

POLICE AND OTHER LEGISLATION (MISCELLANEOUS PROVISIONS) BILL 1998

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The legislation seeks to amend a range of legislation within the policing portfolio and other related Acts. The amendments address both minor technical issues as well as more significant policy matters that have become urgent or are needed for the Police Service to remain operationally effective. The new policy outcomes sought are:

Police Powers and Responsibilities Act 1997

- The manager of a watchhouse is provided with authority to give directions to persons in custody to ensure the good management and control of the watchhouse and to transfer persons in watchhouses to another watchhouse for security and safety reasons or a place for treatment.
- The power for police to move on persons in certain circumstances is extended to include automatic teller machines.

Drugs Misuse Act 1986

- Specific authority is provided to staff members of the Service to have possession of dangerous drugs and utensils as part of the performance of their duty as exhibit officers.
- The legislation allows acceptance of interstate certificates of analysis across State and Territory boundaries upon Ministerial declaration. The analysts would then be prescribed by regulation.
- An exemption is provided to allow the trial planting of hemp by

certain persons under strictly controlled terms and conditions. These terms and conditions would then be prescribed by regulation.

- The legislation allows an application to be made to a court for the destruction of chemicals used in the production of dangerous drugs and property contaminated by such chemicals prior to conviction of the alleged offender.

Police Photographs Act 1966

- Ownership of any photograph, tape or transcript of interview made by or for a police officer is vested in the Commissioner of Police. An offence is created of unlawfully having possession of, or supplying, a police photograph, tape or transcript of interview.

Police Service Administration Act 1990

- The legislation provides for the Commissioner to impose conditions on the disclosure of information and provides an offence for breaching the conditions.
- The *Police Photographs Act 1966* and the *Police Dogs Act 1984* are repealed and incorporated into the Police Service Administration Act. This incorporation will extend the protection of the Act to include police horses.

Criminal Code

- Offences related to unlawfully entering another person's vehicle and unlawfully entering another person's vehicle with intent to commit an indictable offence are created.

Environmental Protection Act 1994

- The legislation provides police with power to require a person to give his or her name and address when about to give a noise abatement direction.

Weapons Act 1990

- An offence is created of carrying a knife in a public place without reasonable excuse.
- Offences are created which provide for misconduct offences by

persons using specific types of production made slingshots (not homemade children's slingshots).

- The legislation provides for an authorised officer to grant a weapons license to a person in another State if they have a genuine need and are not disqualified from holding a licence in that State.

Means of Achieving Policy Objectives

The objectives listed are achieved by amendment to the *Police Service Administration Act 1990*, *Police Powers and Responsibilities Act 1997*, *Crimes Commission Act 1997*, *Drugs Misuse Act 1986*, *Criminal Code*, *Environmental Protection Act 1994* and the *Weapons Act 1990*. The *Police Photographs Act 1966* and the *Police Dogs Act 1984* will be repealed and incorporated into the Police Service Administration Act.

It is necessary to make amendments to the *Drugs Misuse Regulation 1996*.

Estimated Cost of Implementation for Government

The implementation of this legislation will not entail any cost to government.

Consistency with Fundamental Legislative Principles

Overall, this Bill does not breach fundamental legislative principles.

Consultation conducted in Development of the Bill

The Department of Justice has been consulted on the Bill as a whole and the following bodies have been consulted in relation to that part of the proposal which relates to their concerns/issues:

- the Department of Primary Industries;
- the Department of Environment; and
- the Department of Health.

NOTES ON PROVISIONS

PART ONE—PRELIMINARY

Clauses 1 and 2 specify the short title of the proposed Act and provide for its commencement.

PART TWO—AMENDMENT OF POLICE SERVICE ADMINISTRATION ACT 1990

Act amended

Clause 3 identifies the *Police Service Administration Act 1990* as the Act being amended by this part.

Amendment of s 1.4 (Definitions)

Clause 4 amends the section by inserting redrafted definitions previously contained within the *Police Dogs Act 1984* and the *Police Photographs Act 1966* as a consequence of the consolidation of those Acts and includes a new definition “police horse”.

Amendment of s 4.8 (Commissioner’s responsibility)

Clause 5 amends the section by identifying the types of records currently held by the Commissioner.

