

POLICE POWERS AND RESPONSIBILITIES BILL 2000

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The Police Powers and Responsibilities Bill 2000 ("the Bill") completes the process of consolidation of police powers which commenced with the passing of the *Police Powers and Responsibilities Act 1997* ("PPRA 1997") but due to time limitations was not completed.

The legislation has a number of objectives which are—

- a. to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- b. to provide powers necessary for effective modern policing and law enforcement;
- c. to provide consistency in the nature and extent of the powers and responsibilities of police officers;
- d. to standardise the way the power and responsibilities of police officers are to be exercised;
- e. to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Bill; and
- f. to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

Additionally, the Bill seeks to rectify any technical defects contained in the PPRA 1997.

Consequently, the Bill provides a central reference point for police and the general community, enabling them both to understand the nature and extent of police powers. This consolidation results in the added benefit of consistency both in the extent of police powers and in the respective safeguards.

Means of Achieving Policy Objectives

The legislation will prescribe powers and responsibilities of police officers.

Alternative Means of Achieving Policy Objectives

The policy objectives cannot be achieved in any way other than the introduction of the Bill.

Estimated Cost of Implementation for Government

The financial impact of the Bill is expected to be minimal, as it proposes the consolidation of existing powers and responsibilities.

There will be costs associated with the delivery of training for police officers with respect to the proposed changes. These costs have been anticipated and provision has been made within the Police Service's training budget.

Costs associated with assisting the safe conduct of Olympic events have been the subject of a separate funding consideration as would be expected with all major events to take place in Queensland.

Consistency with Fundamental Legislative Principles

Clauses contained in this Bill are similar in nature to those addressed by the Scrutiny of Legislation Committee in its appraisal of the PPRA 1997.

Accordingly, where possible, the comments of the Scrutiny of Legislation Committee were taken into account by the Queensland Parliamentary Council during drafting of the Bill.

Fundamentally, however, safeguards such as judicial overview are included as a prerequisite to the exercise of powers involving an interruption to an individual's privacy, e.g. the need to obtain a search warrant in most instances of search, or extended interference with a person's freedom, e.g. a magistrate must consider any extension to a detention period for questioning.

As was the case with the PPRA 1997, the authority to install a listening or visual surveillance device for the investigation of serious indictable offences, or the conduct a covert search of a place for evidence relating to organised

crime, remain extraordinary but necessary powers. As the level of intrusiveness may be extensive, the respective safeguards are extensive to ensure the proper use of such powers. The Bill continues the concept of a public interest monitor. The monitor will continue to perform an independent role, and will be able to overview applications to a Supreme Court judge for a surveillance warrant or covert search warrant. However, due to the clandestine use of surveillance devices and covert search warrants, applying the principles of natural justice is not appropriate.

In summary, the Bill recognises the importance of privacy and protection of law abiding citizens, by ensuring that investigative powers into prescribed offences are properly balanced with an individuals rights to privacy.

Consultation conducted in Development of the Bill

Extensive consultation has occurred with respect to police powers over a number of years. A Criminal Justice Commission review of police powers was conducted over a lengthy period in the early 1990s. This was followed by a similar review which was conducted by the Parliamentary Criminal Justice Committee and which included private and public hearings. Later a public discussion paper called for submissions on proposed changes to police powers. Finally, prior to the introduction of the PPRA 1997 into Parliament, public meetings attended by government and opposition members were held around the State.

Unlike the PPRA 1997, the Bill primarily focuses on consolidation rather than an extension of police powers. As a result those most likely to be affected by the consolidation process were government departments from whose Acts police powers are being removed to give effect to the consolidation. Therefore, consultation focused on all Government Ministers and their respective departmental representatives. Due to the nature of this consolidation process, the same level of public consultation as occurred during the development of the PPRA 1997 has not been necessary.

Nevertheless, the consolidation process was fully considered by the community—based Police Powers Reference Group chaired by Sir Bruce Watson and consisting of representatives from—

- Queensland Council for Civil Liberties (Mr Terry O'Gorman);
- Public Defender (Mr Michael Shanahan (now Judge Shanahan), Ms Debbie Richards (now Judge Richards) later replaced by Mr Brian Devereaux);

- 2 community representatives (Sir Bruce Watson and Ms Sue Johnson);
- Aboriginal and Torres Strait Islander Corporation for Legal Services (Mr Kevin Smith);
- Department of Justice and Attorney—General (Mr David Schulz);
- Criminal Justice Commission (Dr David Brereton later replaced by Mr Brendan Butler);
- Queensland Crime Commission (Mr Tim Carmody);
- Director of Public Prosecutions (Mr Royce Miller); and
- Queensland Police Service (Assistant Commissioner Ron McGibbon (now Deputy Commissioner McGibbon) later replaced by Assistant Commissioner Bob Atkinson, and Assistant Commissioner Graham Williams later replaced by Chief Superintendent George Nolan).

The Reference Group was assisted and advised by Superintendent Ross Dwyer, Acting Inspector Greg Thomas, Senior Sergeant Peter Doyle, Dr Chris Leithner, Dr David Brereton and Mrs Elaine Davis.

All of the recommendations made by the Police Powers Reference Group were fully considered during the preparation of the Bill. The majority of the Reference Group recommendations are included in the Bill.

NOTES ON PROVISIONS

CHAPTER 1—PRELIMINARY

PART 1—GENERAL

Short title

Clause 1 specifies the short title of the Bill.

Commencement

Clause 2 provides for the commencement of the Bill, in part, on assent with the remainder commencing on a date to be fixed by proclamation or on 1 July 2000.

Dictionary

Clause 3 provides for a dictionary in schedule 4, to define certain terms.

Purposes of Act

Clause 4 provides for the purposes of the Bill. These are to:

- a. to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;
- b. to provide powers necessary for effective modern policing and law enforcement;
- c. to provide consistency in the nature and extent of the powers and responsibilities of police officers;
- d. to standardise the way the power and responsibilities of police officers are to be exercised;
- e. to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under the Bill; and
- f. to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

Compliance with Act by police officers

Clause 5 is designed to ensure police comply with the provisions of the Bill when exercising any of the powers contained therein. Non—compliance renders the officer liable to be dealt with according to law. Action may range from cautioning to the imposition of criminal penalties, depending upon the seriousness of the circumstances.

Act does not affect certain principles

Clause 6 provides that a police officer is not prevented from speaking to anyone or doing anything that he or she may lawfully do other than provided for in the Bill, when performing his or her duties, whether or not in relation to an offence, without exercising a power under the Bill or using any form of compulsion.

Examples—

1. A police officer may enter a person's yard to save a child who may be drowning in a pool.
2. A police officer may do a door knock in an endeavour to locate witnesses to an offence which occurred in the area.

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

Clause 7 retains a police officer's common law powers, obligations and liabilities, except where specific areas of the common law have been incorporated into the Bill, e.g. the *chance discovery rule*. Also, the clause preserves the powers a police officer may exercise as an individual, e.g. powers for protecting property.

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

Clause 8 makes a clear statement that the Bill does not affect the common law right of a court to exclude evidence sought to be admitted in a criminal proceeding.

Inconsistency

Clause 9 caters for instances where an inconsistency occurs between a power provided to a police officer under the Bill and a power contained in another Act. To ensure there is no doubt as to which provision is to take precedence, the clause states that, subject to clause 10, any inconsistency between the provisions of the Bill and the other Act is to be resolved by giving precedence to the provisions contained in the Bill. The aim is to

ensure that police officers are not subject to a legislative compulsion to use the powers under another Act when they might perform the required function using the powers contained in the Bill. An obvious exception is preserved Acts such as the *Public Safety Preservation Act 1986*. In terms of subclause (3), while it is recognised that this Parliament cannot restrict the legislative powers of a future Parliament, it is the intention of this Parliament to strongly indicate that police officers should, as far as is practicable, have a single piece of legislation from which to source their powers and responsibilities.

Relationship to other Acts

Clause 10 describes the relationship of the Bill to other Acts. Subclause (1) provides that the provisions of the Bill do not affect the powers or responsibilities a police officer has under an Act included in schedule 1. However, whilst not binding on an individual police officer, subclause (2) allows a police officer to use a power or perform a responsibility under the Bill when giving effect to a Schedule 1 Act. Additionally, a police officer is entitled to use a power under this Bill to give effect to another Act irrespective that there is a similar power in the other Act and regardless of the requirements in that other Act for the use of that power.

Example—

A police officer may use the arrest provision contained in the Bill in preference to the arrest provision contained in the *Prisoners (Interstate Transfer) Act 1982*. In doing so, the police officer need not comply with any of the requirements when arresting under the *Prisoners (Interstate Transfer) Act 1982*.

PART 3—APPOINTMENT AS, AND HELPING, PUBLIC OFFICIALS

Division 1—Provisions about appointments

Appointment of police officers as public officials for other Acts

Clause 11 applies to the appointment of police officers as public officials for the purposes of enforcing a particular Act using, in addition to the

powers contained in the Bill, the distinct powers contained in that other Act. The clause requires that the appointment may only be made with the written approval of the commissioner who must first be satisfied that the officer has the necessary experience, expertise or training to perform the functions and duties of the public official, e.g. an appointment of a member of the police Stock Squad as a stock inspector under the *Stock Act 1915*.

Declaration of police officers as public officials

Clause 12 provides that irrespective that another Act may generically appoint police officers as public officials, they may only exercise powers under that Act to the extent that the commissioner approves. The commissioner may only give the approval if the commissioner is first satisfied that the police officers have the necessary experience, expertise or training to exercise the powers or have satisfactorily completed a training course approved by the commissioner.

Example—

Appointment of police officers as public officials under the *Stock Act 1915* may be restricted to members of the police Stock Squad.

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

Clause 13 provides that although another Act may expressly or impliedly appoint a police officer as a public official the provision making the appointment is subject to clauses 11 and 12 of the Bill and thus the provision is altered accordingly.

Division 2—Helping public officials

Helping public officials exercise powers under other Acts

Clause 14 allows a police officer who is not appointed as a public official under an Act to assist a public official exercise powers under that Act. On a request being made by the public official a police officer may exercise all of the powers under that Act in addition to the powers under the Bill while assisting the public official. However, a prerequisite is that the public official must explain the public official's powers to the police officer. Also, a police officer may exercise the powers of a public official in the

circumstances mentioned even though the public official may be absent if the police officer is satisfied that it is reasonably necessary in the circumstances.

Examples—

Multiple roadblocks may have to be established to ensure the quarantine of an area where a transmittable disease has broken out among stock in the particular area. In this case police assistance may be sought because there is a shortage of public officials in that area to staff the roadblocks.

A public official may explain the public official's powers over the telephone or via written instructions.

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

Clause 15 applies where a public official, other than a police officer, lawfully requires a person to state his or her name and address or date of birth and the person fails to comply with the requirement. A police officer may ask the person to provide a reasonable excuse for failing to comply with the requirement. Should the person fail to provide a reasonable excuse or not answer, the police officer is empowered to make a requirement under the name and address or date of birth provisions of the Bill (chapter 2, part 3). A failure to comply with the requirement renders a person liable for an offence against the Bill.

Steps a police officer may take for obstruction of public official

Clause 16 applies where a public official claims to have been obstructed in the exercise of his or her powers and a police officer reasonably suspects the obstruction has occurred. The police officer may ask the person whether he or she has an excuse for the obstruction. If the person does not provide a reasonable excuse or fails to answer, the police officer may make a requirement under the Bill to the person to stop or not repeat the conduct. Should the person continue or repeat the conduct action may be taken under section the Bill (chapter 10, part 3). The clause does not apply if the public official is a police officer.

CHAPTER 2—GENERAL ENFORCEMENT POWERS

PART 1—ENTRY, INQUIRIES AND INSPECTION

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

Clause 17 ensures that a police officer performing a function of the police service may enter and stay on a place in circumstances that may otherwise constitute trespass. It is Parliament's intention that the section is, among other things, designed to rectify limitations on police entry to property as decided in *Plenty v Dillon and others* (1991) 98 ALR 353. However, if a search warrant or other similar authority is required to enter a place, this clause is not intended to alleviate the need to obtain that search warrant or that other similar authority, e.g. authority to inspect compliance with the law at a brothel. The clause allows a police officer a reasonable time to enter and stay on a place a place to inquire into or investigate a matter, e.g. an alleged offence, a missing person report or an traffic incident report, or to serve a document, e.g. a summons, subpoena or notice or appear. The section does not permit excessive force to be used to enter the place nor does it allow entry to a part of the place that is a dwelling without consent.

Examples where entry is permitted—

1. To any part of a hotel, nightclub or casino where members of the public are permitted to enter.
2. To a swimming pool in the back yard of a dwelling house where a person might be swimming.
3. A garage erected within the yard of a dwelling house.
4. A business office to speak to an employee about an alleged offence.
5. Showgrounds where an exhibition is taking place (without the need for police to pay an advertised entry fee).

What is a reasonable time to stay on a place

Clause 18 qualifies clause 17 by providing an indication of what is a "reasonable time" for the purposes of clause 17. It is recognised that a police investigation or the performance of a duty or function might be prejudiced should a predetermination in the Bill limit the exercise of powers

under clause 17 to a specified time period. Generally, therefore, what constitutes a "reasonable time" should be determined according to the particular circumstances of each matter. Subclauses (3) and (4) allude to factors which may assist in the determination in the case of an investigation or inquiry or the service of a document. The clause does not apply to the use of the term "reasonable time" in clause 19.

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

Clause 19 allows a police officer to enter and stay on a place (including a vehicle) for a reasonable time in order to arrest a person or to detain a person under another Act. The clause limits entry to a dwelling house to circumstances where a police officer has a reasonable suspicion the person is at the dwelling. A power is provided to search for a person who could be in the place.

Examples—

1. A police officer may enter a dwelling, using reasonable force, to arrest a person reasonably suspected of a stealing offence if the police officer has received information that the person is at the place or resides at the place.
2. A police officer may wait inside a business address for a person whom the police officer seeks to arrest, to return to the place if the police officer is told the person is out but will be returning at a later time.

Power to enter etc. for relevant laws

Clause 20 provides a police officer with powers to ensure compliance with a relevant law, i.e., an Act prescribed under a regulation related to this clause, e.g., the *Weapons Act 1990*.

The clause allows a police officer to—

- a. at any reasonable time, enter and stay on a place used for a purpose under a licence under the relevant Act. The subclause is subject to clause 21;

Examples—

1. A police officer may enter a pawn shop during business hours to inspect records and pawned items held or after business hours if someone is still at the place.
2. A police officer may visit a firearms collector's home when the collector has returned home after business hours to inspect the collector's collection of firearms or security measures.

- b. inspect, photograph or copy a prescribed item there or at a place with appropriate facilities for photographing or copying the item;

Example—

A police officer may take a register from a business premises to allow it to be photocopied at a police station.

- c. seize a thing to which the relevant law applies, if the thing is evidence of the commission of an offence against the relevant law or another Act;
- d. require the licence holder or someone else apparently in possession of prescribed items to produce stated prescribed items for inspection;
- e. inspect security measures the person must maintain under the relevant law;
- f. require the licence holder or person apparently in possession of a place mentioned in paragraph (a) to give the police officer reasonable help to do something mentioned in paragraphs (b) or (e). The subclause is subject to clause 22.

Examples—

1. A police officer may require the manager of a firearms store to open a safe in which records or weapons may be kept.
2. A police officer may require a firearms collector whose collection is at the collector's home to show the police officer through to that portion of the home in which the collection is held.

The clause allows a police officer to enter a part of a place not relevant to an inspection in order to access that part of the place which is relevant to the inspection.

Examples—

1. A police officer may enter through the front door of a house and pass through a lounge room and hallway to get to a room attached to the house in which a relevant business is conducted.
2. A police officer may enter a multi storey building and use an elevator to get to a floor in the building in which a business to be inspected is located.
3. Where a business to be inspected rents accommodation from another business, a police officer may pass through the area used by that other business to get to the business to be inspected.

If a police officer seizes something from a business in the course of the officer's inspection or inquiry so that the thing may be photographed or copied, the officer is to give the person from whom it was seized, a receipt, and must return the item as soon as practicable but no later than the next day of business unless the person otherwise agrees in writing.

The clause includes premises used by motor vehicle repairers and deems those premises to be used under a license under a relevant law. Similar effect is given with respect to suppliers of controlled substances.

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

Clause 21 alludes to what is a "reasonable time" for entry to a place for the purposes of clause 20. The clause is not exclusive and sets guidelines for reasonable times for inspections.

Requirement by a police officer for a relevant law

Clause 22 suggests what may be reasonable help for the purposes of clause 20. The clause is suggests that what is reasonable help must be decided according to the particular circumstances.

Power to demand production of licence etc. for weapons

Clause 23 applies where a person is required under the *Weapons Act 1990*—

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

Subclause 2 provides that a person mentioned above may be required by a police officer to produce a licence, permit to acquire, certificate, evidence of approval, or a register or record within 48 hours.

However, if a person has physical possession of a weapon they may be required to produce the weapon and associated licence immediately. The clause is in addition to, and does not limit, clause 20 (Power to enter etc. for relevant laws). The term licence is defined in the Dictionary.

PART 2—SEARCHING PERSONS, VEHICLES AND PLACES WITHOUT WARRANT

Division 1—Roadblocks

Roadblocks

Clause 24 provides the authority for a police officer to establish a roadblock. A roadblock is conditional on the person sought—

- a. having committed an offence punishable by 7 or more years imprisonment;

Example—

A person has committed an armed robbery and is driving from the scene.

- b. possibly unlawfully depriving someone else of their liberty;

Example—

A person has kidnapped another and is moving the person from one place to another.

