of the following information about each authority granted under this part in relation to the commission—
 - (a) the date on which the authority was granted and the name of the person who granted it;
 - (b) if the authority was varied or cancelled under this part—the date it was varied or cancelled, and the name of the person who varied or cancelled it;
 - (c) the name of the authorised person under the authority;
 - (d) details of the assumed identity to which the authority relates;
 - (e) details of any request made to an issuing agency under section 146ZB⁵² in relation to the authority;
 - (f) the general nature of the duties undertaken by the authorised person under the assumed identity;
 - (g) general details of relevant financial transactions entered into using the assumed identity;
 - (h) details of reviews of the authority under section 146X.⁵³

‘146ZS Audit of records

- ‘(1) The chairperson must have the records kept under section 146ZR for each authority granted in relation to the commission audited by the parliamentary commissioner—
 - (a) at least once every 6 months while the authority is in force; and
 - (b) at least once in the 6 months after the cancellation or expiry of the authority.

52 Section 146ZB (Request for evidence of assumed identity)

53 Section 146X (Review of authority)

- ‘(2) The parliamentary commissioner must give the chairperson a written report of the results of the audit.

‘Division 7 Delegation

‘146ZT Delegation generally

‘Other than as provided by this part, and despite any other Act or law to the contrary, the powers of the chairperson under this part may not be delegated to any other person.

‘146ZU Delegation—chairperson

- ‘(1) The chairperson may delegate any of the chairperson’s powers under this part relating to the following to an assistant commissioner—
- (a) the granting, variation and cancellation of authorities;
 - (b) conducting reviews under section 146X;
 - (c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;
 - (d) making requests under section 146ZB.
- ‘(2) Also, the chairperson may delegate to an authorised commission officer the chairperson’s power under section 146Y to apply to the independent member for authority to create a birth certificate for an assumed identity.
- ‘(3) No more than 4 delegations may be in force under this section at any time.’.

93 Amendment of s 255 (Secondment of officers)

- (1) Section 255(5)—
renumber as section 255(6).
- (2) Section 255—
insert—

- ‘(5) Without limiting section 174(2), a police officer seconded to the commission under this section continues to be a police officer for all purposes and to have the functions and powers of a police officer without being limited to the performance of the commission’s functions.

Example for subsection (5)—

A police officer seconded to the commission may exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* for an investigation of alleged misconduct involving a relevant offence as defined in section 197ZI of that Act.’.

94 Amendment of s 381 (Transitional provisions for authorities for birth certificates)

- (1) Section 381(2), ‘an authority given under new section 146F’—

omit, insert—

‘a birth certificate approval’.

- (2) Section 381(3)(a), ‘section 146G’—

omit, insert—

‘section 146Z’.

- (3) Section 381—

insert—

- ‘(4) Also, new section 146ZG applies in relation to the creation of the birth certificate as if the birth certificate had been created under new section 146Z.’.

95 Amendment of s 382 (Identity documents other than birth certificates)

Section 382(2)—

omit, insert—

- ‘(2) New sections 146ZF, 146ZH and 146ZI apply to the document as if it had been produced under a request under section 146ZB.’.

96 Amendment of sch 2 (Dictionary)

Schedule 2—

insert—

‘acquire, for chapter 3, part 6B, div 1, see section 146Q.

agency, for chapter 3, part 6B, div 1, see section 146Q.

authorised civilian, for chapter 3, part 6B, div 1, see section 146Q.

authorised identity officer, for chapter 3, part 6B, div 1, see section 146Q.

authorised person, for chapter 3, part 6B, div 1, see section 146Q.

authority, for chapter 3, part 6B, div 1, see section 146Q.

birth certificate approval, for chapter 3, part 6B, div 1, see section 146Q.

conduct, for chapter 3, part 6B, div 1, see section 146Q.

doing a thing, for chapter 3, part 6B, div 1, see section 146Q.

evidence, for chapter 3, part 6B, div 1, see section 146Q.

government issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

non-government issuing agency, for chapter 3, part 6B, div 1, see section 146Q.

officer, for chapter 3, part 6B, div 1, see section 146Q.

use, for chapter 3, part 6B, div 1, see section 146Q.’.