Amendment of s 7.1 (Responsibility for command)

Clause 6 amends the section to clarify what type of service should be taken into account to identify the police officer in command at an incident.

Amendment of s 7.2 (Duty concerning misconduct or breaches of discipline)

Clause 7 amends the section to provide the Commissioner with authority to grant conditional exemptions from the duty to report misconduct or breaches of discipline. The exemptions remove the restrictive reporting requirements that greatly reduce the capacity of persons performing support and counselling roles to operate effectively. For example, a welfare officer dealing with an alleged contravention of the *Anti-Discrimination Act 1991* would not then be required to report information against the wishes of the aggrieved.

Insertion of new pt 9A

Clause 8 inserts sections 3 to 7 of the *Police Photographs Act 1966* as part of the consolidation of that Act. Section 9A.1 is amended to provide authority to the Commissioner not to charge a fee if desired.

Amendment of s 10.2 (Authorisation of disclosure)

Clause 9 amends the section to allow the Commissioner to impose conditions on disclosure and an offence for contravening such conditions. This amendment resolves the problem of improper disclosure of information by the increasing number of persons lawfully in receipt of official information. This section does not cover members of the police service who are adequately covered by section 10.1 of the Act.

Amendment of s 10.5 (Liability for tort generally)

Clause 10 amends the section by extending the protection from liability to include “volunteers” and provides a definition of “volunteer”.

Amendment of s 10.9 (Service and production of documents)

Clause 11 amends the section by providing that any member of the Police Service may represent the Commissioner in order to produce documents in a court or tribunal. This amends the previous section where only persons nominated on behalf of the Commissioner could serve and produce documents. The procedure of nomination continues to be necessary

for the service of documents as special knowledge is required, but is unnecessary and overly restrictive for the production of documents.

Amendment of s 10.12 (Legal proceedings)

Clause 12 amends the section by including a new paragraph in subsection (2) and new subsections (3) and (4).

The new paragraph (d) in subsection (2) provides that stated property is the property of the Commissioner under this Act. This amendment is intended to remove evidentiary difficulties where, for example, undercover operatives purchase drugs with Police Service funds, by making it clear that ownership of such property is always retained by the Commissioner and is not the property of any other person.

Subsection (3) inserts section 8 of the *Police Dogs Act 1984* as part of the consolidation of that Act and includes new terms “mounted police officer” and “police horse”.

Subsection (4) requires a person to give seven days notice of their intention to question the delegation of an officer. This amendment is required to allow sufficient time for the production of the Commissioner’s delegations where the production is affected by the geographical location of the proceeding.

Insertion of new ss 10.21A-10.21B

Clause 13 inserts sections 10.21A (Unlawful possession of prescribed articles) and 10.21B (Killing or injuring police dogs and horses).

Section 10.21A provides for action to be taken to prevent the unlawful possession or supply of a prescribed article and provides the meaning of “prescribed article”. These provisions are intended to prevent persons from possessing or retaining prescribed articles where it serves no official purpose and where, in some cases, the possession may be used to facilitate another offence. An example of this is a person who keeps a photograph which shows injuries he had inflicted on a previous victim, to intimidate another person into submission. Exemptions to these provisions are where the article is supplied for identified court and defence purposes.

Section 10.21B inserts section 7 of the *Police Dogs Act 1984* as part of the consolidation of that Act.

Amendment of s 10.22 (Apprehension etc. of offenders against Act)

Clause 14 omits the subsection as these provisions are now provided in the *Police Powers and Responsibilities Act 1997*.

**PART 3 —AMENDMENT OF DRUGS MISUSE ACT
1986****Act amended in pt 3**

Clause 15 identifies the *Drugs Misuse Act 1986* as the Act being amended by this part.

Amendment of s 4 (Interpretation)

Clause 16 amends the definition of “analyst” to be persons identified in the new section 4C and renumbers the section to better identify the scope and coverage of the sections.

Insertion of new s 4C

Clause 17 inserts section 4C (Analyst) which identifies the manner in which the Minister may appoint analysts and provides for a regulation to be established to declare interstate analysts as analysts for Queensland.

Interstate analysts will only be declared by regulation where the Minister is satisfied they are suitably qualified. Certificates issued by interstate analysts would then be held to be conclusive, in the absence of evidence to the contrary, and remove the necessity of interstate analysts attending court on every occasion.