- c. being unlawfully deprived of his or her liberty;

Example—

A kidnapped person may be held in the boot of a vehicle moving from one place to another.

- d. having escaped from lawful custody; or

Example—

A person has escaped from a police officer following arrest, from a watchhouse, a prison, a prison officer, or a child detention centre or employee of that centre.

- e. possibly endangering the life or safety of someone else.

Example—

A person is driving a vehicle dangerously on a road, for example, at 160kph through a town.

If a precondition to a roadblock is met, a police officer may stop any vehicle and detain the vehicle for a reasonable time to search it for a person mentioned above.

Example—

It may be necessary to have the driver of a vehicle open the boot of his or her vehicle to search for a person who has been kidnapped.

Prior to establishing a roadblock a police officer must consider when and where the circumstances constituting a precondition to a roadblock occurred or any information regarding the whereabouts of the person sought.

Examples—

1. Where there has been a prison outbreak it would be reasonable to suspect that a roadblock would be effective if established shortly after the outbreak and in the vicinity of the prison, but not if established in that location 24 hours later in the absence of any additional information.
2. Where there has been prison outbreak it would be reasonable to suspect that a roadblock would be effective if established 48hrs after the outbreak if a person resembling an escapee is recently seen in the area of the proposed roadblock.

Procedure for establishing roadblocks

Clause 25 requires the senior police officer present to consider the effect of the roadblock on road safety and public safety, the likelihood of a dangerous situation arising if a person sought is located at the roadblock, and any other safety considerations prior to establishing a roadblock. While these factors do not prevent a roadblock being established in a particular location, consideration must be given to the benefits to be gained as opposed to the likelihood of injury occurring to a member of the public.

Record of roadblock to be made

Clause 26 requires the senior police officer present to ensure that records relating to the roadblock are kept.

Division 2—Searching persons without warrant

Searching persons without warrant

Clause 27 provides a police officer with power to search a person without warrant where there is a reasonable suspicion that a prescribed circumstance mentioned in clause 28 exists. For the purpose of the search the police

officer may stop and detain the person and search not only the person but his or her possessions. The section also provides for the seizure of evidence of the commission of an offence or anything that a person intends to use to cause harm to himself, herself or someone else or an antique firearm.

Prescribed circumstances for searching persons without warrant

Clause 28 provides that the search of a person under clause 27 may occur in the following circumstances—

- a. the person has something that may be—
 - i. a weapon, knife or explosive the person may not lawfully possess; or
 - ii. an unlawful dangerous drug; or
 - iii. stolen property; or
 - iv. unlawfully obtained property; or
 - v. tainted property; or
 - vi. evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed.
- b. the person possesses an antique firearm and is not a fit and proper person to be in possession of the firearm—
 - i. because of a mental and physical fitness; or
 - ii. because of a domestic violence order;
 - iii. because of having been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;
- c. the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;

Examples—

1. The person has possession of a scanner which if pointed at the door of a car and activated will decipher and replicate the electronic code which automatically unlocks the door of a car.

2. The person has possession of a coat hanger which has been bent to a shape to allow it to be used to unlock the door of a car and the person has it for the purpose of using it to break into a car and steal it.
3. The person has possession of a picklock with the intent of breaking into a house to commit an offence.
4. The person has possession of a pipe for smoking cannabis sativa.
- d. the person has something he or she intends to use to cause harm to himself, herself or someone else;

Examples—

1. A person may have possession of a knife with which the person intends to commit suicide.
2. A person may have possession of a baseball bat and be walking to a place where the person intends to use the baseball bat to assault another person.
- e. the person is at a casino and may have contravened or attempted to contravene the *Casino Control Act 1982*, section 103 (Cheating) or section 104 (Unlawful use of certain equipment etc);
- f. the person has committed, is committing, or is about to commit—
 - i. an offence against the *Racing and Betting Act 1980*; or
 - ii. an offence against the *Corrective Services Act 1988*, section 104 (Offences by persons other than prisoners); or
 - iii. an offence that may threaten the security or management of a prison or the security of a prisoner.

Division 3—Searching vehicles without warrant

Searching vehicles without warrant

Clause 29 (subclauses 1 and 2) provide that a police officer with power to stop and detain a vehicle and its occupants and search a vehicle and anything in it without warrant where—

- a. there is a reasonable suspicion that a prescribed circumstance mentioned in clause 30 exists; or
- b. the vehicle is being unlawfully used; or
- c. a person in the vehicle is an escapee and may be arrested without warrant or under a warrant under the *Corrective Services Act 1988*.

Also, subclause (3) provides that if the driver or passenger is arrested for an offence involving something the vehicle and anyone in it may be detained and the vehicle and anything in it searched without warrant.

Example—

If a police officer sees a person wanted for a stealing offence travelling in a vehicle the police officer may stop the vehicle, arrest the person and detain the vehicle and its occupants for the purpose of searching the vehicle and its contents.

Subclause (4) provides that if it is impractical to search the vehicle at the place it is stopped, a police officer may take the vehicle to a place with appropriate facilities for searching the vehicle and search it at that place.

Examples—

1. A police officer may drive a detained vehicle to a police station for the purpose of search if the officer reasonably suspects that heroin may be concealed in a tyre of the vehicle.
2. A police officer may arrange for a vehicle to be towed to a police establishment for scientific examination if the officer reasonably suspects that the vehicle may have been used in a kidnapping, or a murder offence and the officer does not want to risk damaging potential evidence, e.g. DNA, by driving the vehicle.

Subclause (5) allows a police officer to seize anything that may be evidence of an offence or that a person intends to use to cause harm to himself, herself or someone else or an antique firearm.

So that there is no doubt regarding a police officer being on or in a vehicle, subclause (6) provides an entry, re—entry and remaining power to search and remove anything seized.

Prescribed circumstances for searching vehicle without warrant

Clause 30 provides that the search of a vehicle under clause 29 may occur where the vehicle may contain something that—

- a. may be a weapon, or explosive a person may not lawfully possess;
or
- b. a person possesses which may be an antique firearm and the person is not a fit and proper person to be in possession of the firearm—
 - i. because of a mental and physical fitness; or
 - ii. because of a domestic violence order;

- iii. because of having been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;
- c. may be an unlawful dangerous drug; or
- d. may be stolen property; or
- e. may be unlawfully obtained property; or

Example—

The vehicle may contain property which was received by an occupant as a result of a false pretence committed on a person.

- f. may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;

Examples—

1. The vehicle may contain a scanner which if pointed at the door of a car and activated will decipher and replicate the electronic code which automatically unlocks the door of a car.
2. The vehicle may contain a coat hanger which has been bent to a shape to allow it to be used to unlock the door of a car and the person has it for the purpose of using it to break into a car and steal it.
3. The vehicle may contain a picklock with the intent of breaking into a house to commit an offence.
4. The vehicle may contain a pipe used for smoking cannabis sativa.
- g. may be evidence of the commission of an offence against—
 - i. the *Racing and Betting Act 1980*; or
 - ii. the *Corrective Services Act 1988*, section 104 (Offences by persons other than prisoners); or
 - iii. the *Nature Conservation Act 1992*.
- h. may have been used, is being used, or is intended to be used, to commit an offence that may threaten the security or management of a prison or the security of a prisoner.

Example—

1. The vehicle may be lurking in the vicinity of a prison and contain diamond wire intended for use in cutting through security grills at the prison.
2. The vehicle may be entering a prison and contain alcohol or otherwise lawful precursors used for drug manufacture which it is intended to smuggle into a prison.
- i. may be tainted property; or

- j. may be evidence of the commission of a 7 year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed.
- k. a person may intend to use to cause harm to himself, herself or someone else;

Examples—

1. A person may have possession of a knife with which the person intends to commit suicide.
2. A person may have possession of a baseball bat and be walking to a place where the person intends to use the baseball bat to assault another person.

Division 4—Searching public places without warrant

Searching public places without warrant

To remove any doubt, Clause 31 provides that it is lawful for a police officer to exercise the following powers in a public place without a search warrant—

- a. enter and stay on it to exercise a power in paragraphs (b) to (f);
- b. search the place and anything in it that may be evidence of an offence;
- c. seize any thing found in the place, or on a person in the place, that a police officer reasonably suspects may be evidence of an offence;
- d. photograph anything a police officer reasonably suspects may provide evidence of an offence;
- e. dig up land;

Examples—

1. Police may dig for a body suspected of being murdered and buried in a National Park.
2. Police may dig in a park for dangerous drugs that may be buried.

- f. open anything that is locked

Example—

Police may open a locked bag found on a railway station platform that may contain an explosive or a dangerous drug.

However, subclause (2) limits the use of the power in places that are only public places while they are open to the public, e.g. a cinema. In these instances a police must—

- a. first obtain the consent of the occupier of the place; or
- b. obtain a search warrant; or
- c. use the powers and responsibilities contained in Chapter 3, Part 2 (Search to prevent loss of evidence).

Subclause (3) allows a police officer to use search warrant powers when an occupier consents to a search. This ensures that the powers used for the search of a public place with consent are consistent with, and do not exceed, those which may be used in a search sanctioned under a search warrant.

PART 3—POWER TO REQUIRE NAME, ADDRESS OR AGE

Division 1—Powers relating to name and address

Person may be required to state name and address

Clause 32 provides power to a police officer to require a person to state his or her correct name and current place of residence in circumstances prescribed in *clause 33*.

Subclause (2) allows a police officer to require the person to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the person to be in possession of that evidence.

Examples of circumstances where it may be expect a person to be in possession of evidence—

1. It is reasonable to expect that a person can produce evidence of correctness if the person is carrying a wallet.
2. It is reasonable to expect that a person can produce evidence of correctness if the person is driving a vehicle.
3. It is reasonable to expect that a person can produce evidence of correctness if the person can does not have identification on them but can call on another person to verify the name and address supplied.

Examples of where a person may not be expected to be able to produce evidence of correctness—

1. It is not reasonable to expect that a person can produce evidence of correctness if the person is alone on a beach and has only swimming attire.
2. It is not reasonable to expect that a person can produce evidence of correctness if the person is jogging while dressed in jogging attire.

Subclause (3) provides that a person does not commit an offence of contravening a requirement to state his or her name and address if—

- a. for clause 33(a) or (b) (found committing an offence or reasonably suspected of having committed an offence), the substantive offence is not proved;
- b. for clause 33(e), the person is not proved to be the person named in a warrant, summons or other court document;
- c. for clause 33(g) (domestic violence), the person is not proved to have been involved or to be about to be involved in an act of domestic violence or associated domestic violence; or
- d. for clause 33(h) (help in investigation of a domestic violence incident or vehicle incident) or (i) (witness to offence), the person is not proved to have been able to help in the investigation.

Subclause (4) also extends the presumption of innocence to a failure to comply with a requirement to provide name and address in relation to offences against the *Tobacco Products (Prevention of Supply to Children) Act 1998* if no—one is proved to have committed an offence against that Act.

Prescribed circumstances for requiring name and address

Clause 33 list the prescribed circumstances for requiring a person to state his or her name and address under clause 31 as a police officer—

- a. finds a person committing an offence;
- b. reasonably suspects a person has committed an offence;
- c. is about to take the person's identifying particulars under an identifying particulars notice;
- d. is about to give, is giving, or has given a noise abatement direction, an initial nuisance direction or a final nuisance direction;

- e. is attempting to enforce a warrant or serve a summons or other court document on a person;
- f. reasonably considers the person's name and address is necessary for the administration or enforcement of an Act prescribed under a regulation for this clause;
- g. reasonably suspects a person has been or is about to be involved in an act of domestic violence or associated domestic violence;
- h. reasonably suspects the person may be able to help in the investigation of an act of domestic violence or associated domestic violence or a relevant vehicle incident.
- i. reasonably suspects the person may be able to help in the investigation of an alleged indictable offence because the person was near the place when the offence happened or before or soon after it happened;
- j. finds a person in control of a vehicle that is stationary on a road or has been stopped under clause 51 (traffic, e.g. drink driving, or littering offences).

Division 2—Powers relating to age

Powers for age—related offences

Clause 34 applies if a person is at a place or engaging in an activity at a place and the age of the person is relevant to the person's entitlement to be at the place or to engage in the activity, e.g. being on licensed premises. A police officer may require a person to state his or her correct date of birth and if it is reasonable in the circumstances to produce evidence of the stated date of birth.

If a police officer asks a person give evidence of the person's date of birth and is not satisfied the person is old enough to be at the place or engage in the activity at the place, the police officer may direct the person to immediately leave the place, or the part relevant to age and not return, or not to engage in the activity.

Unlawful supply of tobacco products to children

Clause 35 applies if a police officer observes a person being supplied with a tobacco product and reasonably suspects the person is a child. The police officer may ask the person for evidence of age and may seize the tobacco product as evidence of an offence against the *Tobacco Products (Prevention of Supply to Children) Act 1998* if the person refuses or is unable to comply with the request, or produces evidence indicating the person is a child.

PART 4—DIRECTION TO MOVE—ON

Part 4 refers to a "prescribed place" which is defined in the Dictionary as—

- a. for soliciting for prostitution, means any public place to which the public has access, whether on payment of a fee or otherwise, but does not include any area in a licensed brothel that can not be viewed from outside the brothel;
- b. a shop;
- c. a child—care centre;
- d. a pre—school centre;
- e. a primary, secondary or special school;
- f. premises licensed under the *Liquor Act 1992*;
- g. a railway station and any railway land around it;
- h. a mall;
- i. South Bank Parklands;
- j. a racing venue;
- k. an automatic teller machine;
- l. a place declared under section 41 to be a notified area.

Part does not apply to authorised public assemblies

Clause 36 provides that the move—on powers do not apply to an authorised public assembly under the *Peaceful Assemblies Act 1992*.

When power applies to behaviour

Clause 37 applies to a person's behaviour at or near a prescribed place if a police officer reasonably suspects the behaviour is or has been—

- a. causing anxiety to a reasonable person entering, at or leaving the place; or

Examples—

1. A stranger approaching a child and asking the child if he or she wants to be driven home.
 2. Youths gathering around the footpath near the entrance to a railway station tunnel and causing anxiety to any person by abusing any person who wants to use the tunnel to get to a train platform.
 3. A group of persons harassing other persons walking through a mall.
- b. interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place, or

Example—

A group of persons deliberately stepping in front of someone who is attempting to enter or leave a late night store.

- c. disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or

Examples—

1. Persons fighting in front of a place in such a manner that a reasonable person may feel threatened if they were to enter or leave.
 2. A husband yelling at his estranged spouse who is attempting to leave a school yard after picking up her child.
 3. Youths gathering around the entrance to a railway station and threatening, or by menace demanding something from, a person who wants to catch a train or wants to leave a railway station.
- d. disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

Example—

1. An intoxicated person or a group of intoxicated persons disrupting a school fete.
2. A person or persons interrupting or disrupting entertainment held at a shopping complex.

With respect to trade or business at a place, subclause (2) provides that the clause only applies if the complaint about behaviour is made by the occupier of the place.

Subclause (3) provides that the move—on powers may be used with respect to a person who a police officer reasonably suspects is soliciting for prostitution in a prescribed place.

When power applies to a person's presence

Clause 38 applies to a person's presence at or near a prescribed place if a police officer reasonably suspects the behaviour is or has been—

- a. causing anxiety to a reasonable person entering, at or leaving the place; or

Examples—

1. A person, who has no reasonable excuse for being there, is sitting in a vehicle parked across from a school yard.
 2. A person who is suspected, or reputed, to be selling drugs to school children is standing outside a school yard without reasonable cause.
- b. interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place, or

Example—

A group of youths sitting on the steps in front of a store and by their presence are preventing or impeding the entry of a person to that store.

- c. disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

Example—

Members of an extremist group standing at the entrance of a shop where a book opposing their views is to be launched by the author.

With respect to trade or business at a place, subclause (2) provides that the clause only applies if the complaint about behaviour is made by the occupier of the place.

Direction may be given to person

Clause 39 provides a police officer with power to give a person or group of persons, referred to in clauses 37 and 38, any direction reasonable in the circumstances.

Examples—

1. If a person is sitting in the entrance of a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
2. If a group of people have been fighting in a night club car park which is in a notified area, a police officer may give the people involved in the fight a direction to leave the notified area in opposite directions and not to return for a specified number of hours in order to separate the aggressors.
3. If a stranger approaches a child outside a primary school an offers to give the child a ride home, the person may be given a direction to leave the area of the school and not return for a period of 24 hours.

Subclause (2) places a restriction on giving a move—on direction what interferes with a person's right of peaceful assembly unless it is in the interests of public safety, public order or the protection of the rights and freedoms of other persons.

Subclause (3) allows a direction to remain in force for a maximum of 24 hours, to include a distance and direction a person must move, or a distance from a place which the person must not enter for a maximum period of 24 hours.

Subclause (4) requires a police officer to tell the person or group of persons the reasons for giving the direction.

Proposal for notified area

Clause 40 is a machinery section which allow a local government or a government entity to apply for a declaration of a notified area to be made by the Governor in Council. The application is be made in accordance with requirements prescribed under a regulation to be made for this clause. The declaration may be permanent or temporary.

Examples—

Where it comes to the attention of a local government that there are constant problems created by drunken or violent persons in an area in which night clubs are concentrated, the local government may make application to have the Governor in Council declare a defined area (the night club precinct) to be a notified area. A temporary declaration may be made for an Anzac day march or service or concerts at entertainment venues or parks.

Declaration of notified areas

Clause 41 is a machinery section which empowers the Governor in Council to declare a notified area by regulation.

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

Dealing with breach of the peace

Clause 42 limits the application of the section to where a police officer reasonably suspects—

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

Subclause (2) allow a police officer, in the circumstances mentioned in subclause (1), to take the steps the officer considers reasonably necessary, even though the conduct prevented may be otherwise lawful, to—

- (a) prevent the breach of the peace happening or continuing;
- (b) prevent the conduct constituting the breach of the peace happening again .