- (2) Section 69(3), ‘watch-house manager’—
omit, insert—
‘appropriate police officer’.

101 Replacement of s 70 (Duty of police officer who has taken a person into custody under s 69)

Section 70—

omit, insert—

‘70 Duty of police officer who has taken a person into custody under s 69

- ‘(1) If a person is taken into custody under section 69(1), the police officer who took the person into custody must, as soon as reasonably practicable, deliver the person into the custody of—
- (a) the officer-in-charge of a police station at which there is a holding cell; or
 - (b) a watch-house manager.
- ‘(2) If the person is taken to a holding cell at a police station, the officer-in-charge of the police station must ensure the person’s particulars are entered, as required under a regulation, in the register kept at the police station for the purpose.
- ‘(3) If the person is taken to a watch-house, the watch-house manager must ensure the person’s particulars are entered, as required under a regulation, in the register kept at the watch-house for the purpose.
- ‘(4) The person’s particulars must be entered in the relevant register as soon as possible after the person arrives at the police station or watch-house.
- ‘(5) The police officer who took the person to the relevant place must confirm the entry in the register relating to the person’s particulars by signing it.’.

102 Amendment of s 71 (Police officer must apply for protection order etc.)

(1) Section 71(3)(d), ‘watch-house manager’—

omit, insert—

‘appropriate police officer’.

(2) Section 71(4), ‘watch-house manager’—

omit, insert—

‘appropriate police officer’.

103 Amendment of s 75 (Entry of registers)

Section 75(1)(b), after ‘and at the’—

insert—

‘holding cell or’.

104 Amendment of sch (Dictionary)

Schedule—

insert—

‘*appropriate police officer* means—

(a) the officer in charge of a police station; or

(b) a watch-house manager.

holding cell means a cell at a police station or a police establishment other than a watch-house.’.

Part 6 Amendment of Drugs Misuse Act 1986

105 Act amended in pt 6

This part amends the *Drugs Misuse Act 1986*.

106 Insertion of new ss 122A–122C

After section 122—

insert—

‘122A Particular proceedings for minor drugs offences

- ‘(1) This section applies to a proceeding for an offence against this Act that is a minor drugs offence as defined in the *Police Powers and Responsibilities Act 2000*, schedule 4.
- ‘(2) However, this section applies only if the person charged with having committed the minor drugs offence pleads guilty to the offence.
- ‘(3) The court may, if the person is eligible under the *Police Powers and Responsibilities Act 2000*, section 211 to be offered an opportunity to attend a drug diversion assessment program, order the person to attend, and complete, a drug diversion assessment program as directed by a police officer.
- ‘(4) Before making the order, the court must inform the defendant that if the court makes the order and the defendant fails to attend and complete the drug diversion assessment program, the defendant will be dealt with by the court as if the order had not been made.
- ‘(5) The court may also make any other order the court considers appropriate for ensuring the defendant’s attendance at the drug diversion assessment program, including an order requiring the provider of the drug diversion assessment program to give the court a report about the defendant’s attendance at and completion of the drug diversion assessment program.
- ‘(6) On the making of the orders under this section the proceeding against the defendant is adjourned until a date fixed by the court or a date to be fixed.

‘122B Provision of information to court

- ‘(1) If the court makes an order under section 122A and a police officer arranges for the defendant to attend a drug diversion assessment program, the police officer must inform the provider of the drug diversion assessment program that the

provider must, as required by the court's order under section 122A, give the court a written report about—

- (a) the person's attendance at, and completion of, the program; or
 - (b) if the person failed to attend or complete the program—the person's failure to attend or complete the program.
- '(2) The provider of the drug diversion program may give the court the report by filing the report with the court and giving a copy of the report to the commissioner.
- '(3) The commissioner must ensure a copy of the report is given to the prosecuting authority and the person's lawyer.
- '(4) In this section—
- prosecuting authority* means the entity responsible for prosecuting the charge of the minor drugs offence.