Amendment of s 32 (Forfeiture of dangerous drugs)

Clause 18 amends the section by widening its coverage to include chemicals and property contaminated by chemicals used in or for the manufacture of a dangerous drug. This amendment is intended to resolve the health and safety concerns arising from the storage of increasing

amounts of dangerous and volatile chemicals and property taken from clandestine laboratories.

While forfeiture of these items is provided for in the *Police Powers and Responsibilities Act 1997*, which commences on 6 April 1998, it will not apply to chemicals and contaminated property taken possession of up to that time. Accordingly, the application of this amendment is to be made retrospective from 25 January 1995, such date having been identified as the last date of seizure awaiting conclusion.

Insertion of new pt 5A

Clause 19 provides for the creation of a regulation which exempts persons from certain provisions of the Act to allow the trial planting of low-level drug content cannabis sativa for research into its suitability as a commercial fibre crop. The regulation will strictly control any trial by placing comprehensive and stringent conditions on their operation. The regulation is controlled by the expiry of the part 4 years after its commencement.

Amendment of s 52A (Prescribed persons permitted to receive and dispose of drugs)

Clause 20 expands the section by identifying new categories of persons who are required to possess dangerous drugs as part of their duties for the Police Service. This has occurred as a result of the civilianisation of roles previously only held by police officers.

PART 4—AMENDMENT OF CRIMINAL CODE

Act amended in pt 4

Clause 21 identifies the *Criminal Code* as the Act being amended by this part.

Insertion of new ss 426—427

Clause 22 inserts sections 426 (Unlawful entry of vehicle) and 427 (Unlawful entry of vehicle for committing indictable offence).

Section 426 allows police to prosecute persons who enter a motor vehicle without the owner's consent in circumstances where evidence that anything had been taken or damaged could not be found. Section 427 identifies the more serious matter of entering a person's motor vehicle without consent with the intention of committing more serious offences such as rape, abduction, and assaults arising from 'road rage' incidents.

Amendment of s 552B (Charges of indictable offences that may be dealt with summarily)

Clause 23(1) corrects a drafting error.

Clause 23(2) amends the section to give Magistrates the jurisdiction to deal with matters that involve the circumstances of aggravation provided in section 408A. This removes the previous nonsensical provision that allowed Magistrates to deal with the unlawful use aspects of the offence but denied jurisdiction when even minor damage occurred which then necessitated a District Court trial.

PART 5—AMENDMENT OF ENVIRONMENTAL PROTECTION ACT 1994**Act amended in pt 5**

Clause 24 identifies the *Environmental Protection Act 1994* as the Act being amended by this part.

Amendment of s 144 (Power to require name and address)

Clause 25 replaces the name and address provision left out in error during the transition of powers from the now repealed *Noise Abatement Act 1978* to the *Environmental Protection Act 1994*.

PART 6—AMENDMENT OF WEAPONS ACT 1990

Act amended in pt 6

Clause 26 identifies the *Weapons Act 1990* as the Act being amended by this part.

Amendment of s 5 (Definitions)

Clause 27(1) omits the definition of “dealer”.

Clause 27(2) amends the section by redefining some words or by adding new words. A new definition of “dealer” is inserted to better define the activities of firearms dealers for the purpose of identifying unlicensed firearms dealing offences.

A new definition “slingshot” is inserted which identifies the specific types of items that may be used to commit offences in sections where the term is used. The definition of “firearm” is amended to identify a “slingshot” as not being a firearm generally.

The definition of “security organisation” is amended to clarify the position of a person who is not an organisation, but who employs security guards, as being included in the definition.

Amendment of s 10 (Limitation on issue of licence)

Clause 28(1) amends the section making it a requirement that persons must live in Queensland to be able to obtain a weapons licence. The intention is to prevent persons who are disqualified from holding a licence in their home State from obtaining a licence in Queensland.

Exemptions have been provided which require a person to provide to the authorised officer a genuine reason for the issue of a licence. For example, the amendment applies to a person who resides in Tweed Heads but shoots at, and is a member of, a pistol club situated on the Gold Coast.