Examples—

1. The police officer may detain a person until the need for the detention no longer exists.
2. A police officer may transport a person from the place related to the breach of the peace to another place to prevent continuation of the conduct or the conduct occurring again.
3. A person who pushes in to the front of a queue may be directed to go to the end of the queue.
4. Property that may be used in or for breaching the peace may be seized to prevent the danger.

Subclause (3) allows a police officer to receive a person into custody who has been detained by any other person for a breach of the peace under the Criminal Code, section 260.

Prevention of riot

Clause 43 allows a police officer to take any steps the officer reasonably believes are necessary to suppress a riot. The clause also allows a police officer to comply with the reasonable orders given by a justice for suppressing a riot, to suppress a riot.

Prevention of offences

Clause 44 applies where a police officer reasonably suspects that an offence has been committed, is being committed, or is about to be committed. In these circumstances a police officer may take steps the officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence.

Examples—

1. A police officer may require a person whose behaviour suggests that the security of a prisoner may be threatened to move away from the vicinity of the prisoner.
2. A police officer may require a person obstructing a fire service officer or ambulance officer to leave a place where the fire service officer or ambulance officer is and may use reasonable force to remove the person.
3. A police officer may require a person or group of persons to move away from a person whom they are following if the police officer reasonably suspects that the person or group of persons may assault or steal from the other person.
4. A police officer may remove or deface an obscene, or indecent placard, picture, writing or advertisement attached to a place such as a building, fence or tree if it contravenes an Act because it is visible to members of the public.

PART 6—POWERS RELATING TO VEHICLES, TRAFFIC AND ANIMALS

Division 1—Inquiry and investigation powers

Power of inquiry into road use contraventions

Clause 45 provides that it is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed.

Subclause (2) allows a police officer to arrange for a suitable person to make the inspection, examination or test for the police officer.

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

Clause 46 provides police with the power to require information which might assist in the identification of the person who was in control of a vehicle when a contravention of a Road Use Management Act occurred from persons specified in the clause, e.g., the owner of the vehicle.

Additional power of inquiry for relevant vehicle incidents

Clause 47 provides power to police to make any reasonably necessary inquiry, investigation, inspection, examination or test to obtain information about a vehicle, etc involved in a relevant vehicle incident or to establish the cause of the incident or about a person involved in the incident.

Power of entry for ss 45—47

Clause 48 allows a police officer to enter and remain on any place for the time reasonably necessary for the purpose of entry. However the police officer may only use reasonable force to enter if the entry is authorised by an inspector or above.

Production of driver licence

Clause 49 applies if a police officer—

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

Subclause (2) allows the police officer to require the person to produce his or her driver licence for inspection.

Subclause (3) allows a person (other than a person in control of a heavy vehicle) who holds an open driver licence (other than a person in control of a heavy vehicle) issued under the Road Use Management Act, 48 hours to produce the licence at a nominated police establishment.

Subclause (4) requires that the nominated police establishment to be reasonable in the circumstances.

Subclause (5) provides that subclause (3) does not apply to a person in control of a heavy vehicle.

Power for regulating traffic

Clause 50 allows a police officer to give directions, signals or orders to drivers, passengers or pedestrians for the safe and effective regulation of traffic on a road.

Subclause (2) provides that if an emergency exists a police officer may give directions, signals or order to the driver or passenger of a train.

Subclause (3) allows for the temporary closure of a road and the diversion of traffic if an emergency exists.

Examples—

1. A siege where firearms are being discharged and members of the public may be hurt.
2. A serious traffic accident has occurred.

Subclause (4) extends the power to give directions to the owner or driver of a parked vehicle to move the vehicle as soon as practicable.

Subclause (5) allows for the making of a regulation to prescribe the way a police officer may give directions under the clause.

Generally, the purpose of the clause is to allow for police to direct traffic movement in an effective and efficient manner and to take swift action to reduce risk to any person or to maintain efficient traffic flow where an emergency exists.

Stopping vehicles for prescribed purposes

Clause 51 allows a police officer to stop a vehicle (other than an aircraft or train) for the purpose of enforcing a transport Act, to check whether a vehicle complies with a transport Act or to enforce littering laws, to conduct a breath test. For a breath test a police officer may enter, and remain on, the vehicle. A person must not fail to comply with the requirement of a police officer unless the person has a reasonable excuse.

Power to require vehicles to be moved

Clause 52 allows a police officer to direct the driver of a stationary vehicle to move it to a nominated reasonable location for a prescribed purpose. Limitations on the distance involved in the direction are specified in subclauses (3) and (4). The purpose of the clause is to allow for a vehicle to be moved to a safer area for the purpose of conducting a test or for it to be moved to a location where suitable equipment for a test to be performed is located.

Requirement to remain at a place

Clause 53 requires a driver stopped or required to move to another location to ensure that the vehicle remains at the place nominated in the direction for a time reasonably necessary to allow the exercise of a function or power by a police officer.

Power to inspect vehicles

Clause 54 empowers a police officer to conduct an inspection or test on a vehicle that is stationary, has been stopped or moved to another place under clause 51.

Power to enter vehicles etc. other than for vehicle inspection

Clause 55 allows a police officer to enter, search, inspect, measure, test, photograph, film, take samples from, copy documents or move, a vehicle's load if there is a reasonable suspicion that the vehicle is used to transport dangerous goods, has been used to commit an offence against a transport Act, may provide evidence of an offence against a transport Act or requires the driver to keep a record of driving hours.

Power to require vehicle inspections

Clause 56 allows a police officer to require that a vehicle be inspected if there is a reasonable suspicion that the vehicle does not comply with a transport Act. However, where practicable the requirement must be given on an appropriate notice. If not practicable the requirement may be given orally and confirmed as soon as practicable by a notice.

Power to prohibit use of vehicles

Clause 57 allows a police officer who reasonably suspects that a vehicle is unsafe or defective to require the vehicle not to be used on a road until the vehicle is inspected or the defect is rectified. The requirement is to be given in the form of an approved notice.

Subclauses (2) and (3) provide that a defect notice or a defective vehicle label may be issued. It is an offence for a person to contravene or attempt to contravene a prohibition notice unless the person has a reasonable excuse.

Subclause (4) lists the reasonable excuses for failing to comply with a defect notice as cancellation of the registration or sale of the vehicle to a motor dealer.

Subclause (5) requires, if applicable, the driver of a vehicle to give the defect notice to the owner unless there is a reasonable excuse for not doing so.

Subclause (6) prohibits a person from removing a defective vehicle label from a vehicle unless the person has a reasonable excuse.

Subclause (7) allows a police officer to remove a label if the police officer is reasonably satisfied the vehicle is no longer defective.

Power to prohibit persons driving

Clause 58 provides that a police officer may, by notice, prohibit the driver of a vehicle on a road from driving the vehicle where it would contravene the Road Use Management Act.

Power to enable effective and safe exercise of other powers

Clause 59 provides that a police officer may require a person in control of a vehicle to give reasonable help to a police officer in exercising a power under this division. Certain aspects of the operation of vehicle may be unique and require knowledge of the vehicle in order to operate them thereby requiring the driver to assist. Alternatively, a driver seated in a vehicle may be required to release the bonnet lock as access to it may be restricted by the driver's seating position.

Subclause (2) places a requirement on the driver of the vehicle to do things reasonably necessary to enable a police officer to safely exercise a power in relation to the vehicle or to preserve the safety of the police officer or other persons. Therefore, the driver may be required to get out of the vehicle while an inspection is made of it or the driver may be required to get out of the vehicle and stand on a footpath away from traffic movement. Also, a driver may be required to keep his or her foot on the brake pedal while an aspect of an examination of the vehicle is undertaken. A person must comply with a requirement unless the person has a reasonable excuse.

Division 2—Removal powers

Removal of vehicles and animals from roads and other places

Clause 60 provides that a police officer may, in the circumstances provided in clause 61, seize and move a vehicle or animal or arrange for it to be moved to another place for safe keeping.

Subclause (2) provides that a police officer in circumstances mentioned in clause 59(2)(c) and (d) move or arrange for a vehicle or animal to be moved to a place where it can be located by the owner.

Subclause (3) allows the person in control of a vehicle or animal to take charge of it at any time before or while it is being moved provide the police officer consents.

Prescribed circumstances for removing vehicles and animals

Clause 61 lists the prescribed circumstances for clause 60 as—

- a. the person in control of the vehicle or animal has been arrested;
- b. a police officer reasonably suspects the vehicle or animal has been abandoned;
- c. a police officer reasonably suspects the vehicle of animal has been involve in a traffic incident and it is necessary to detain the vehicle or animal for completing inquiries and investigations into the incident;
- d. a police officer reasonably suspects that a vehicle or animal has been left unattended, temporarily or otherwise and due to its location it may be dangerous to others or it may prevent or hinder the use of the road by other persons, e.g. a vehicle parked in a clearway or a bus lane.
- e. a police officer reasonably suspects that a vehicle or animal has been left in circumstances that constitute an offence against the Road Use Management Act, the *Brisbane Forest Park Act 1977*, the *Recreation Areas Management Act 1988*, the *Nature Conservation Act 1992* and the person in control cannot easily be located or fails to comply with a direction to move it immediately.
- f. a police officer reasonably suspects a contravention of an Act has happened involving an animal and it is necessary to take steps to protect the animal.

Police officer may authorise tow

Clause 62 applies if a police officer seizes a vehicle under the Bill or any other Act or the owner or owner's agent of a damaged vehicle is absent from the vehicle or is incapacitated.

Subclause (2) provides that in the circumstance described a police officer may sign a towing authority for the removal of the vehicle,

Subclause (3) requires the tow truck driver to tow the vehicle to the nearest holding yard available to the driver or if directed by a police officer, to the nearest police station or other place as directed, e.g. a police garage for inspection purposes.

Steps after seizing vehicle or animal

Clause 63 provides that as soon as practicable, but within 14 days after the seizure and moving of a vehicle or animal, the police officer responsible must give or arrange for a notice to be given to the owner advising of the whereabouts of the vehicle or animal. The notice must, if practicable, be given personally or if not practicable an advertisement must be published in a newspaper.

Recovery of seized vehicle or animal

Clause 64 allows the commissioner to auction or dispose of a vehicle or animal if, within 1 month of notice being given under clause 61, the owner does not recover the vehicle or animal. An advertisement in a newspaper must give notice of the intended sale or disposal.

Application of proceeds of sale

Clause 65 relates to the distribution of the proceed of the sale and requires that the expenses of the sale and the cost of seizure and keeping the vehicle or animal be paid with the remainder being given to the owner. Compensation is not recoverable against the State for a payment under this clause.

Division 3—Other provisions about animals

Powers in relation to offences involving animals

Clause 66 applies if a police officer reasonably suspects that an offence involving an animal has been, is being or is about to be committed at or involving a place.

Subclause (2) provides that a police officer may enter the place and—

- a. search for and inspect any animal, e.g. for signs of cruelty; and
- b. search for and inspect any brand, mark, branding instrument, pliers or other device used for identifying an animal; and
- c. open anything that is locked; and
- d. seize anything reasonably suspected of being evidence; and
- e. muster, yard, detain, clip or otherwise deal with the animal.

Subclause (3) provides a police officer with the power to stop any travelling livestock, any vehicle being used to transport animals, and any vehicle used by a person accompanying the animals.

Examples—

1. A road train may be stopped to inspect the animals.
2. A drover's vehicle may be stopped to search for evidence of an offence regarding animals.

Offence to interfere with seized animals

Clause 67 applies if an animal is seized under this Act. A person must not interfere with move or have possession or control of an animal or enter or be on the place an animal is kept unless the person is a police officer or authorised by a police officer.

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

PART 1—SEARCHING PLACES WITH WARRANTS

Search warrant application

Clause 68 allows a police officer to apply to a justice for a search warrant.

Subclause (3) restricts the application to a magistrate if the thing sought is only evidence of the commission of an offence because may be liable to forfeiture or is forfeited, or it may be used in evidence of a forfeiture

proceeding, or it is a property tracking device. This subclause is altered from that appearing in the PPRA 1997 to rectify a misinterpretation that if the thing sought is evidence of an offence and may also be used, for example, as evidence in a forfeiture proceeding then only a magistrate may issue the warrant. If the thing sought is to be used primarily as evidence of, for example, a fraud as in the case of documents, then a justice may issue the warrant irrespective that the documents may also be used in a forfeiture proceeding. If however, the documents are sought only for a forfeiture proceeding although a fraud offence may later come to light, the application is to be made to a magistrate. The need to apply to a magistrate is to be determined on the basis of the primary purpose for the warrant.

Subclause (3) provides that an application for a warrant is to be made to a magistrate if the thing sought is evidence of the commission of an indictable offence committed in another State that would also be an indictable offence is committed in Queensland.

Subclause (4) provides that the application is to be made to a Supreme Court judge if a search intended to be made will involve causing structural damage to a building, e.g. a concrete floor abutting building foundations is to be dug up in order to search for a body suspected of being murdered. This subclause does not apply to the mere removal of timber flooring which will not weaken the structure of a building.

Subclause (5) requires the application to be sworn and state the grounds on which the warrant is sought and include information specified in the responsibilities code about search warrants issued within the previous year with respect to the place or person involved in the current application.

Subclause (6) provides that the information required applies only to that kept in a register the police officer may inspect or of information which the police officer has knowledge. A police officer working at an operational station is not required to attempt to inspect a register maintained by police officers working at the Ethical Standards Command of the police service or the CJC or QCC as access to these registers is limited and denied to most operational police.

Subclause (7) allows the issuer to refuse to consider the application until the issuer is provided with such additional information the issuer requires. The additional information sought must be reasonable in the circumstances.

Issue of search warrant

Clause 69 requires that an issuer may only issue a search warrant if he or she is satisfied there are reasonable grounds for suspecting evidence of the commission of an offence is at the place or is likely to be at the place within the next 72 hours. To relieve any uncertainty regarding the application of a similar provision in the PPRA 1997, if the police officer reasonably suspects the evidence is at the place, but cannot be certain for the obvious reason that he or she has not seen it, then clause 69(a) applies. However, if the police officer has received information that the evidence is to be brought onto the place within the next 72 hours then clause 69(b) applies.

If justice refuses application for search warrant

Clause 70 allows a police officer to make a further application to a magistrate or judge for a search warrant if a justice of the peace refuses the initial application, however, the magistrate or judge must be informed that a justice of the peace has refused the application.

Order in search warrants about documents

Clause 71 provides that where a magistrate issues a search warrant, the magistrate may make an order as part of the warrant requiring a person in possession of documents at the relevant place to give a police officer those documents.

When search warrant ends

Clause 72, subclause (1) provides that a search warrant issued because things sought are reasonably suspected of being at the place remains in force for a period of 7 days after it is issued.

Subclause (2) provides that a search warrant issued because it is reasonably suspected that things sought are to be brought onto the place in the next 72 hours remains in force for a period of 72 hours after it is issued.

To relieve any uncertainty regarding the application of a similar provision in the PPRA 1997, if the police officer reasonably suspects the evidence is at the place, but cannot be certain for the obvious reason that he or she has not seen it, then clause 69(a) applies. However, if the police officer has received information that the evidence is to be brought onto the place within the next 72 hours then clause 69(b) applies.

What search warrant must state

Clause 73 requires a warrant to state that a stated or all police officers may enter a place and exercise search warrant powers. If the warrant is issued in relation to an offence—brief particulars of the offence, or for a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised. Also, any evidence which may be seized is to be listed in the warrant together with an authorisation for the warrant to be executed at night, if applicable. The date and time the warrant ends is to be placed on the warrant. Brief particulars of the offence may be the short title of the offence together with when and where the offence was committed, if known. Reference to evidence which may be seized will not, in every case, require a particularised description of each item. If, for example, information is received by the applicant that stolen car parts are located at a particular place, then reference to car parts rather than a detailed description of each part, is to be sufficient for the warrant. Additionally, where information is received that a person has been stealing property from cars parked in a railway station car park then it is not necessary to detail each item stolen where this information is not known. It shall be sufficient to refer to property, the description of which is not known, that is reasonably suspected of having been stolen from the vehicles. Clearly, in some instances the information received by police will not be of such a quality as to allow for each item relating to the suspected offence to be particularised in the warrant.

Subclause (2) provides that if the offence relates to a transport vehicle and involves the safety of that vehicle or anyone on it then the warrant may authorise the search of anyone or anything in or on or about to board, or be put in or on, the vehicle.

Example—

Where information is received that a bomb has been or may be placed on an aircraft located at a boarding terminal, all luggage and passengers may be searched.

Subclause (3) provides that if a magistrate who makes an order under clause 71 (production of documents) the warrant must state that failure, without reasonable excuse, to comply with the order is an offence against section 205 of the Criminal Code.

Powers under search warrants

Clause 74 provides that a police officer may exercise the following powers under a search warrant—

- a. enter the place specified and remain there to exercise the powers contained in paragraphs (b) to (m);
- b. pass over, through along or under another place to enter the relevant place;
- c. search the place for items sought under the warrant;
- d. open anything in the relevant place that is locked;
- e. detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;
- f. if the police officer reasonably suspects a person on the relevant place has been involved in the commission of the offence—power to detain the person during the search;
- g. dig up land
- h. seize evidence relating to the warrant at the place or on a person at the place;
- i. muster, hold and inspect any animal reasonably suspected of being able to provide evidence of the commission of an offence to which the warrant relates;
- j. photograph anything reasonably suspected of being able to provide evidence;
- k. remove wall or ceiling or floors of a building or panels of a vehicle to search for evidence of an offence.