'122C Further consideration of charge of minor drugs offence

- '(1) If, after considering a report filed under section 122B, the court is satisfied the defendant attended and completed the drug diversion assessment program as required under section 122A, the court must strike out the proceeding for the charge of the minor drugs offence.
- '(2) However, if the court is satisfied the defendant did not attend and complete the drug diversion assessment program as required under section 122A, the court may continue to hear the charge of the minor drugs offence and may make any order in relation to the offence the court considers appropriate.'

insert—

**‘Division 1 Officers and other police
 personnel’.**

115 Insertion of new pt 5, div 2

Part 5, after section 5.17—

insert—

‘Division 2 Watch-house officers

‘5.18 Appointment of watch-house officers

- ‘(1) This section applies if the commissioner proposes to appoint a person who is or is to become a staff member to be a watch-house officer.
- ‘(2) The commissioner may appoint the person only if the commissioner is satisfied the person has appropriate qualifications and experience for performing the functions of a watch-house officer.
- ‘(3) A person has appropriate qualities and experience for appointment as a watch-house officer only if the commissioner is satisfied the person—
 - (a) has completed a course of training approved by the commissioner for the purpose; or
 - (b) possesses appropriate qualifications, standing and experience for performing the functions of a watch-house officer.

Note—

Staff members are appointed under the *Public Service Act 1996* or section 8.3(5) and are not police officers. Also, this section does not affect the powers of the commissioner to appoint watch-house managers. For the definition *watch-house manager*, see the *Police Powers and Responsibilities Act 2000*, schedule 4.

116 Amendment of s 5A.2 (Definitions for pt 5A)

Section 5A.2—

insert—

‘*analyst* means a person who, under section 5A.4A, is appointed as an analyst.⁵⁴’.

117 Insertion of new s 5A.4A

After section 5A.4—

insert—

‘5A.4A Analysts

‘The Minister may, by gazette notice, appoint as an analyst for this part, a person the Minister is satisfied has appropriate qualifications, standing and experience to be an analyst for this part.’.

118 Amendment of sch (Relevant information)

Schedule, entry for information about staff members, applicants to become staff members, volunteers and students on work experience, item 2, ‘in QPS’—

omit, insert—

‘in a QPS’.

Part 9 Other Acts amended

119 Acts amended in sch 2

Schedule 2 amends the Acts it mentions.

Schedule 1 Minor amendments of Police Powers and Responsibilities Act 2000

section 3

- 1 Section 12(3), ‘proposed to be appointed’—**
omit.
- 2 Section 19(1)(d), ‘, 318D’—**
omit.
- 3 Section 21(1)(a) and (b), ‘; or’—**
omit, insert—
‘; and’.
- 4 Chapter 2, part 4, heading, ‘move-on’—**
omit, insert—
‘move on’.
- 5 Section 49(3), after ‘police establishment’—**
insert—
‘or police station’.
- 6 Section 49(4), ‘police establishment’—**
omit, insert—
‘place’.
- 7 Section 59LX(4)(a)—**
omit, insert—

Schedule 1 (continued)

‘(a) the *Juvenile Justice Act 1992*, section 260 does not apply to that order; and’.

8 Section 59LY(1), ‘an impounded motor vehicle’—

omit, insert—

‘a motor vehicle impounded under this chapter’.

9 Section 68(1)(c), from ‘is to be’—

omit, insert—

‘is or is to be impounded under chapter 2B or 11A.⁵⁵’.

10 Section 82, ‘Example—’—

omit, insert—

‘Examples—’.

11 Section 197ZI(3)(a)(ii), ‘by a’, second mention—

omit.

12 Section 209(4), ‘Example’—

omit, insert—

‘Examples’.