Clause 28(2) amends the section to follow the original intent of the section which is to identify the course as an interstate course in safety training.

Amendment of s 18 (Renewal of licences)

Clause 29 amends the section to comply with the original intent of the legislation. It is clear that a person must establish that they continue to be a fit and proper person to hold a weapons licence when applying for its renewal.

Amendment of s 29 (Revocation of licence)

Clause 30 amends the section to rectify an omission in the original legislation. While the power to revoke a licence was provided to authorised officers, no such power was provided to rectify circumstances where the licence was revoked in error. This section does not provide authority to authorised officers to interfere with a revocation made by a court.

Replacement of s 51 (Possession of a knife in night clubs)

Clause 31 omits the previous section and replaces it with a new section that better reflects community and police concerns over the increasing use of knives to commit offences. The section provides police officers with authority to prosecute a person who is in possession, or carrying, a knife in a public place without reasonable excuse. This is achieved by defining the term “knife” and includes a reasonable excuse section which contains examples which are not meant to be definitive. Issues to have regard to when considering what is a reasonable excuse are also identified. The section also provides that the possession or carriage of a knife for self defence is not a reasonable excuse.

Amendment of s 54 (Possession or use of weapon by unlicensed person in primary production sometimes allowed)

Clause 32 amends the section to remove an anomaly with the application of the section. The amendment allows the intent of the legislation to be followed.

For example, an employee of a primary producer will now be able to possess or use a weapon identified on the primary producer’s licence providing they hold a weapons licence even though the categories may differ.

Amendment of s 56 (Discharge of weapon on private land without owner's consent prohibited)

Clause 33 amends the section to include a “slingshot”, as identified in section 5 (definitions), as a weapon for this section. Slingshots have been included to counter the increasing use of high powered production type slingshots to cause damage and injury.

Amendment of s 57 (Particular conduct involving a weapon in a public place prohibited)

Clause 34 amends the section to include a “slingshot”, as identified in section 5 (definitions), as a weapon for this section. Slingshots have been included to counter the increasing use of high powered production type slingshots to cause damage and injury.

Amendment of s 58 (Dangerous conduct with weapons prohibited generally)

Clause 35 amends the section to include a “slingshot”, as identified in section 5 (definitions), as a weapon for this section. Slingshots have been included to counter the increasing use of high powered production type slingshots to cause damage and injury.

Amendment of s 59 (Possession or use of weapon under the influence of liquor or a drug prohibited)

Clause 36(1) amends the section to correct a drafting error.

Clause 36(2) amends the section to include a “slingshot”, as identified in section 5 (definitions), as a weapon for this section. Slingshots have been included to counter the increasing use of high powered production type slingshots to cause damage and injury.

Amendment of s 68 (Dealers to be licensed)

Clause 37 amends the section by inserting penalties that were omitted in error.

Amendment of s 69 (Armourers to be licensed)

Clause 38(1) amends the section by inserting penalties that were omitted in error.

Clause 38(2) amends the section by inserting an offence for manufacturing a weapon without an armourers licence and provides a penalty section.

This offence is required to rectify an omission which failed to provide that a person must be a licensed armourers to manufacture a weapon.

Amendment of s 71 (Licensed dealers and armourers to keep register)

Clause 39 amends the section to allow licensed dealers and armourers to keep records in a computerised register if desired.

Amendment of s 78 (Weapons not to be discharged or operated)

Clause 40 amends the section by removing a provision that is nonessential to the section. The operation and discharge of collector's weapons are adequately contained in subsection (1) and governed by licence conditions issues with the licence.

Amendment of s 132 (Power to demand production of licence etc.)

Clause 41 amends the section by identifying what part of a weapons licence is required to be produced to a police officer on demand.

Amendment of s 139 (Seizure and retention of weapons)

Clause 42 amends the section by inserting a new subsection that provides a police officer with authority to seize and retain an antique firearm in certain circumstances. At the present time, a licence is not required to possess an antique firearm and where a person in possession of an antique firearm is no longer a fit and proper person a police officer has no authority to seize the weapon. For example, where a person is the subject of a domestic violence order they retain the antique firearm even though it is still capable of being discharged.

Amendment of s 154 (Retention and disposal of weapons in police custody)

Clause 43 amends the section to allow police officers to retain and dispose of antique firearms in the same manner as any other weapon in their possession.