Example for paragraph (j)—

The house searched may be photographed so as to acquaint a court with the design of the house and the location property was seized.

Subclause (2) provides that a police officer, if authorised under the warrant, may—

- a. search anyone found at the place for anything sought under the warrant that can be concealed on the person;
- b. search anyone or anything in or on or about to board, or be put in or on, a transport vehicle; or

Example—

The warrant may allow for the search of all passengers where information is received that a bomb has been or may be placed on an aircraft located at a boarding terminal.

- c. take a vehicle to another place with appropriate facilities for a search and there search the vehicle.

Copy of search warrant to be given to occupier

Clause 75 requires that a police officer must give a copy of a warrant and a statement summarising a person's rights and obligations to the occupier of the place or if the occupier is not present, then leave it in a conspicuous place.

However, compliance with the requirement may be delayed if it would frustrate or otherwise hinder that of another investigation but for only so long as a reasonable suspicion relating to the frustration or hindrance remains and a police officer involved in the investigation remains in the vicinity of the place to keep it under observation

Examples—

1. A police officer may conduct a search of a warehouse in the absence of any person related to the warehouse and find stolen property. The officer may then refrain from leaving a copy of the warrant or other indication of a search and keep the warehouse under surveillance in the hope that a person responsible for the theft of the property may return.
2. A police officer who during a search of a farm in the absence of the occupier might locate a drug plantation. The officer may remain hidden on the farm without leaving any visible indication of his presence in order to wait for a person who tends the plantation to return.

PART 2—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE**Application of pt 2**

Clause 76 restricts the application of the part to the following offences—

- a. an indictable offence;
- b. a gaming or betting offence;
- c. a *Crimes (Confiscation) Act 1989* offence;
- d. an *Explosives Act 1999* offence;
- e. a *Nature Conservation Act 1992* offence;
- f. a *Weapons Act 1990* offence.

Search to prevent loss of evidence

Clause 77 applies if a police officer reasonably suspects that a thing at or about a place, or in the possession of a person at or about a place is evidence of the commission of a specified offence and is likely to be concealed or destroyed if the place is not immediately entered and searched.

The clause also applies where there is a risk to life or a risk of property to a transport vehicle, e.g. a report of a bomb on a plane. All the powers of a search warrant including the additional power to search any person connected with the transport vehicle, e.g. a passenger, applies.

Subclause (3) permits a police officer to exercise the powers of search warrant with respect to the place with the exception of the power to cause structural damage.

Post—search approval

Clause 78 requires that as soon as reasonably practicable after exercising the powers the police officer must apply to a magistrate in writing for an order approving the search.

It is not expected that an application will be made at an unreasonable hour following a search when it may more appropriately be made during court hours.

The purpose of the clause is to ensure that a police officer obtains no relief from judicial oversight by using clause 76 to avoid the need to first obtain a search warrant in circumstances where the obtaining of search warrant is practical and reasonable.

In the normal course of events it is not the intention of the clause to require the police officer to be present at the time the application is heard and determined by a magistrate. A written application made by the police officer and presented by a representative of the police officer, e.g., a prosecutor, is sufficient for the application to be heard. However, a magistrate requiring further information may adjourn the hearing of the application for such time as is necessary for the further information to be made available or the applicant to be present at the hearing.

Also, as in the case of the making of an application for a search warrant it is not the intention of the clause that the person whose property is searched or his or her legal representative is present at the application.

Making of post—search approval order

Clause 79 outlines the prerequisites placed on a magistrate for making a post—search order. The magistrate must be satisfied that the police officer had a relevant reasonable suspicion before exercising the powers and that there was a reasonable likelihood that the evidence would be concealed or destroyed or there was a risk to life or property in the case of a transport vehicle if the police officer had not acted.

Regardless of the magistrate not being satisfied of the forgoing he or she may still make an order approving the search if he or she is of the opinion that having regard to the nature of the evidence found it is in the public interest to make the order.

Example—

It is in the public interest to approve a search where the search was made without a reasonable suspicion if a large quantity of dangerous drugs was found as a result of the search.

The magistrate may make an order in relation to the things seized irrespective that he or she does not make a post—search approval.

Additionally, it is not the intent of the section that evidence obtained as a result of a search without warrant which is not subsequently approved be inadmissible in an ensuing trial. The discretion for the admission or exclusion of the evidence in this case should properly rest with the trial court.

Appeal

Clause 80 allows a police officer to appeal to the Supreme Court within 28 days of a magistrate refusing to make a post—arrest approval order or making an order under clause 79(2). The police officer is to retain the thing seized pending the outcome of the appeal. The Supreme Court is also empowered to make an order regarding the retention, disposal, return or destruction of the thing irrespective of its finding on the appeal.

PART 3—CRIME SCENES

Division 1—Establishment of crime scenes

Gaining access to crime scenes

Clause 81 provides that it is lawful for a police officer to enter a place reasonably suspected of being a crime scene and stay on the place for the time reasonably necessary to decide whether or not the place is a crime scene. Also, a police officer may enter any other place in order to gain access to the crime scene.

Initial establishment of crime scene

Clause 82 provides that a police officer at a place who decides the place is a crime scene may establish a crime scene and exercise crime scene powers at that place. In establishing a crime scene the officer may take such action as is necessary to give the public notice that the place is a crime scene. However, if a judge or magistrate refuses to issue a crime scene warrant under clause 88 the place stops being a crime scene.

Responsibility after establishing crime scene

Clause 83 provides that, unless a place is a public place, as soon as practicable after establishing a crime scene a police officer must apply to a magistrate for a crime scene warrant. If structural damage could be done to a building during a search the application must be made to a Supreme Court judge irrespective of whether a magistrate has issued a warrant.

However, if a place is a public place only while open to the public and the occupier requires police to leave the place, a police officer may obtain a crime scene warrant.

Examples of public place only while open to the public—

1. A cinema.
2. A hotel.
3. An art gallery.
4. A camping ground.

Deciding limits of crime scene

Clause 84 requires a police officer to identify what constitutes the crime scene, the boundaries necessary to protect the crime scene and mark the limits in a way that sufficiently identifies to the public it is a crime scene.

The clause allows a police officer to set boundaries which are outside the perimeter in which evidence may be obtained. This is to ensure that a person does not venture near the extremities of the area in which the evidence may be found.

Although in the normal course of events crime scene tape would be used to define the crime scene boundaries, if it is not available then anything which indicates a boundary may be used including a notice or a guard.

Restricting access to crime scene

Clause 85 recognises the fact that it is essential to an investigation that a crime scene is restricted to all persons who are not required as part of the investigation. Therefore, there is a statutory requirement on the responsible officer (establishing officer or officer in charge) to immediately take steps he or she considers reasonably necessary to protect anything at the crime scene from damage or destruction. Although not exclusive, these steps may include ensuring non—essential people (including police officers) do not enter the crime scene, preventing unnecessary movement in the crime scene and establishing a safe walking area to reduce damage to evidence.

Subclause (2) provides that a person, other than the responsible officer, must not enter a crime scene unless the person has a special reason associated with the investigation, is invited in by the responsible officer or investigating officer, is an authorised assistant, or is a person whose presence is necessary to preserve life or property.

Examples for subclause (2)—

1. A police officer, other than a member of the investigation team who has entered the crime scene to remove a person.
2. An undertaker to remove a body.
3. A senior police officer may be invited into the crime scene to offer advice.
4. A forensic scientist may be invited in to gather evidence.
5. An ambulance officer or doctor may enter to provide medical attention.
6. A fire officer may enter to put out a fire which could endanger property.

Subclause (4) requires the responsible officer to ensure that a record is made of each person who is present at the crime scene. This subclause allows for cross testing to be done at a later time if it is suggested that a foreign object was introduced into the crime scene or to rebut a suggestion that a particular person entered the crime scene.

Preserving evidence at the crime scene

Clause 86 places a requirement on a responsible officer to ensure that nothing in the crime scene is unnecessarily touched or moved until all necessary forensic or technical examinations are completed or unless there is a possibility that the thing could be damaged or destroyed if it is not moved.

Division 2—Crime scene warrants

Application for crime scene warrant

Clause 87 allows a police officer to apply to a Supreme Court judge or a magistrate for a crime scene warrant. While this is essentially a machinery section it does provide that the occupier of the place must, if reasonably practicable, be given notice of the making of the application unless the notice would frustrate or hinder the investigation. If notice is given the occupier is entitled to be present and heard on the application.

Consideration of application and issue of crime scene warrant

Clause 88 is a machinery section outlining considerations to be taken into account by the issuer when issuing a crime scene warrant. If, however, the place ceases to be a crime scene prior to the issuer fully considering the application, it is intended that the issuer will still issue a crime scene warrant for the period the place was a crime scene if the criteria for issuing a warrant are satisfied.

What crime scene warrant must state

Clause 89 stipulates that a crime scene warrant must stipulate that a stated police officer may establish a crime scene and exercise appropriate powers at the site and that any police officer necessary may enter and stay on the place for a stated period of up to 7 days or any period the crime scene is extended.

If the issuer is a Supreme Court judge because structural damage to a building is likely then the judge must endorse the warrant to authorise structural damage or may, even though the judge may issue the warrant stipulate that structural damage is not to be done.

Duration, extension and review of crime scene warrant

Clause 90 is a machinery clause which stipulates the day a crime scene warrant stops and allows an issuer to extend the warrant for no more than 7 days at a time.

Review of crime scene warrant

Clause 91 provides that where an occupier was not present at the making of the application through lack of knowledge or a genuine reason, the occupier may apply to the issuer to revoke the warrant. Any application for revocation does not effect the warrant until the occupier's application is determined.

Copy of crime scene warrant to be given to occupier

Clause 92 requires that if a place that is occupied, the occupier is to be given a copy of the warrant and a statement summarising the person's rights and obligations under the warrant. If the occupier is not present the copy must be left in a conspicuous place.

Division 3—Powers at crime scenes

Powers at crime scene

Clause 93 contains the powers of the responsible officer and a police officer acting under the direction of a responsible officer. The powers are—

- a. enter the crime scene;
- b. if reasonably necessary, enter another place to gain access to the crime scene;
- c. perform any necessary investigation, including for example, search the crime scene and inspect anything in it to obtain evidence of the commission of an offence;

- d. open anything at the crime scene that is locked;
- e. take electricity for use at the crime scene;
- f. dig up anything at the crime scene;
- g. remove wall or ceiling linings or floors of a building, or panels of a vehicle;
- h. remove or cause to be removed an obstruction from the crime scene;
- i. photograph the crime scene and anything in it'
- j. seize all or part of a thing that may provide evidence of the commission of an offence.

The powers are clarified in subclause (2) by a provision requiring the prior authority of a Supreme Court judge if structural damage may be caused to a building.

An authorised assistant at a crime scene may perform a function mentioned in subsection (1) if asked by the responsible officer.

Powers of direction etc. at crime scene

Clause 94 allows the responsible officer and a police officer acting under the direction of a responsible officer to—

- a. direct a person to leave the crime scene or remove a vehicle or animal from the crime scene;
- b. remove or cause to be removed from the crime scene—
 - i. a person who fails to comply with a direction to leave the crime scene;
 - ii. a vehicle or animal a person fails to remove from the crime scene;
- c. direct a person not to enter the crime scene;
- d. prevent a person from entering the crime scene;
- e. prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and for that purpose, detain and search the person;
- f. direct the occupier of the place or a person apparently involved in the management or control of the place to maintain a continuous supply of electricity at the place.

Exercise of crime scene powers in public place

Clause 95 provides that it is lawful for a police officer to exercise powers under clause 93 and 94 without a warrant at a crime scene in a public place.

If, however, the public place is that only while it is ordinarily open to the public and the occupier requires a police officer to leave, the police officer may, despite the requirement, continue to remain on the place and exercise crime scene powers for the time reasonably necessary for an application for a crime scene warrant to be made and decided.

An authorised assistant at a crime scene may perform a function mentioned in subsection (1) if asked by the responsible officer.

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

Clause 96 applies to the occupier of a dwelling that is a crime scene where the occupier cannot continue to live in the dwelling while it is a crime scene or because it was damaged during the exercise of crime scene powers. The Commissioner of Police is required, if asked, to arrange suitable accommodation for the occupier for the time the occupier cannot live in the place. The accommodation must, if reasonably practicable, be in the same locality as, and of at least a similar standard to, the occupier's dwelling. However, the clause does not apply to an occupier who is detained in lawful custody.

PART 4—PRODUCTION NOTICES**Production notices**

Clause 97 relates to production notices. The clause applies to situations where police officers reasonably suspect cash dealers hold documents that may be evidence of the commission of an offence by someone else. The Clause contains standard provisions about applications for production notices.

Issue of production notice

Clause 98 provides for the issuing of production notices where the magistrate is satisfied that there are reasonable grounds for suspecting that documents held by the cash dealer may be evidence of the commission of an offence, and that the cash dealer is not a party to the offence.

Copy of production notice to be given to cash dealer

Clause 99 provides that a police officer must provide a copy of the production notice to the cash dealer named in the notice as soon as reasonably practicable after the notice has been issued.

Procedural requirements — production notice

Clause 100 outlines the procedural requirements for production notices. The clause provides that although cash dealers who are served with production notices must comply with the production notice, they are not subject to any legal liability for not complying with a production notice and do not commit an offence for failing to comply with a production notice.

Power under production notice

Clause 101 outlines the powers a police officer has in relation to documents under a production notice. A police officer has the power to:

- a inspect documents;
- b take extracts from the document;
- c make copies of the document; and
- d seize a document if the officer reasonable suspects the document is evidence of the commission of an offence.

Subclause (2) of Clause 101 provides that the powers provided in Clause 101(1) are subject to the provisions of Clause 102.

If cash dealer claims documents contain privileged communications

Clause 102 relates to documents containing privileged communications. Subclause (1) outlines requirements for police officers, where a cash dealer under a production notice claims documents contain privileged

communications between the cash dealer and someone else, to make application to a magistrate to access the documents. It allows police to keep possession of a document until an application has been decided. The clause also contains standard requirements a police officer must comply with prior to making an application.

Making of access order

Clause 103 provides that a magistrate or justice may make an application for access to privileged communications documents if reasonably satisfied that access is necessary in the circumstances. The clause also provides for the return of privileged communication documents to a cash dealer, if an application for access by a police officer has been refused by a magistrate or justice.

Provisions about access order

Clause 104 states the powers a police officer may exercise, and the requirements a police officer must comply with in relation to documents obtained under an access order.

PART 5—PRODUCTION ORDERS

Application of pt 5

Clause 105 states the part applies to a serious offence and interstate serious offence, and provides that in relation to part 5 of the Bill, questions as to whether a person has been charged or found guilty of an interstate serious offence is to be decided in accordance with the law of the State in which the person has been charged or convicted.

Production order applications

Clause 106 allows a police officer to apply to a Supreme Court judge for an order to produce a property tracking document to a police officer in relation to serious offence the person has been found guilty of or a serious offence a police officer reasonable suspects the person has committed. The clause also provides standard provisions relating to applications for orders.

Making of production orders

Clause 107 provides for a Supreme Court judge to issue a production order for property tracking documents relating to the serious offence mentioned in the application. The clause also provides that applications containing information that a police officer reasonably suspects the person found guilty or believed to have committed the offence, and the property specified in the information is subject to the effective control of the person, the judge may treat any document relevant to identifying, locating or quantifying the property as a property—tracking document in relation to the offence for this section. Finally, the clause provides that in deciding whether to treat a document as a property—tracking document in relation to the offence, the judge may have regard to the provisions of section 37 of the *Crimes (Confiscation) Act 1989*.

What production order must state

Clause 108 provides that production orders must order stated persons to produce to a police officer, any documents in the person's possession of the kind mentioned in clause 106(1), other than a financial institution's books, or make those documents available for inspection by a police officer. Production orders must also state when and where documents are to be produced or made available for inspection and that a stated police officer or all police officers may enter the place and exercise the powers under clause 109. For the purposes of the section a 'financial institution's books' means accounting records used in the ordinary business of a financial institution and includes ledgers, daybooks, cashbooks and account books.

Powers under production order

Clause 109 describes general powers a police officer has in relation to documents under a production order, that is, the power to inspect, take extracts and make copies of documents, and the power to seize documents reasonably suspected of being evidence of the commission of an offence.

Variation of production order

Clause 110 provides that where a Supreme Court judge has made a production order in relation to a person, the person may apply to a Supreme Court judge to have the order varied. Where a document is considered by a

judge to be essential to a business activities of the person, the judge may vary the order so that the document is available to a police officer.

Offence to contravene production order

Clause 111 provides that a person subject to a production order must not contravene the order without reasonable excuse or produce a document which the person knows is false or misleading in a material particular without indicating to the police officer; the fact that the document is false and misleading and in which respect the document is false and misleading and giving correct information to the police officer if the person has possession of or can reasonably acquire the correct information. The clause provides that a person who contravenes subclause (1) commits a crime and is liable to a maximum penalty of 350 penalty units or 7 years imprisonment.

Effect of compliance with production order

Clause 112 provides that a person is not excused from producing a document under a production order because producing the order may incriminate the person or make the person liable to a penalty, or because the producing the document would be in breach of an obligation on the person not to disclose the existence or the contents of the document. The clause also provides that in the case of a person producing a document under a production order, any information or documents obtained directly or indirectly because of the production of the document, is not admissible against the person in any criminal proceedings other than for an offence against Clause 111 of the Bill.