13 Section 230(1)(a), ‘an offence’—

omit, insert—

‘a charge of an offence’.

55 Chapter 2B (Motor vehicle impounding powers for prescribed offences and motorbike noise direction offences) or 11A (Provisions about evading police officers)

Schedule 1 (continued)

- 14 Section 243, heading, after ‘establishment’—**
insert—
‘or police station’.
- 15 Section 243, after ‘establishment’—**
insert—
‘or police station’.
- 16 Section 295(1), ‘a person, other than a child,’—**
omit, insert—
‘an adult’.
- 17 Section 296, ‘a person, other than a child,’—**
omit, insert—
‘an adult’.
- 18 Section 298(1), ‘a person other than a child’—**
omit, insert—
‘an adult’.
- 19 Section 318H(4), from ‘section 314’ to ‘or the results’—**
omit, insert—
‘section 315 or the results’.
- 20 Section 318ZF(6), definition *reporting notice*, from ‘sample notice’—**
omit, insert—
‘sample notice or non-medical examination notice.’.

Schedule 1 (continued)

- 21 Section 347(1)(b), ‘officer’s’—**
omit, insert—
‘person’s’.
- 22 Section 367A(4), ‘subsection (4)’—**
omit, insert—
‘subsection (5)’.
- 23 Section 368, ‘Example—’—**
omit, insert—
‘Examples—’.
- 24 Section 381, ‘Unless’—**
omit, insert—
‘(1) Unless’.
- 25 Section 447A, heading, ‘Assisting coroner to’—**
omit, insert—
‘Helping coroner’.
- 26 Section 447A(1), ‘assist’—**
omit, insert—
‘help’.
- 27 Section 448, ‘Assistance to’—**
omit, insert—
‘Helping’.

Schedule 2 Other Acts amended

section 119

Australian Crime Commission (Queensland) Act 2003

1 Section 29(9)(b), ‘he or she’—
omit.

2 Section 62(a), ‘effect;’—
omit, insert—
‘effect; and’.

Cross-Border Law Enforcement Legislation Amendment Act 2005

1 Section 23, ‘omit;’—
omit.

2 Section 28, new section 500(3), ‘1197ZZH’—
omit, insert—
‘197ZZH’.

3 Section 30(1), after ‘entity;’—
insert—
‘listening device.’.

Schedule 2 (continued)

- 4** **Schedule 1, item 15, ‘; and’—**
omit, insert—
‘; or’.
- 5** **Schedule 1, after item 16—**
insert—
- ‘16A** **Schedule 4, definition *relevant person*, paragraphs (c), (d)
and (e), ‘; and’—**
omit, insert—
‘; or’.

**Police Powers and Responsibilities (Motorbike Noise)
Amendment Act 2005**

- 1** **Section 28(1), after ‘*prescribed offence*’—**
insert—
‘, *relevant court*’.

Summary Offences Act 2005

- 1** **Section 28(2), example, ‘Example—’—**
omit, insert—
‘*Note—*’.
- 2** **Part 4, heading, ‘and amendments’—**
omit.

Schedule 2 (continued)

Tow Truck Act 1973

1 Section 4, definition *seized*, from ‘section 60’ to ‘of that Act’—

omit, insert—

‘section 59Y because of section 59Z(d) or (e) of that Act’.

Weapons Act 1990

1 Section 37, after ‘serial number’—

insert—

‘, if any’.

2 Section 104(5)(b), ‘the specified’—

omit, insert—

‘on the specified’.

3 Section 105(3)(b), ‘the specified’—

omit, insert—

‘on the specified’.

4 Section 106(1)(b), ‘loss of life’—

omit, insert—

‘death’.

Schedule 2 (continued)

- 5 Section 106(4)(b), ‘the specified’—**
omit, insert—
‘on the specified’.
- 6 Section 185, second occurrence—**
renumber as section 186.
- 7 Schedule 2, definition *category M crossbow*,
‘(Categories)’—**
omit, insert—
‘*Categories*’.