Amendment to s 179 (Compensation)

Clause 44 amends the section by including the *National Firearms Program Implementation Act 1997* (Cwlth).

The amendment reflects the financial agreement between the State and the Commonwealth with respect to compensation and the provisions of the relevant Commonwealth statute.

PART 7—AMENDMENT OF POLICE POWERS AND RESPONSIBILITIES ACT 1997**Act amended in pt 7**

Clause 45 identifies the *Police Powers and Responsibilities Act 1997* as the Act amended by this part.

Amendment of s 10 (Appointment of police officers as public officials for other Acts)

Clause 46 amends the section to require the commissioner's approval for the *ex-officio* appointment of police officers as public officials under other statutes. This authority was originally intended for the Act.

Amendment of s 13 (General power to enter to make enquiries, investigations or serve documents)

Clause 47 amends the section to clarify the powers of a police officer to enter residential land and other places that are not dwellings, without the consent of an occupier, when making an enquiry, investigating a matter or

-serving a document. This was the original intention of the section.

Amendment of s 18 (Crime scene warrant)

Clause 48 amends the section to clarify the authority of a judge of the Supreme Court to issue a crime scene warrant although the judge refuses to allow a police officer to cause structural damage to a building.

Amendment of s 20 (Powers at crime scenes)

Clause 49 amends the section to clarify the powers of a police officer at a crime scene, to include searching the place and to open things that are locked.

Amendment of s 26 (Searching persons without warrant)

Clause 50 amends the section to clarify the powers of a police officer to seize things that may not be evidence of an offence but which are intended to be used to cause harm to someone. For example, it is not an offence for a person to cause harm to himself or herself, therefore the thing used would not be evidence of an offence.

Amendment of s 27 (Searching vehicles without warrant)

Clause 51 amends the section for the same reasons provided in the note for clause 50.

Amendment of s 35 (Arrest without warrant)

Clause 52 clarifies the meaning of the term “suspect” used in the Act, for example in section 38 (Arrest may be discontinued). The amendment will clarify the duty a police officer has under section 38, to release a person who is no longer reasonably suspected of having committed an offence.

Amendment of s 41 (Notice to appear form)

Clause 53 amends the section to increase the minimum period that must be given to a person to appear in court and to co-incide with the provisions of the *Justices Act 1886* that allow a matter to be dealt with in the person's

absence. For example, minor public order offences such as using obscene language in a public place may be dealt with *ex parte*.

Amendment of s 46 (Court may order immediate arrest of person who fails to appear)

Clause 54 amends the section to ensure the efficiency of this new way of bringing an offender before a court by not requiring evidence from a police officer about service of the notice if the person fails to appear at a court. Therefore, the matter may be dealt with as though it was a summons on which the person failed to appear.

Amendment of s 48 (Application of part)

Clause 55 amends the section to clarify its application.

Amendment of s 49 (Removal of persons from lawful custody)

Clause 56 amends the section to recognise the use of terms “investigation” and “questioning” as distinct processes for the purpose of part 8.

Amendment of s 51 (Extension of detention period)

Clause 57 amends the section to ensure its intention is clear. A justice of the peace may only grant an extension that does not cause the total questioning period since the detention period began, to exceed 12 hours.

Amendment of s 68 (Surveillance warrants)

Clause 58 clarifies the powers a police officer has to remove a surveillance device after use of the device under the warrant has ended. While use of the device under a warrant was to be limited to a period of 30 days or a shorter period stated in the warrant, it was not the intention that a police officer also be required to remove the device within that 30 days or a shorter period stated in the warrant. The amendment allows for the removal of the device after the period for its use expires. However, the device must be deactivated immediately the period for its use expires.

Amendment of s 70 (Powers under surveillance warrant)

Clause 59 amends the section so that the powers a police officer may exercise under a surveillance warrant are not restricted to the officer who executes the warrant, for example, the officer who installs a listening device would not monitor and record intercepted conversations.

Amendment of s 76 (Report on covert search)

Clause 60 amends the section by requiring a copy of the report to be supplied to the monitor as well as the Supreme Court judge.

Insertion of new s 79A

Clause 61 provides for the appointment of an acting monitor when the person appointed to that position is unable to perform that function.