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

Power to seize evidence generally

Clause 113 applies where a police officer lawfully enters a place, or is at a public place, and finds a thing the police officer reasonably suspects is evidence of the commission of an offence. Subclause (2) may seize a thing

whether or not the things is evidence under a warrant and if under a warrant, whether or not the offence is one relating to the issuing of the warrant. Subclause (3) provides that the police officer may photograph the thing seized or the place from which the thing was seized. Subclause (4) provides that a police officer may stay on or re—enter the place for the time reasonably necessary to remove the thing from the place.

The clause enshrines the essence of the 'chance discovery' rule in legislation while applying the search warrant powers and responsibilities contained in the Bill to it.

Examples—

1. A police officer, taking a statement from a person at the person's home, sees a sawn off shotgun lying on a table.
2. A police officer attempting to serve a summons on a person sees a stolen vehicle in the person's garage.

Power to remove property unlawfully on a place

Clause 114 applies to situations where a police officer has lawfully entered a place or is at a public place and finds a thing on the place that may reasonably be believed to be in contravention of an Act. Subclause (2) provides that a police officer may seize the thing if the person in charge of the thing can not be immediately located. Subclause (3) provides that a police officer may seize the thing if the person in charge can be located but the police officer reasonably believes the person is unwilling or unable to move the thing immediately. Subclause (4) provides that the police officer may move and take the thing to a place where the thing does not contravene the relevant Act or another Act. Subclause (5) provides that Clause 114 does not apply to a vehicle or an animal.

Example—

A police officer may remove a tent erected, without the consent of the government, in Queen's Park, Brisbane.

A police officer may seize and remove a tent erected in a part of a National Park in which camping is not permitted.

CHAPTER 4 — COVERT EVIDENCE GATHERING POWERS

PART 1 — MONITORING ORDERS

Meaning of "financial institution" for part 1

Clause 115 provides that for the purposes of part 1 of the chapter, "financial institution" includes a corporation that is a financial corporation within the meaning of s 51(xx) of the Commonwealth Constitution, and another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting. The latter may include a casino account, a TAB account or a bookmaker's account set up for that purpose.

Monitoring order applications

Clause 116 provides that a police officer can apply to a Supreme Court judge for a monitoring order to direct a financial institution to give information to a police officer. Subclause (2) requires that orders must be sworn, state the grounds for the warrant and include information specified in the responsibilities code relating to orders issued within the previous year in relation to accounts held by the person subject to the application. Subclause (3) provides that the requirement to include with the application, information specified in the responsibilities code, is only relevant to information kept in a register that a police officer may inspect and information the police office actually knows. Subclause (4) provides that a judge may refuse to consider the application until the judge has all the information the judge requires in the way the judge requires.

Making of monitoring order

Clause 117 provides that a Supreme Court judge may make a monitoring order only if satisfied that there are reasonable grounds for suspecting that a person who has an account with a financial institution has committed, or is about to commit a serious offence, or was or is about to be involved in the commission of a serious offence, or has or is about to benefit directly or indirectly from the commission of a serious offence

What monitoring order must state

Clause 118 provides that a monitoring order must direct a financial institution to give information obtained by the institution where the person has an account and must state:

- a. the name or names the account is believed to be in;
- b. the type of information required to be supplied by the institution;
- c. the period for which the order is in effect which is not more than three months;
- d. that the order applies to transactions conducted during the period stated in the order; and
- e. that the information is to be given to a police officer, and the way in which the information is to be given.

Subclause (2) provides that a "transaction conducted through an account" includes the making of a fixed term deposit and in relation to a fixed term deposit, the transfer of the amount deposited or any part of it, at the end of the term.

When period stated in monitoring order starts

Clause 119 provides that the order has effect from the start of the day when notice of the order is given to the financial institution.

Offence to contravene monitoring order

Clause 120 provides that a financial institution given notice of a monitoring order must not knowingly contravene the order or provide false or misleading information in purported compliance with the order. The maximum penalty provided is 1000 penalty units.

Existence and operation of monitoring order not to be disclosed

Clause 121 provides that a financial institution subject to a monitoring order must not disclose the existence or operation of the order to any person other than a police officer, an officer or agent of the institution ensuring compliance, or a lawyer obtaining legal advice or providing representation in relation to the order.

Subclause (2) provides that a person to whom the existence of a monitoring order under subclause (1) has been disclosed, whether before or after the commencement of subclause (1), must only disclose the existence of the order to another person to whom an order may be disclosed under subclause (1). An exception is made where the person is a police officer, an officer or an agent of an institution ensuring compliance, or a lawyer giving legal advice or making representations in relation to the order, or when the person is no longer a person to whom information may be disclosed, makes a record of or discloses the existence of the operation of the order under any circumstances.

Subclause (3) provides that subclause (2) does not prevent a police officer disclosing the existence or operation of a monitoring order in relation to a legal proceeding or in a proceeding before a court.

Subclause (4) provides that a police officer cannot be required under any circumstances to disclose the existence or operation of a monitoring order.

Subclause (5) provides that a person who contravenes subclauses (1) and (2) commits a crime punishable by a maximum penalty of 350 penalty units or 7 years imprisonment.

Subclause (6) provides that for the purposes of the clause a person must not be taken to be director within the meaning of section 4(c) "director" of the Crimes (Confiscation) Act 1989 only because the directors act on the advice given by that person in the proper performance of the functions attaching to his or her professional capacity or to his or her business relationship with the directors of the financial institution or the corporation.

Subclause (7) provides that a reference in this clause to disclosing the existence or operation of a monitoring order includes a reference to disclosing information to persons who could reasonably be suspected to be able to infer the existence or operation of the monitoring order.

PART 2 — SURVEILLANCE POWERS

Division 1 — Preliminary

Certain Acts do not apply to this part

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

Certain acts not prevented by divs 2 and 3

Clause 123 provides that divisions 2 and 3 do not prevent a police officer from using a visual surveillance device in a place where the presence of a police officer does not constitute an offence.

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

Surveillance warrant applications

Clause 124 applies if a police officer reasonably believes that a person has been, is, or is likely to be involved in the commission of an indictable offence.

Subclause (2) provides that a police officer of at least the rank of inspector may apply to a Supreme Court judge for a surveillance warrant.

Subclause (3) provides that a police officer may apply for a surveillance warrant authorising the use of a class A surveillance device only if the offence is an serious indictable offence.

Subclauses (4) to (7) provides the general application requirements for obtaining a surveillance warrants.

Who may be present at consideration of application for surveillance warrant

Clause 125 provides a list of the only persons who may be present when a judge hears an application for a surveillance warrant. Subclause (2) provides that the judge must hear the application in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Consideration of application for surveillance warrant

Clause 126 states the issues a judge must be mindful of when considering an application for a surveillance warrant.

Issue of surveillance warrant

Clause 127 provides that after considering the application and the matters mentioned in clause 126, a judge may issue a warrant if satisfied that there are reasonable grounds for believing the suspect is likely to be at a place, at a public place or at a class of place mentioned in the application, and the suspect is or is likely to be involved in the commission of an indictable offence.

Subclause (2) provides that a judge may issue a warrant for the use of a class A device for use in the office of a practising lawyer only if the lawyer may be involved in a serious indictable offence.

Subclause (3) provides that a judge may impose any conditions on a warrant the judge considers necessary in the public interest.

What warrant must state

Clause 128 provides the information which must be included in a warrant.

Report on use of surveillance devices

Clause 129 provides that where a condition of a surveillance warrant requires a police officer to give a report to a judge on activities under the warrant, the judge may, after considering the report, order the destruction of records made that are not relevant to the offence mentioned in the warrant, unless the records relate to the investigation of another indictable offence.

Duration and extension of surveillance warrants

Clause 130 provides that surveillance warrants are to be in force until the day stated in the warrant or until the investigation ends.

Subclause (2) provides that despite subclause (1), a warrant stops having effect if the investigation under the warrant ends, unless, whilst using the surveillance warrants evidence of another serious indictable offence is discovered, or in the case of a tracking device, evidence of another indictable offence is discovered.

Subclause (3) provides that the provisions of Division 2 apply to an application with all necessary changes.

Subclause (4) provides that subclauses (1) and (2) do not prevent a police officer from exercising powers under a surveillance warrant after the warrant has ended, to remove the surveillance device to which the warrant relates.

Powers under surveillance warrants

Clause 131 provides general powers a police officer may exercise under a surveillance warrant.

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

Clause 132 provides that where a police officer reasonably believes that there is a risk of serious injury to a person and using a surveillance warrant may help reduce that risk, a police officer of the rank of inspector or above may authorise the use of a surveillance device. Whilst using a surveillance device pursuant to the provisions of clause 132, a police officer may exercise any of the powers a police officer may exercise under a surveillance warrant. This emergency provision is designed for a siege, terrorist incident, an abduction where a victim's life may be in danger, or an extortion where a person is threatening action against another that is likely to result in injury if immediate action is not taken.

Application for approval after emergency use of surveillance device

Clause 133 provides that where a surveillance device is used for an emergency situation under clause 132, the police officer authorising the use

of the device must within two business days apply to a Supreme Court judge for approval of the exercise of the powers.

Subclause (2) to (4) outline requirements which must be complied with when obtaining approval under this clause.

Who may be present at consideration of application

Clause 134 provides a list of the only persons who may be present when a judge hears an application for a surveillance warrant.

Subclause (2) provides that the judge must hear the application in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Consideration of application

Clause 135 states the issues that a judge must be mindful of when considering an application for a surveillance warrant.

Judge may approve emergency use of powers

Clause 136 provides that after considering both the application and the matters outlined in clause 135, a judge may approve the use of an emergency surveillance device where there was serious risk of injury to a person and the use of the device may have helped reduce the risk.

Subclause (2) provides that a judge may also require the destruction of any recordings made which are not related to the purpose for which the device was used.

Use of evidence and information

Clause 137 provides that evidence obtained through the exercise of powers approved under Clause 136 is admissible in a proceeding for an offence. Subclause (2) provides that information obtained under Division 3 may be given to any person or organisation involved in helping to reduce the risk of serious injury to a person. By way of example, the Australian Security Intelligence Organisation (ASIO) or the Special Air Services (SAS) may need to be given information in the case of a terrorist incident if they are to assist in overcoming the incident. Additionally, a security organisation

such as ASIO or the SAS may be given information after an event in which they were not involved if the information is pertinent to national security or relates to another event, e.g., multiple terrorist actions by the same or a related terrorist group at different locations.

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

Surveillance warrant applications

Clause 138 provides that a police officer of the rank of inspector or above who reasonably believes that a person has been, is, or is likely to be involved in the commission of an indictable offence, may apply to a magistrate for a warrant authorising the use of a Class B surveillance device.

Subclauses (3) to (6) outline the requirements which must be complied with when applying for a warrant for a surveillance device.

Who may be present at consideration of application

Clause 139 provides a list of the only persons who may be present when a magistrate hears an application for a surveillance warrant.

Subclause (2) provides that the magistrate must hear the application in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Consideration of application

Clause 140 states the issues that a magistrate must be mindful of when considering an application for a surveillance warrant.

Issue of surveillance warrant

Clause 141 provides that after considering the application and the matters mentioned in clause 140, a magistrate may issue a warrant if satisfied that there are reasonable grounds for believing the suspect is likely to be at a place, at a public place or at a class of place mentioned in the application and the suspect is, or is likely to be involved in the commission of an indictable offence.

Subclause (2) provides that a magistrate may impose any conditions on a warrant a magistrate considers necessary in the public interest.

What warrant must state

Clause 142 provides the information which must be included in a warrant.

Duration and extension of surveillance warrants

Clause 143 provides that surveillance warrants are to be in force for 30 days or a shorter time if stated in the warrant, unless the time is extended by application.

Subclause (2) provides that despite subclause (1), a warrant stops having effect if the investigation under the warrant ends, unless, whilst using the surveillance warrants evidence of another serious indictable offence is discovered, or in the case of a tracking device, evidence of another indictable offence is discovered.

Subclause (3) provides that the provisions of Division 2 apply to an application for an extension with all necessary changes.

Subclause (4) provides that subclauses (1) and (2) do not prevent a police officer from exercising powers under a surveillance warrant after the warrant has ended, to remove the surveillance device to which the warrant relates.

Powers under surveillance warrants

Clause 144 provides general powers a police officer may exercise under a surveillance warrant.

Division 5 — Other provisions about surveillance devices

Restriction about records and access to surveillance warrant applications etc.

Clause 145 provides that a "relevant proceeding" means—

- a. an application to a Supreme Court judge or magistrate for a surveillance warrant or for the extension of a surveillance warrant;
- b. an application to a Supreme Court judge for the approval for the emergency use of a surveillance device; and
- c. any order made or approval given pursuant to an application under this clause.

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

Subclause (3) provides an offence for publishing reports of relevant proceedings with a maximum penalty of 85 penalty units or 1 year imprisonment.

Subclause (4) provides that a person cannot search information in the custody of a court in relation to a relevant proceeding unless it is in the interests of justice and then only with an order from a Supreme Court judge.

Disclosure of information obtained using surveillance warrant

Clause 146 applies to "relevant information" or information that has not been disclosed in a proceeding in open court and was obtained under a surveillance warrant.

Subclause (2) provides a list of persons to whom relevant information can only be disclosed.

Destruction of records

Clause 147 provides that all information obtained under a surveillance warrant must be kept in a secure place by the chief executive of the agency responsible for the warrant.

Subclause (2) provides that all recordings or photographs made under a surveillance warrant and any transcripts or copies made from information obtained under a surveillance warrant must be destroyed by the chief executive as soon as practicable after no longer required.

However, Subclause (3) provides that information relevant to any offence to which a person has been convicted does not need to be destroyed if there is a possibility that an issue about the conviction may arise.

Division 6 — Covert searches**Covert search warrant applications**

Clause 148 provides that a police officer of the rank of inspector or above may apply to a Supreme Court judge for a covert search warrant to enter and search a place for evidence of organised crime.

Subclauses (2) to (5) outline the requirements which must be complied with when applying for a covert search warrant.

Who may be present at consideration of application

Clause 149 provides a list of the only persons who may be present when a judge hears an application for a warrant.

Subclause (2) provides that the judge must hear the application in the absence of the suspect or anyone likely to inform the suspect of the application, and without the suspect having been informed of the application.

Consideration of application

Clause 150 states the issues that a judge must be mindful of when considering an application for a warrant.

Issue of covert search warrant

Clause 151 provides that after considering the application and the matters mentioned in clause 150, a judge may issue a warrant if satisfied that there are reasonable grounds for believing there is, in or on a place, evidence of organised crime.

Subclause (2) provides that a judge may impose any conditions on a warrant a judge considers necessary in the public interest

What covert search warrant must state

Clause 152 provides the information which must be included in a covert search warrant.

Duration and extension of covert search warrant

Clause 153 provides that a covert search warrant is in force until the day stated in the warrant, or the initial search is complete.

Subclause (2) provides that a warrant may be extended from time to time on application.

Subclause (3) provides that the provisions of this division for an application for a warrant apply to an application for an extension with all necessary changes.

Restriction about records and access to covert search warrant applications

Clause 154 provides that despite the *Recording of Evidence Act 1962*, a transcript of a application for a covert search warrant and any other order made on it must not be made.

Subclause (2) provides an offence for publishing reports of proceedings on an application for a covert search warrant or an extension of a covert search warrant with a maximum penalty of 85 penalty units or 1 year's imprisonment.

Subclause (3) provides that a person cannot search information in the custody of the Supreme Court in relation to an application for a covert search warrant unless it is in the interests of justice and with an order from a Supreme Court judge.

Powers under covert search warrant

Clause 155 provides general powers a police officer may exercise under a covert search warrant.

Report on covert search

Clause 156 provides that within 7 days after executing a covert search, a police officer must provide to the Supreme Court judge who issued the warrant and to the monitor, a report complying with the responsibilities code in relation to the exercise of the powers under the warrant.

Subclause (2) provides that a police officer must also, if practicable, take before the judge, anything seized or any photos taken during the search.

Subclause (3) provides that a judge may in relation to a thing mentioned in subclause (2) order that the thing be held by a police officer until the conclusion of any proceedings in which the thing may be evidence or dealt with in the way the judge orders.

Division 7 — Public Interest Monitor

Public interest monitor

Clause 157 provides for the Governor in Council to appoint a public interest monitor, to monitor applications for, and the use of, surveillance warrants and covert search warrants.

Subclause (2) provides that the Governor in Council may appoint as many deputy public interest monitors as the Minister considers necessary.

Subclause (3) provides that the appointment, terms and conditions of the appointment may be decided by Governor in Council.

Subclause (4) provides that the *Public Service Act 1996* does not apply to the appointment of a public interest monitor.

Subclause (5) provides that the public interest monitor must not be a person who is, or who is a member of, or who is employed in or by or to assist—

- a. the Director of Public Prosecutions;
- b. the office of the Director of Public Prosecutions;
- c. the Queensland Crime Commission;
- d. the Criminal Justice Commission; or
- e. the Queensland Police Service.

Acting Monitor

Clause 158 provides that Governor in Council may appoint a person, who is qualified to for appointment as public interest monitor, to act as the public interest monitor during a vacancy in the office or during times when the public interest monitor is absent from duty or the state or for some other reason, cannot perform the duties of the office.

Subclause (2) provides that Governor in Council may appoint a person, who is qualified to for appointment as deputy public interest monitor, to act as deputy public interest monitor during a vacancy in the office or during times when the deputy public interest monitor is absent from duty or the state or for some other reason, cannot perform the duties of the office.

Monitor's functions

Clause 159 provides the functions of the public interest monitor as—

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

Example for paragraph (d)—

The monitor may report non—compliance to the commissioner because a police officer did not provide in his or her application, relevant information contained in a register to which the police officer had access.

A deputy monitor has the functions mentioned in paragraphs (a), (b) and (c).

Monitor's annual report

Clause 160 requires the monitor to provide the Minister with an annual report for tabling in Parliament. The Minister is required to table the annual report within 14 sitting days of receiving it. However, the annual report

must not contain information that discloses or leads to the disclosure of the identity of any person who has been, is being, or is to be, investigated or indicates a particular investigation has been, is being, or is to be conducted.

Secrecy

Clause 161 provides that a monitor or person who was a monitor (including a deputy monitor) must not, unless in the performance of his or her functions under the Bill, record, use or disclose information obtained under the Bill that came to the person's knowledge because of the person's involvement in the administration of the Bill.

A monitor or person who was a monitor is not a compellable witness concerning information derived from his or her functions as a monitor.

Protection from liability

Clause 162 provides in subclause (1) for the protection from civil liability for the monitor and deputy monitor where an act or omission is done or made honestly and without negligence under the Bill. If subclause (1) prevents civil liability attaching to the monitor it instead attaches to the State.

CHAPTER 5—ARREST AND CUSTODY POWERS

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

Division 1—Arrest without warrant

Arrest without warrant

Clause 163 provides a police officer with the power to arrest a person without warrant if the police officer reasonably suspects the person has committed or is committing an offence and the arrest is reasonably necessary—

- a. to prevent the continuation or repetition of an offence of the commission of another offence;
- b. to make enquiries to establish the person's identity;
- c. to ensure the person's appearance before a court;
- d. to obtain or preserve evidence relating to the offence;
- e. to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence.
- f. to prevent fabrication of evidence;
- g. to preserve the safety or welfare of any person, including the person arrested;
- h. to prevent a person fleeing from an officer or the location of the offence;
- i. because a person has committed an offence against clause 354 (assault or obstruct police) or 355 (disobey direction or requirement);
- j. because the person has committed or is committing an offence against the *Domestic Violence (Family Protection) Act 1989*, section 80 (breach of order of condition);
- k. because of the nature and seriousness of the offence.

Examples—

Paragraph g—

1. A police officer may arrest a person if a crowd gathered at the scene of an offence is likely to attack the person.
2. A police officer may arrest a person if the mental welfare of a complainant is likely to suffer if the person is left at large.

Paragraph k—

1. A police officer may arrest a person who has committed a robbery because it is a serious offence.
2. A police officer may arrest a person who has murdered his or her spouse even though the person is unlikely to commit another offence and is likely to appear in court and therefore, with the exception of this paragraph, the remaining paragraphs (a) to (j) may not apply to the person.

Subclause (2) allows a police officer to arrest an adult or a child, without warrant, if the police officer reasonably suspects that the person has committed or is committing an indictable offence. The purpose for the

arrest is to allow the questioning of the person for the offence or the investigation of the offence. The section should be read in conjunction with Chapter 6 of this Bill.

Subclause (3) provides that subclause (1) does not apply to a child.

However, subclause (3) allows for the arrest, without warrant, of a child for an offence provided that the police officer has a reasonable suspicion that the child has committed or is committing an offence and the arrest is made in accordance with the provisions of section 20 of *the Juvenile Justice Act 1992*.

Arrest of escapees etc.

Clause 164 provides that it is lawful for a police officer to arrest a person the police officer reasonably suspects has escaped or is escaping from lawful custody. The provision allows for the arrest of someone who has escaped from a police officer after being arrested or who has escaped from a prison or detention centre.

Subclause (2) also allows for the arrest of a prisoner who is released from a prison on leave of absence or home detention and who is or is preparing to become unlawfully at large or who is contravening or has contravened a condition of the instrument authorising the person's release or who is discharged under the *Corrective Services Act 1988* in error.

Arrest of person granted bail

Clause 165 provides that if a person is released on bail irrespective of whether they have been arrested for an offence, a police officer may arrest the person without warrant if—

- a the person has left the precincts of a court, without entering into an undertaking, or without fulfilling specified conditions;
- b the person is likely to contravene, is contravening, or has contravened, the condition for the person's appearance or another condition of the undertaking as to bail;
- c a surety for the person's appearance is dead;
- d that for any reason the security for the person's appearance is no longer adequate;
- e the person is likely to fail to appear before a court to answer a charge.

Also, a police officer may arrest the person without warrant if—

- a. a surety has given written notice to a police officer that he or she wishes to be relieved of the obligation of being a surety because the person bailed is likely to contravene a condition for appearance.
- b. a police officer reasonably suspects that the person is directly or indirectly harassing or interfering with a witness to the offence for which the person was bailed;

Arrest of person given notice to appear or summons

Clause 166 applies where a person has been given a notice to appear or summons and allows a police officer to detain the person if the police officer reasonably suspects the person is harassing or interfering with a witness or is likely to fail to appear at court.

Division 2—Arrest under warrant

Arrest with warrant

Clause 167 provides a police officer with the power to arrest a person named in a warrant issued under any Act or law. For the purpose of the section and to ensure that all warrants, including those relating to mental health provisions, may be executed by a police officer, arrest includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

Arrest warrant application

Clause 168 is a machinery provision and allows a police officer to apply to a justice for a warrant to arrest a person for an offence. A similar section is contained in *the Justice Act 1886* but due to the consolidation of arrest provisions into the Bill and the subsequent removal of those provisions from a majority of Acts, a new clause is required which simply refers to an Act containing offences rather than an Act allowing for the arrest of a person.

Issue of arrest warrant

Clause 169 is a machinery section requiring that a justice before issuing a warrant must first be satisfied there are reasonable grounds for suspecting the person has committed the offence, and if the offence is not indictable that proceedings by way of notice to appear, attendance notice or complaint and summons would not be effective.

What arrest warrant must state

Clause 170 requires that an arrest warrant state the name, rank, registered number and station of the applicant, that any police officer may make the arrest, and the offence alleged to have been committed. The wording of the charge is sufficient to allege the offence.

Division 3—Other provisions about arrest**Power of arrest for offences committed outside the State**

Clause 171 applies to an indictable offence or an offence punishable by at least 2 years imprisonment and is an offence against the law of another State.

Subclause (2) provides that despite clause 163, a police officer may arrest a person, without warrant, who the police officer reasonably suspects is committing or has committed the offence.

Subclause (3) allows the person to be detained in custody for questioning under chapter 6 by a Queensland police officer or a police officer of the State where the offence occurred.

Subclause (4) applies the provisions of the *Justices Act 1886* and the *Bail Act 1980* to the offence but only to allow a person to apply, within 7 days, for the extradition of the person to the State where the offence occurred.

Subclause (5) If an extradition proceeding is not commenced within 7 days and the person is in custody, he or she is to be released or if on bail, discharged.

The clause allows a police officer to act in good faith by arresting a person for an interstate offence when a reasonable suspicion exists that the person has committed the offence, irrespective of whether police in the other State

are aware of the offence or subsequently make an extradition application. The clause is pre—emptive and designed to ensure that a person, who having committed an offence and left the other State, does not escape justice in the time taken to begin the extradition process in that other State.

Police officer to consider alternatives to proceeding against child

Clause 172 requires that a police officer, before commencing a proceeding against a child for an offence, other than by arrest, must first consider whether, in all the circumstances, it is more appropriate to take no action, administer a caution or refer the matter to community conferencing.

Subclause (2) qualifies the circumstances mentioned in subclause (1) as those relating to the alleged offence and the child's previous history as known to the police officer. If it is necessary a police officer is to delay the commencement of proceedings to consider the circumstances of the offence and the child's history. The child's history involves any previous offences it was alleged that the child committed and the action taken and opportunities offered to the child in those instances.

The section does not in any way prevent a police officer from proceeding against the child by complaint and summons or attendance notice.

Division 4—Discontinuing arrest

When arrest may be discontinued—general rule

Clause 173 allows for the arrest of a person to be discontinued. It imposes a duty on a police officer to discontinue an arrest at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence relating to the arrest unless another offence, irrespective of whether it arises out of the circumstances of the offence for which the arrest was made, is reasonably suspected, or the person may be detained for another reason, or the person is in custody for another offence.

It is not necessary for a police officer to unarrest a person who has been arrested for grievous bodily harm and re—arrest the person for murder if the victim dies following the initial arrest. The initial arrest may be maintained even though the charge ultimately preferred against the person is murder. Additionally, if the person is arrested for an offence and has also breached a

bail condition and the former offence is not proceeded with, the person may be kept in custody on the breach of bail without the need to unarrest on the first offence and re—arrest on the bail matter.

Additionally, if a person is in custody for questioning on multiple unrelated offences and has only been arrested for one of those offences which is not to be proceeded with, a police officer need not release the person from custody but may apply the original arrest to the other offences which are to be investigated.

So there is no doubt, if a person is serving a sentence of imprisonment for a previous offence and the offence for which the person is arrested is not proceeded with, the person is not to be released from the police custody until he or she is returned to prison custody.

Subclause (2) requires a police officer who has arrested a person for an offence to release that person where the police officer considers there is insufficient evidence to bring the person before a court for the offence. It may be the case that a police officer has sufficient grounds to form a reasonable suspicion that a person has committed an offence and arrests the person for questioning and investigation. However, at the conclusion of the interview or investigation, the police officer may not consider that there is sufficient evidence to continue the proceeding even though the police officer still suspects the person committed the offence. Irrespective of the suspicion, the duty to release the person applies.

For example, if a person was to deny involvement in a murder offence a potential prosecution might only be successful if a subsequent DNA analysis of the person's blood was to link that person with blood found at the scene of the offence. In this case the time required to conduct the DNA analysis would normally be a time unreasonable to keep the person in custody. Therefore, even though a police officer may harbour a suspicion that the person is responsible for the offence, the police officer must, in the absence of other evidence, and if he or she has not charged the person with the offence, release the person.

Additional case when arrest of adult may be discontinued

Clause 174 is restricted to an arrested person who is an adult.

Subclause (2) imposes a duty on a police officer to release an arrested person at the earliest reasonable opportunity if the reason for the arrest no

longer exists or is unlikely to happen again if the person is released and it is more appropriate that the person be taken before a court by a notice to appear or summons. The notice to appear or summons must first be served prior to the release of the person.

Therefore, an agitated person arrested for an offence of obscene language in a public place may be released on a notice to appear before the person is taken to a watchhouse if he or she calms down in the intervening period.

Additionally, a person arrested for a minor common assault committed, for instance, after harassment by one of a group of persons in a mall, may be released on a notice to appear after the person has been removed from the mall and is unlikely to return to the mall.

Subclause (3) provides, however, that the duty to release is discretionary where the person was arrested to prevent him or her from fleeing from a police officer or the location of an offence or because of the nature and seriousness of an offence it is inappropriate to release the person. Consequently, where a person has shown a tendency to attempt to escape justice by fleeing from a police officer or the scene of an offence, release of the person is not mandatory.

Additionally, if a person walks up to another person in a mall and for no apparent reason assaults that person, the nature of that assault would be such as to require that the person be kept in custody. The seriousness of the assault would be determined by the extent of injuries caused to the victim.

Subclause (4) allows a police officer to release the person at the earliest reasonable opportunity if the police officer reasonably considers it more appropriate for the arrested person to be dealt with other than by charging the person with an offence and the person and his or her victim agree to the person being dealt with that way.

The subclause allows for alternative dispute resolution, e.g., a minor assault resulting from a dispute between neighbours, or for the operation of any scheme involving cautioning of adults which the commissioner may develop, e.g., elderly offenders being cautioned for stealing inexpensive food items from shops.

Additional case when arrest of child may be discontinued

Clause 175 applies to a child who has been arrested.

Subclause (2) imposes a duty on a police officer to release a child at the earliest reasonable opportunity if—

- a. the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; and
- b. after considering the circumstances of the alleged offence and the child's previous history known to the police officer it is more appropriate to deal with the child in a manner described in subclause (3).

Subclause (3) describes the alternatives which may be applicable as—

- a. take no action;
- b. administer a caution;
- c. community conferencing;
- d. use of an attendance notice or summons either of which have been served.

Subclause (3) renders subclass (2) inapplicable if because of the nature or seriousness of the offence it is inappropriate to release the child.

Additionally, subclause (4) renders subclass (2) inapplicable while the police officer reasonably believes the child is an adult.

Subclause (6) provides that in deciding whether the police officer has reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.

Limit on re-arrest

Clause 176 provides that a person who has been arrested for an offence and released cannot be re—arrested for that offence unless new evidence leads a police officer to form a reasonable suspicion that the person is responsible for the offence.

In this instance a police officer who has released a person due to insufficient evidence to connect the person with the offence may re—arrest the person for the offence, if for example, the later results of a DNA analysis tend to show that the person may in fact have been involved in the offence.

Division 5—Alternative to arrest**Notice to appear may be issued for offence**

Clause 177 outlines the objective of the clause as providing an alternative to arrest or summons for an adult.

Where a person is reasonably suspected by a police officer of committing or having committed an offence, the police officer may use a notice to appear in order to bring the person before a court. However, the notice to appear must be personally served on a person. A notice to appear cannot be served by substitute service or postal service or by a person whose signature does not appear on the notice to appear.

Notice to appear form

Clause 178 is a machinery clause providing what a notice to appear must contain. While the clause requires that the substance of the offence must be included in the notice to appear, it is only intended that a short reference to the offence be included, e.g., stealing a book from K Mart, Sunnybank at about 3pm on 5 January 2000.

Additionally, where a person may be leaving the State prior to the required 14 days service period or will be otherwise unavailable after the 14 days, the person may agree in writing to waive the 14 day service period. It may also be the case that because of a nervous disposition a person wants an offence dealt with as soon as possible.

A notice to appear must be signed by the police officer serving the notice to appear.

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

Clause 179 requires that the notice to appear must be filed with the clerk of a Magistrates Court prior to the appearance date. Additionally, there are to be no filing costs ordered against the person as is the case with a complaint and summons.

General particulars only are required on a notice to appear

Clause 180 removes any requirement to provide other than general particulars of the offence in the notice to appear, e.g., stealing a book from K Mart, Sunnybank at about 3pm on 5 January 2000.

Additionally, subclause (2) provides that if 2 or more matters are properly joined in 1 notice to appear in accordance with section 43(1) of the *Justices Act 1886*, then regardless of the requirements of section 43(2) and(3) of that Act each matter need not be set out in a separate paragraph. To remove any argument, objection cannot be taken because each matter is not set out in a separate paragraph. It is sufficient to list the charges as set out in the following example—

Example—

Burglary at 1555 Mains Road Algester at 5am on 21 December 1999

Burglary at 3245 Warrens Road Albany Creek at 10pm on 22 December 1999

Burglary at 33 Smiths Road Rochedale at 6pm on 5 January 2000.

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

Clause 181 requires that the prosecution must comply with its duty to provide proper particulars of an offence in the course of prosecution irrespective that these particulars are not required in a notice to appear form. The Magistrates Court before which the person appears is to ensure that proper particulars are promptly provided to the person by the prosecution and may grant an adjournment to allow this to happen.

Notice to appear equivalent to a complaint and summons

Clause 182 is a machinery section equating a notice to appear to a summons in order that a process for dealing with an offence mentioned in a notice to appear is available without the need to reproduce in the Bill, multiple clauses similar to those in the *Justice Act 1886* pertaining to dealing with a summons.

Court may order immediate arrest of person who fails to appear

Clause 183 provides alternative ways in which a notice to appear may be dealt with if a person fails to appear and the notice is not struck out. A Magistrates Court is entitled to deal with the charge in the absence of the

person or order that a warrant be issued for the person's arrest to bring them before the court. Any justice may issue the warrant. Additionally, so there is no doubt regarding service of the notice to appear, a document purporting to be a copy of the notice to appear signed on the date it was served by a police officer who served it and stating when and where it was served, is evidence of the service of the notice. There is no need for a court to call evidence of service from the police officer concerned as, unlike the case in summons, a notice to appear must be served personally.

If a person appears voluntarily before a court after a warrant is issued any justice may revoke the warrant and without the need to take any further action with respect to the non—appearance, deal with the offence mentioned in the notice to appear.

Court must strike out notice to appear if service insufficient

Clause 184 provides a court must strike out a notice to appear if a person fails to appear and the court is not satisfied that the person was served personally with the notice to appear. If, for example, there is evidence before the court the notice to appear was left with a friend of the person mentioned in it rather than it being given to the person, the court must strike out the notice.

However, the striking out of the notice to appear under this clause does not prevent another proceeding being started for the offence for which the notice to appear was served. Therefore, if a police officer mistakenly attempts to serve a notice to appear by substituted or postal service, the officer may serve another notice to appear personally on the person for the offence.

Division 6—Duties after arrest

Information to be given to arrested person

Clause 185 requires an arresting officer as soon as reasonably practicable after an arrest to inform the person of the arrest and the offence or the warrant. Before releasing a person from custody a police officer must give the person the officer's name, rank, registered number and station in writing.

Parent and chief executive must be advised of arrest of child

Clause 186 requires a police officer who arrests a child to advise where practicable, a parent of the child and the CEO of family services or a nominated person of the arrest and whereabouts of the child, without unreasonable delay.

Duty of police officer after arrest etc. of person

Clause 187 provides that if a police officer arrests a person with or without warrant, detains a person, or receives a person into custody who is arrested or detained by someone other than a police officer, the police officer must, as soon as reasonably practicable take the person before a court to be dealt with.

However, the provision does not apply if the arrest is discontinued, the person is detained for questioning or investigation under chapter 6, is arrested under clauses 165 or 166, is arrested by a warrant which requires the person to be taken elsewhere, or is taken to a watchhouse or placed in custody at a police establishment. The provision recognises that a warrant may be issued to bring a person before a Commission of Inquiry.

Additionally, if the person is a prisoner under the *Corrective Services Act 1988* or was in the custody of a court and escaped a police officer may in the former case take the person to a watchhouse or a prison, and in the latter to a watchhouse or police station until he or she can be returned to the relevant court.