Insertion of new 82A

Clause 62 provides protection from liability for the monitor and acting monitor from acts or omissions committed by them in the performance of their functions done honestly and without negligence.

Amendment of s 83 (When part applies to behaviour)

Clause 63 corrects a drafting error, as this section only applies to division 1.

Amendment of s 84 (When part applies to presence)

Clause 64 corrects a drafting error, as this section only applies to division 1.

Insertion of new pt 11A

Clause 65 inserts sections 90A (Control of persons in watch-houses) and 90B (Transfer of persons in watch-houses). Section 90A codifies the authority of a police officer then in charge of a watchhouse to give directions to, and to move prisoners held in a watchhouse to ensure the good management and control of the watchhouse.

Section 90B also codifies the powers of a police officer then in charge of a watchhouse to transfer a prisoner to another watchhouse, to a police station or to a place to receive treatment, for example, a hospital.

Amendment of s 108 (Requirements after property seized)

Clause 66 amends the section to allow courts to make orders with respect to things seized under the Act, at the end of a proceeding. Also if the thing is held by a police officer, the amendment allows an officer to continue retention of the thing until it is dealt with under the order, for example, retaining it until the determination of a forfeiture proceeding under the *Crimes (Confiscation) Act 1989*.

Amendment of s 110 (Return of things seized)

Clause 67 amends the section to clarify a police officer's authority to retain a thing seized for a limited cooling off period of 7 days, where the thing was seized not as evidence but because it is intended to be used to harm someone.

Amendment of s 120 (Assault etc. of police officer)

Clause 68 amends the section as part of the consolidation of the *Police Dogs Act 1984*, and expands its application to include police horses.

Amendment of s 122 (Entry of place to prevent offence or injury)

Clause 69 corrects a drafting error.

Amendment of s 123 (Police officer may use assistance in exercising certain powers)

Clause 70 amends the section to allow a police officer to bring vehicles and animals on to a place when exercising a power under the Act. For example, a police dog may be taken on to a place to help the search for a dangerous drug under a search warrant. Similar provisions exist in other statutes such as section 53 of the *Drugs Misuse Act 1986*. A consolidated provision, that included animals and vehicles, was intended for this section.

Amendment of sch 3 (Dictionary)

Clause 71 amends the dictionary by changing the meaning of some words and by adding new words to the schedule.

The meaning of “detention period” is changed to reflect the intention of part 8 so that any period extended by a justice or a magistrate is included.

Also the word “question” has been added to clarify the powers and responsibilities a police officer has under parts 8 and 12.

For example, the obligations to warn a person about their right to silence should only arise before asking a question that relates to the person's involvement in an offence.

The obligation should not arise before a question that is not related to the person's involvement in an offence, such as a question asking if a person is prepared to go to a police station to answer questions or to take part in an identification parade.

The meaning of “identifying particulars” is amended to reflect provisions found in other statutes by including footprints.

The meaning of “prescribed place” is amended to allow a police officer to give a reasonable direction to a person who, for example, by their presence or behaviour near an automatic teller machine is causing anxiety to a reasonable person. This amendment allows a police officer to take a preventative approach when dealing with the growing problem of offenders approaching people using automatic tellers and obtaining money by threats or violence.

The meaning of “suspect” has been included in the schedule as a result of the amendment to section 35 of the Act for the reasons outlined in clause 51.

The words “police dog” and “police horse” are included because of the amendment to section 120 of the Act, and “watch-house manager” is included because of the new part 11A of the Act.

**PART 8—AMENDMENT OF CRIME COMMISSION
ACT 1997**

Act amended in pt 8

Clause 72 identifies the *Crime Commission Act 1997* as the Act amended by this part and also identifies the schedule as correcting minor drafting errors.

Clauses 73 to 78 insert new sections 70A, 72A, 84AA and amend sections 78, 82 and 84 of the Act to ensure consistency with similar amendments to the *Police Powers and Responsibilities Act 1997*

PART 9—REPEALS**Acts repealed**

Clause 79 repeals the *Police Photographs Act 1966* and the *Police Dogs Act 1984* following the consolidation of their respective provisions into the *Police Powers and Responsibilities Act 1997* and the *Police Service Administration Act 1990*.