Duty of officer receiving custody of person arrested for offence

Clause 188 applies if an arrested person is delivered into the custody of an officer in charge of a police station or a watchhouse manager and the person is not being detained under chapter 6 and it is not practicable to bring the person before a court promptly.

The officer in charge or watchhouse manager must, as soon as reasonably practicable, decide whether to grant bail or if not, then to take a person charged with an offence before a court.

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

Clause 189 applies if a police officer or someone else arrests a person under a warrant issued under another Act or law and the person is delivered into the custody of the officer in charge of a police establishment or a watchhouse manager. The officer in charge or watchhouse manager, must as soon as reasonably practicable, ensure compliance with the warrant.

**CHAPTER 6—POWERS AND RESPONSIBILITIES
RELATING TO INVESTIGATIONS AND
QUESTIONING FOR INDICTABLE OFFENCES****PART 1—PRELIMINARY***Division 1—Application of chapter***Chapter does not apply to covert operations**

Clause 190 provides that the chapter does not apply to functions of a police officer performed in a covert way. By way of example, provided a police officer is acting in an undercover capacity, questions the police officer asks during a conversation with a person regarding an offence committed by the person are not subject to the requirement for electronic recording or warnings contained in chapter.

Also the chapter applies only to indictable offences.

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

Clause 191 provides that nothing in chapter 6 affects the right of a person to refuse to answer questions, unless required to answer the questions by or under an Act. The clause is not, however, designed to overcome or affect any decision of an appeal court or the High Court of Australia regarding

inferences that might be drawn from a person exercising the right to remain silent in certain circumstances, e.g. those laid down in *Weissensteiner's* case.

PART 2—INVESTIGATIONS AND QUESTIONING

Division 1—Application of part

Application of pt 2

Clause 192 restricts the application of part 2 only to a person who is—

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

The part does not apply to a person who voluntarily agrees to questioning or to assist in an investigation and who is not under arrest, or not in a watchhouse, prison or detention centre, or who is not remanded in custody.

Division 2—Removal of persons from lawful custody

Application for removal of person from lawful custody

Clause 193 applies to a person who is suspected of having committed an indictable offence and is in custody under the *Corrective Services Act 1989* or the *Juvenile Justice Act 1992* because bail has been refused or revoked or the person is under a sentence of imprisonment or detention.

Subclause (2) allows a police officer to apply to a magistrate for an order to remove the person from the prison or detention centre for questioning about the offence or investigation of the offence.

Subclause (3) allows for the extension of the detention at the time the initial application is made even though the detention period has not started. The initial detention period is 8 hours, all of which might be spent travelling portion of the way to the location of an offence. The subclause is designed

to allow for extended time to transport a prisoner to a place for the purpose of questioning or investigation. By way of example, it may take 20 hours to transport a prisoner from a Brisbane prison to a western Queensland location for the re—enactment of offence or to locate evidence of an offence.

Subclause (4) is a machinery clause outlining the making of the application.

Subclause (5) is a machinery clause allowing a magistrate to refrain from determining the application until he or she receives further information requested.

Chief executive must be advised of application for removal order

Clause 194 requires that the chief executive of family services must be advised before making an application for a removal order for a child.

When magistrate may make removal order

Clause 195 allow a magistrate to make a removal order only if he or she is satisfied the custody is reasonably necessary for the purpose of questioning or investigation.

Paragraph (f) does not require the return of the person to be commenced until as soon as reasonably practicable after the detention period ends. This alleviates the need to continue to apply for extensions to the detention period after the finalisation of questioning and investigation where safeguards are no longer required because the person is merely being returned to the custody of a prison or detention centre.

Division 3—Detention for investigation or questioning

Initial period of detention for investigation or questioning

Clause 197 provides that a police officer may detain a relevant person for a reasonable time to investigate, or question the person about an indictable offence for which the person was arrested or any other indictable offence the person is suspected of having committed.

Subclause (2) provides that the person must not be detained for more than 8 hours unless the detention period is extended under this part.

Subclause (3) requires that, if applicable, the person be returned to custody as soon as reasonably practicable after the completion of the detention period.

Subclause (4) provides that in the initial 8 hour period a person must not be questioned for more than 4 hours total. However, the time out period may be more than 4 hours. Therefore, if the time out period extends beyond 4 hours the questioning period correspondingly decreases by the additional time out period, e.g., 6 hours of time out permits only 2 hours of questioning time.

Subclause (5) defines the detention period as commencing when the person is—

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

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

Clause 198 lists considerations that must be taken into account when deciding what is a reasonable time to detain a person under section 195. They are—

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

- g. the need to delay or suspend questioning of the person for the purpose of time out.

Paragraph (a) may not be determined until questioning has commenced or progressed.

In taking into account paragraph (d) consideration should also be given to the possible need to continue to detain a person who, although they have indicated from the outset that they do not wish to answer questions, should be given the opportunity to comment on vital evidence which a police officer is arranging to have transported to the place of questioning.

In determining a reasonable time in terms of paragraph (e) consideration should also be given to any abnormally long time out periods afforded to a person on the basis of their age or physical or mental condition.

Subclause (2) provides that if a suspect decides not to answer questions or continue to answer questions, continuing the detention period may not be reasonable unless it is necessary to carry out further investigations before charging the suspect or the suspect consents or is required to participate in an investigative procedure.

Application for extension of detention period

Clause 199 provides that a police officer may apply for an extension of the detention period before the period ends.

Subclause (2) requires that an application must be made to a magistrate or a justice of the peace (magistrates court) or if a magistrate or justice of the peace (magistrates court) is not available then to a justice of the peace (qualified).

Subclause (3) stipulates that if the total questioning period since the detention began will, if extended, be more than 12 hours, the application must be made to a magistrate. Therefore, if a person has been questioned for 4 hours in the initial detention period and an extension has been granted by a justice of the peace for another 5 hours, only a magistrate may further extend the period of questioning beyond a further 3 hours.

Subclause (4) requires a police officer, when making an application for an extension, to provide a magistrate with an indication of what time out period may be needed during the extension.

Subclause (5) allows the person or his or her lawyer to make submissions to the magistrate of justice about the application. However, the submissions must not unduly delay the consideration of the application. It may be unreasonable for a lawyer to seek an adjournment of the hearing for any length of time other than that necessary to take verbal instructions from his client. It is not intended that a hearing should be adjourned to another date to allow a lawyer to prepare submissions.

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

When detention period may be extended

Clause 200 provides that a justice or magistrate may extend the detention period for a reasonable time if satisfied—

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

With respect to paragraph (b)(i) it may be necessary to extend the detention period to allow a doctor to arrive to take blood for DNA analysis from the person.

Subclause (2) provides that a magistrate may grant an extension or extensions of the detention period for a reasonable time, of not more than 8 hours for questioning on each occasion if the total questioning period since the detention began will, if extended, be more than 12 hours. The magistrate may grant such time out as he or she considers necessary.

A justice who is not a magistrate must not make an order for an questioning or further questioning for a period that would extend the questioning period to total more than 12 hours.

What order must state

Clause 201 is a machinery clause outlining the contents of the order.

Use of time out during extended detention period

Clause 202 provides that if a magistrate or justice orders a period of time be allowed for time out, the time is to be used for the purpose stated in the application else unless the magistrate or justice otherwise orders or the person in custody agrees to the alteration and the agreement is, if reasonably practicable, electronically recorded.

Effect of unforeseen delays on detention

Clause 203 provides that if, because of reasonably unforeseen time out, a delay happens in making an application for an extension of the initial detention the detention continues to be lawful but only for the time necessary to enable the application to be made and decided.

Subclause (2) deals with extensions to extended periods of detention. If, because of reasonably unforeseen time out the questioning of a person is suspended or delayed or a delay happens in making an application for an extension, the detention of the person beyond the end of the detention period is lawful and the time allowed for questioning remains in force. Therefore, if a police officer was granted a detention period involving 4 hours of questioning and 8 hours of time out and after 1 hour of questioning the suspect required medical treatment which took 10 hours to provide, the police officer may continue to question the person for 3 hours at the conclusion of the medical treatment. The fact that no further time out remains is irrelevant if the questioning continues without a break for the 3 hours period. Any further time out required would need to be applied for.

Effect of another arrest on questioning period

Clause 204 provides that if a person is questioned under this part for more than 4 hours in any 24 hour period irrespective of the offence relating to the questioning, an application must be made for an extension to questioning. The clause prevents a police officer from arresting a person for an offence, questioning the person, releasing them and then re—arresting them for another offence to obtain a fresh 4 hour questioning period if this occurs within a 24 hour period. Therefore, any further initial questioning time within the 24 hours period is reduced by any previous amount during that period. The clause does not apply to a period of time when the person may have been a volunteer.

When does detention period start for offenders arrested outside Queensland

Clause 205 applies where a person has been arrested in another State for an indictable offence committed in Queensland or has appear before a magistrate in another State for an indictable offence committed in Queensland and it is intended to extradite the person to Queensland.

In these instances the detention period commences—

- a. when a Queensland police officer starts to question the person about the offence in the other State; or
- b. when the person arrives in Queensland in the company of a Queensland police officer for the purpose of being questioned for the offence.

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

Clause 206 provides a police may take a person, detained under this part, to a place other than a police station if the police officer considers it is reasonably necessary to facilitate the purpose of the detention.

The clause is designed to facilitate an investigation in that a person may be taken to a place for a medical examination or to re—enact the crime or if necessary, to a place where there is electronic recording equipment if the equipment at the police station fails and there is other equipment readily available to the officer. By way of example, a police officer in a country location may use the recording facilities at another government department office if the facilities at a police station are not working or are likely to be in alternate use for a lengthy period.

Persons helping in covert investigations not under arrest

Clause 207 applies to covert investigations conducted by a police officer into whether a person other than a person who is in custody following an arrest has been involved in the commission of an offence or suspected offence.

If the person in custody voluntarily agrees by electronic recording or in writing to take part in the investigation, the person stops being under arrest for the offence. However, the person may later be re—arrested for the offence.

PART 3—SAFEGUARDS ENSURING RIGHTS OF AND FAIRNESS TO PERSONS QUESTIONED FOR INDICTABLE OFFENCES

Division 1—Preliminary

Part applies only to indictable offences

Clause 208 provides the part applies only to indictable offences.

When does this part apply to a person

Clause 209 applies to a volunteer or an arrested person where either is in company of a police officer for the purpose of questioning as a suspect for an indictable offence.

However, the part does not apply to a person if a police officer has detained the person under a power or law for a search, or has required, the person to give information or answers under a power of an Act.

Questioning generally

Clause 210 provides that a police officer must not obtain a confession by threat or promise from a person being questioned.

Questioning of person after proceeding started

Clause 211 provides that a person may help a police officer by making a statement or answering questions about an offence for which the person has been charged at any time during the proceedings.

A police officer may, at any time, including after the commencement of proceedings, question a person to clarify any ambiguity in relation what was previous said by the person.

A police officer may, at any time, including after the commencement of proceedings, tell a person of any new evidence and invite the person to make a statement. By way of example, this provision allows a police officer to put the results of DNA analysis to a person and invite a statement concerning it. If the person makes an admission at this time that is contrary to a previous statement or denial, a police officer would be entitled to question the person to clear up any differences between the previous and current admissions.

Division 2—Other persons may be present during questioning

Right to communicate with friend, relative or lawyer

Clause 212 requires that prior to the commencement of questioning for an indictable offence, a police officer must inform the person that he or she may telephone or speak to a friend or relative to ask the person to be present during the questioning and telephone or speak to a lawyer of the person's choice and arrange or attempt to arrange for the lawyer to be present during questioning.

Subclause (2) requires a police officer to delay questioning for a reasonable time to allow the person to telephone or speak to a person mentioned above.

Subclause (3) provides a police officer must delay questioning for a reasonable time to allow a person mentioned above to attend.

Subclause (4) outlines how a reasonable time might be determined for a person to attend or to speak to the suspect. The subclause intends to restrict a person needlessly delaying questioning for any number of reasons. Therefore, generally an upper limit of 2 hours is considered reasonable for a person to attend or speak to the suspect. Clearly, 2 hours spent speaking to a friend or relative may be unreasonable whereas the same time spent speaking to a lawyer in a complex offence may be reasonable.

Speaking to and presence of friend, relative or lawyer

Clause 213 requires the police officer to provide reasonable facilities to speak to a friend or relative and if a lawyer then, if reasonably practicable in facilities where the conversation cannot be overheard.

A person permitted to be present during questioning is to be allowed to give advice to the person. However, if the person is unreasonably interfering with the questioning, the police officer may exclude the person from the interview.

The clause does not apply to an Aborigine, a Torres Strait Islander or a child.

Division 3—Special requirements for questioning particular persons

Questioning of aboriginal people and Torres Strait islanders

Clause 214 applies to adult Aborigines or Torres Strait Islanders.

Subclause (2) states that if the person has not arranged for a lawyer to be present during questioning, the police must inform the person that a representative of a legal aid organisation will be notified and as soon as reasonably practicable, notify or attempt to notify a representative.

Subclause (3) provides that subclause (2) does not apply if, having regard to the person's level of education and understanding, a police officer reasonably suspects the person is not at a disadvantage in comparison with members of the Australian community generally.

Subclause (4) prohibits questioning from commencing unless, if practicable, the person has been allowed to speak to a support person (defined in Dictionary) in circumstances where the conversation cannot be overheard and the support person is present during questioning.

Subclause (5) allows the suspect to waive his or her rights to have a support person present, however, the waiver must be electronically recorded or in writing.

Subclause (6) allows the support person to be excluded from the interview if he or she is unreasonably interfering with the questioning.

Questioning of children

Clause 215 applies to a child for the purposes of questioning. The questioning must not commence unless, if practicable, the child has had the opportunity to speak to a support person in private. A support person must be present during questioning. The support person may be excluded from the interview if he or she is unreasonably interfering with the questioning.

Questioning persons with impaired capacity

Clause 216 applies to a person with an impaired capacity whether it is apparent prior to an interview or becomes apparent during an interview.

The person must be allowed to speak to a carer and a carer must be present during the interview.

Questioning intoxicated persons

Clause 217 requires that questioning be delayed until an intoxicated person has the ability to understand his or her rights and decide whether or not to answer questions.

Division 4—Excluding persons unreasonably interfering with questioning**What is "unreasonable interference" for divs 2-3**

Clause 218 provides examples of unreasonable interference for divisions 2 and 3.

Subclause (2) provides that it is not unreasonable interference to seek clarification of a question, challenge an improper question, challenge the way in which the question is put or for a lawyer to advise a person not to answer a question or to request further consultation with the suspect.

What constitutes an improper question should be determined in the circumstances of the questioning and the answers given by the suspect. If a suspect has admitted responsibility for the offence and as a lead in to another question the police officer refers to the suspect's previous admission, the question would not be improper. The way in which the question is put relates to the conduct of the interviewer. An interviewer should not yell at a suspect or commence a question by attempting to belittle the suspect.

Requirements before excluding persons unreasonably interfering with questioning

Clause 219 provides that a warning should be first given to a person who may be excluded not to interfere with the questioning and 1 further opportunity to discontinue the conduct which may lead to exclusion together with being told that he or she may be excluded.

If police officer excludes person from questioning

Clause 220 requires a police officer to give an opportunity to have another person attend the questioning if a person already in attendance is excluded.

Cautioning of persons

Clause 221 provides that a police officer must before starting to question a person for an indictable offence, caution the person in accordance with the responsibilities code. It is important that the person understand the caution and whether they did or not should be judged on the circumstances at the time, i.e., the person acknowledges they understand. The clause does not apply where a person is required to answer questions under another Act.

Provision of information relating to a relevant person

Clause 222 requires that a suspect be informed of the request of a relative, friend or lawyer with respect to the whereabouts of a suspect and that the person then be told unless the suspect does not want it divulged, the police officer reasonably suspects the person is not a friend, relative or lawyer or the whereabouts of the suspect are not in a register and unknown to the officer.

Right to interpreter

Clause 223 requires that, where needed because of an inadequate knowledge of the English language or a physical disability on the part of a suspect, a police officer must delay questioning and arrange for an interpreter to be present.

Right of visiting foreign national to communicate with embassy etc.

Clause 224 provides that a consular or embassy official may be telephoned before a person, not an Australian citizen or resident, is questioned.

Rights of a person to be electronically recorded

Clause 225 provides that information which must be given by a police officer to a suspect must, if practicable, be electronically recorded.

Division 5—Recording of questioning**Recording of questioning etc.**

Clause 226 provides that if practicable, questioning of a person for an indictable offence must be electronically recorded. The clause provides a number of examples of what may be impracticable for the purposes of the clause. Preference is to be given to an electronic recording where it is available.

Requirements for written record of confession or admission

Clause 227 stipulates the procedures to be followed if an interview is written and requires that it be read onto an electronic recording made in the presence of the suspect.

Access to electronic recording of questioning etc.

Clause 228 requires that a police officer provide a copy of an audio recording to the suspect or his or her lawyer within 7 days of the making of the recording or if it is a video recording then within 14 days. If both audio and video were made, a copy of the audio recording is to be given and the video made available for viewing. If a transcript is made, a copy of the transcript is to be provided if requested. The providing of recordings is subject to any other Act.

Admissibility of records of questioning etc

Clause 229 provides that if this Division is not complied with or there is a lack of evidence of compliance, the court may still admit the evidence in the interest of justice.

Division 6—General**List of support persons and interpreters**

Clause 230 requires the commissioner to keep a list of support persons and interpreters or interpreter organisations for use when dealing with a matter under this chapter.

When sections 212-216, 222 and 224 do not apply

Clause 231 provides that the clauses relating to the rights of a suspect to have other people advised of his or her whereabouts or to attend an interview do not apply where compliance is likely to result in an accomplice avoiding apprehension or being present, evidence being concealed, fabricated or destroyed or a witness being intimidated.

Subclause (2) allows for the exclusions mentioned not to apply where questioning is so urgent it should not be delayed. If, for example, a person has been abducted and assaulted and left at a location known to the suspect, the provisions of the part do not apply if there is concern for the victim's well-being suggesting that the victim needs to be located immediately.

**CHAPTER 7—POWERS IN RELATION TO PERSONS
IN CUSTODY****PART 1—SEARCH OF PERSONS IN CUSTODY****Search of persons in custody**

Clause 232 applies to a person who is lawfully arrested or is in lawful custody for an offence that has not been decided, is in custody under sentence or a detention order or is otherwise lawfully detained under another Act.

Subclause (2) allows a police officer to search and re—search a person to whom the clause applies. The subclause is designed to allow regular searches of persons in custody to make certain that the person is not in possession of something they are not permitted.

Subclause (3) allows a police officer to seize anything from the person that the police officer reasonably suspects may provide evidence of the commission of an offence.

Subclause (4) allows a police officer to retain anything that a person may use to endanger anyone's safety, including their own or may be used in an escape, or anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

PART 2—GATHERING INFORMATION FOR IDENTIFYING SUSPECTS

Division 1—Taking identifying particulars

Taking identifying particulars of person in custody

Clause 233 permits a police officer to take identifying particulars from a person who is in custody for an identifying particulars offence.

If the person is due to be released after arrest, the person may be detained for the taking of the identifying particulars.

If the offence, e.g., a demonstration or a disturbance, involves a number of persons acting alone or together the person may be photographed at the scene of the arrest and full particulars including another photograph taken later. The purpose of the subclause is to allow for identification of an offender and the arresting officer in cases of multiple arrests.

Taking identifying particulars—proceedings started by notice to appear or complaint and summons

Clause 234 provides that a person other than a child may be detained before or during the service of a notice to appear or summons for the purpose of taking identifying particulars.

Identifying particulars notice may be given

Clause 235 allows a police officer who starts a proceeding against a person, other than a child, to issue the person with an identifying particulars notice which requires the person to report to a stated police officer at a stated police station between stated hours within 7 days of the giving of the notice for the purpose of taking identifying particulars. The identifying particulars may be taken if the person appears as required. A failure to appear is an offence of disobeying a requirement under the Bill.

Court may order taking of identifying particulars

Clause 236 allows a court before whom a person, other than a child, appears to order the person into custody for up to 1 hours to take identifying particulars.

Destruction of identifying particulars

Clause 237 provides that if a person is found not guilty of an identifying particulars offence or is not proceeded against, identifying particulars are to be destroyed within a reasonable time in the presence of a justice of the peace unless—

- a. the person has been proceeded against on a charge of another identifying particulars offence that has not been decided;
- b. the person has been found guilty of another identifying particulars offence;
- c. the identifying particulars are required for the investigation of another identifying particulars offence alleged to have been committed by the person; or
- d. the person is not proceeded against because of a mental illness.

Paragraph (a) is qualified to require destruction of the identifying particulars if the person is found not guilty or not proceeded against unless another paragraph (a) offence is still involved.

Division 2—Identifying suspects**Identification of suspects**

Clause 238 allows for the identification of persons by identification parades, photo boards, videotape or computer generated images. A suspect need not take part in an identification parade. Essentially, the conducting of the parade will be governed by a regulation to the Bill similar to that in the PPRA 1997.

PART 3—MEDICAL AND DENTAL PROCEDURES

Division 1—Preliminary

Application of pt 3

Clause 239 applies the part to a person who is suspected or having committed an indictable offence, whether or not the person has been charged with the offence.

It is the intention that the part be seen as an aid to investigation of an offence and, unlike section 259 of the Criminal Code which requires a person be 'charged' with an offence, a charge is not a prerequisite for this part. This part can operate from the very outset of an investigation as was the intention with the relevant part of the PPRA 1997.

Consent or approval needed for performing medical or dental procedure under this part

Clause 240 provides that police officer must not require a doctor or dentist to perform a medical or dental procedure on a person unless the person consents or a magistrate gives approval.

Right to interpreter

Clause 241 requires that an interpreter present where necessary before taking any action under this part except making an application.

Person must be told of need for consent or approval

Clause 242 requires that prior to asking a doctor or dentist to perform a medical or dental procedure a person must be informed that the act cannot be done without consent or a magistrate's approval and that the person has the right to have 2 other people present and that the person may telephone those people. The procedure is to be delayed for a reasonable time to allow other persons to be contacted or attend.

Speaking to and presence of friend, relative or lawyer

Clause 243 allows a person to talk to a friend, relative or lawyer and allow them to be present unless they are unreasonably interfering with the performance of the procedure.

Special consent requirement for children and persons with impaired capacity

Clause 244 stipulates that consent to the procedure can only be given in the presence of a support person.

Absence of independent person not to affect lawfulness of custody etc.

Clause 245 provides that the lawfulness of the detention of a person in custody while the procedure is being performed in the absence of a person requested to be present is not affected if the person fails to arrive within a reasonable time or evidence is likely to be lost or destroyed if the procedure is delayed.

If, for example, a person requests that another person who is serving a term of imprisonment be present, then there is no need to wait for a reasonable time before commencing the procedure as it is not a reasonable request.

Requirements before excluding persons unreasonably interfering with performance of medical or dental procedure

Clause 246 outlines the procedures to be followed before a person is excluded from the performance of a medical or dental procedure. The procedure involves a warning being given and a further opportunity to desist in interfering.

If police officer excludes person from performance of medical or dental procedure

Clause 247 provides that if a person is excluded, the suspect must be given the opportunity to arrange for another person to be present. Also, a police officer must arrange for another suitable person to be present if the person excluded is a support person or carer or the suspect has not arranged for another person to be present.

Division 2—Performing medical or dental procedures with consent**Consent to be recorded**

Clause 248 requires that consent to a medical or dental procedure must be in writing or electronically recorded.

Doctor's powers

Clause 249 allows a doctor to gain evidence by—

- a. examining the person's body including orifices;
- b. taking samples of blood, saliva or hair;
- c. asking the person to provide a urine sample;
- d. collecting substances or things from the person's body.

A doctor may use specified assistants and reasonable force to exercise the powers.

If consent is withdrawn the doctor must immediately stop performing a procedure. However, withdrawal of consent does not affect the admissibility of anything observed, taken or collected prior to the withdrawal of the consent.

Dentists powers

Clause 250 mirrors clause 249 with the exception of the powers which may be exercised and the need to have a person of the same sex as the suspect assist. The dentist's powers are—

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

Division 3—Performing medical or dental procedures without consent**Application of div 3**

Clause 251 applies the division to a person in custody for an indictable offence whether or not the person has been charged with an offence.

It is the intention that the division be seen as an aid to investigation of an offence and, unlike section 259 of the Criminal Code which requires a person be charged with an offence, a charge is not a prerequisite for this part. This part can operate from the very outset of an investigation provided a person is in custody as was the intention with the relevant part of the PPRA 1997.

Application for order for performance of medical or dental procedure

Clause 252 allows a police officer to apply to a magistrate for approval to conduct a medical or dental procedure on a person in custody for an indictable offence.

Making of order

Clause 253 is a machinery section outlining things to be considered by a magistrate. The clause also allow the magistrate to order the transfer of a person from one place to another for the procedure to be undertaken.

Copy of order to be given to person

Clause 254 provides that the suspect and doctor or dentist must be given a copy of the magistrate's order.

Performing medical procedures without consent

Clause 255 applies if a magistrate has made an order and a police officer asks a doctor to perform the procedures.

A doctor may—

- e. examine the person's body including orifices;
- f. take samples of blood, saliva or hair;

- g. ask the person to provide a urine sample;
- h. collecting substances or things from the person's body provided grievous bodily harm is unlikely.

A doctor may use specified assistants and reasonable force to exercise the powers.

Performing dental procedures without consent

Clause 256 applies if a magistrate has made an order and a police officer asks a dentist to perform the procedures.

The dentist may—

- e. to examine the person's mouth;
- f. take samples of the person's saliva;
- g. take dental impressions of the person's mouth;
- h. examine any bite mark on the person.

A dentist may use assistants and reasonable force to exercise the powers.

Division 4—Miscellaneous

Power to analyse samples

Clause 257 provides it is lawful for a person to analyse any sample, substance, thing, impression or photograph taken under this part.

It is lawful for a police officer to keep the results of anything done for use in a proceeding for an offence.

Samples and test results to be given to person

Clause 258 provides that a person who takes or collects a sample of other thing must give the person from whom it was taken or a person nominated a part of the sample or an equivalent sample unless—

- a. it is not practicable to give an equivalent sample;
- b. an equivalent sample may be taken at any time, e.g. blood or hair for DNA analysis;

- c. complying may be inappropriate because the sample or thing may be used to transmit a communicable disease, in which case the doctor may send the sample or thing, at the person's expense, to a doctor nominated by the person or his or her lawyer.

If the person does not nominate a doctor, the sample or thing intended to be given may be destroyed.

A police officer must as soon as reasonably practicable after the results of the test or examination are received give a copy of the results to the suspect.

CHAPTER 8 — OTHER POWERS

PART 1 — DIRECTIONS IN STATE BUILDINGS

Division 1 — Screening of entrants to state buildings

Power to require reasons for entry to state building

Clause 259 provides the power for a police officer to require a person to indicate the reason for that person entering or being in the state building.

Use of electronic screening devices in state buildings

Clause 260 applies to those state buildings with a system of security that involves a walk—through detector, and X—ray machine, or a hand held scanner. Subclause (2) provides that a police officer may request a person to walk through the walk—through detector, pass the person's belongings through the X—ray machine or allow the police officer to pass the hand held scanner over the person or the person's belongings. The clause allows a police officer to employ one or more of the electronic screening devices.

Police officer may ask entrant to remove outer garment etc.

Clause 261 provides that a police officer may request that a person entering or being in a state building do the one or more of the following—

- a. allow the police officer to inspect the person's belongings;
- b. remove one or more outer garments worn by the person and allow the police officer to inspect the garments;
- c. allow the police officer to remove and inspect all items from the clothing of the person;
- d. allow the police officer to open and inspect all items;
- c. allow the police officer to open and inspect a vehicle or part of a vehicle;
- d. allow the police officer to remove and inspect an item from the vehicle.

The term inspect includes handling, opening and examining the item and its contents. The request may be made if the police officer considers it necessary and that the police officer informs the person the reason for the request being made. The clause applies even if the person or the person's belongings have been subjected to electronic screening. A police officer may only touch a garment the person is wearing if the police officer is of the same sex as the person.

Direction by police officer to leave building

Clause 262 provides that a police officer may issue a direction to a person to leave a state building immediately and for the person to take their belongings with them. This clause applies if the person has failed to provide the person's reason for entering or being in the state building under clause 259 or allow a police officer to exercise the power under clause 260 to clause 261.

Power to search person or vehicle without warrant not affected

Clause 263 indicates that Division 1 — Searching of entrants to state buildings, does not affect the powers provided to a police officer to search a person or a vehicle without a warrant under the Bill.

Division 2 — Miscellaneous powers for Division 1**Seizure of proscribed things**

Clause 264 provides that a police officer may seize a proscribed thing found in possession of a person entering or being in a state building. A proscribed thing is defined in Schedule 3— Dictionary, as proscribed matter under the *State Buildings Protective Security Act 1983* and means an explosive substance, a firearm, a noxious or offensive substance or an offensive weapon. An exemption is provided for against seizure for persons in lawful possession of proscribed things in the course of the person's trade, business or calling.

Refusal of entry to and removal from building

Clause 265 provides that a police officer may remove a person from a state building or prevent the person from entering the state building if that person has failed to comply with a request given under Division 1 or fails to satisfy the police officer that they have a good and lawful reason for entering or being in the state building. This clause provides power to remove the person from or prevent entry of the person to the state building without having to arrest the person and does not interfere with the powers and responsibilities of the Bill relating to an arrest.

**PART 2 — PRESERVING SAFETY FOR SPECIAL
EVENTS*****Division 1 — Preliminary*****Application of pt 2**

Clause 266 indicates that the part applies only to special events.

Purpose of pt 2

Clause 267 provides that the purpose of part 2 is to provide necessary special provisions for the preservation of public order and safety of persons involved in special events and the safety of other persons at special event sites.

Division 2 — Declaration of special events**Declaration of special event**

Clause 268 provides that a regulation may declare an event to be a special event under part 2. The regulation must:

- a. describe the event and the event site; and
- b. state the period that the event will be declared as a special event; and
- c. state the places, if any, that an authorised person may exercise specified powers under Division 5; and
- d. state those things that a person is prohibited from bringing into the special event site; and
- e. state any restrictions to access to a part of the special event site; and
- f. state any conditions decided by the Minister as to access to the special event site or any part of it.

Requirements for declaring special events

Clause 269 indicates that before an event is declared a special event the Minister must be satisfied that the declaration is necessary for the preservation of public order and safety of persons involved in special events and the safety of other persons at special event sites. The Minister is to have regards to the nature of the event, the status in the international community of the persons involved in the event or the State's obligation for holding the event. The Minister must also be satisfied that there is a reasonable likelihood that the event may be disrupted if the powers under Division 5 are not exercised, the exercise of the powers is necessary for the protection of persons involved in the event, or the exercise of the powers is required as a condition of the holding of the event being held in Queensland.

Notice of declaration to be given

Clause 270 provides that the Minister must give notice of the making of the declaration of a special event site in a newspaper circulating generally in the Queensland as soon as practicable and no later than 7 days after the site is declared as a special event site. The clause provides that failure to give notice does not invalidate the declaration.

Division 3 — Statutory conditions relating to entry to special event sites**Statutory conditions of entry**

Clause 271 provides that as a condition of entry to a special event site a person must not take into or possess in the site a prohibited item and if asked must permit a search of their personal property or permit a frisk search of their person.

Statutory condition about restricted areas

Clause 272 provides that reasonable steps are to be taken by the organiser of the special event to provide information to the public of the limits of a restricted area at the special event site. This may be by signs or other means.

Division 4 — Appointment of authorised persons**Appointment of authorised persons**

Clause 273 provides that the Commissioner may appoint a person to be an authorised person under Part 2 only if the commissioner believes the person has the necessary expertise or experience to be an authorised person under Part 2 or the person has satisfactorily completed a course of training approved by the Commissioner. The appointment must state the powers the authorised person may exercise under Part 2 and where and when they may be exercised as well as stating any limits to the powers of the authorised person if required.

Identity card

Clause 274 provides that the Commissioner is to provide an identity card to the authorised person. If the State has not organised the event the Commissioner may require the organiser to provide the identity card. The identity card must contain a recent photograph of the authorised person, be signed by the authorised person, identify the person as an authorised person, provide a unique identification number and include an expiry date. The identity card must be returned to the Commissioner as soon as practicable and within 21 days after the person ceases to be an authorised person. It is an offence to fail to do so without a reasonable excuse.

Production or display of authorised person's identity card

Clause 275 indicates that the authorised person may only exercise a power in relation to someone else only if the authorised person first produces the identity card for that someone else to inspect or the authorised person has the identity card displayed so it is clearly visible to that someone else. If it is not practicable for the authorised person to comply with this requirement before exercising a power in relation to that someone else, the authorised person must produce the identity card for inspection by that someone else as soon as it is practicable.

Division 5 — Powers for special event sites**Power to require reasons for entry to special event site**

Clause 276 provides the power for a police officer or an authorised person may request a person to state their reason for entering or being in a special event site. If the person fails to comply with the request the police officer or authorised person must warn the person that they may be removed from or prevented from entering the special event site unless the person has a reasonable excuse for failing to comply. This clause only applies to an authorised person if it is stated as such in the appointment of that authorised person.

Use of electronic screening devices at special event site

Clause 277 applies to those special event sites with a system of security that involves a walk—through detector, and X—ray machine, or a hand held scanner. Subclause (2) provides that a police officer or an authorised person may request a person to walk through the walk—through detector, pass the person's belongings through the X—ray machine or allow the police officer to pass the hand held scanner over the person or the person's belongings. The clause allows a police officer or authorised person to employ one or more of the electronic screening devices.

Police officer or authorised person may ask entrant to remove outer garment etc.

Clause 278 provides that a police officer or authorised person may request that a person entering or being in a special event site to do the one or more of the following:

- a. allow the police officer or authorised person to inspect the person's belongings;
- b. remove one or more outer garments worn by the person and allow a police officer or authorised person to inspect the garments;
- c. allow a police officer or authorised person to remove and inspect all items from the clothing of the person;
- d. allow a police officer or authorised person to open and inspect all items;
- e. allow a police officer or authorised person to open and inspect a vehicle or part of a vehicle;
- f. allow a police officer or authorised person remove and inspect an item from the vehicle.

The term inspect includes handling, opening and examining the item and its contents. The request may be made if the police officer or authorised person considers it necessary and that the police officer or authorised person informs the person the reason for the request being made. The clause applies even if the person or the person's belongings have been subjected to electronic screening. A police officer or authorised person may only touch a garment the person is wearing if the police officer or authorised person is of the same sex as the person. This clause only applies to an authorised person if it is stated as such in the appointment of that authorised person.

Frisk search of persons

Clause 279 provides that a police officer may request a person in or entering a special event site permit a frisk search to be conducted of their person.

Refusal of entry to and removal from building

Clause 280 applies if a person fails to comply with request or direction given under Division 5, fails to satisfy a police officer or authorised person that they have a good and lawful reason to be at the special event site or a particular part of it, or has contravened a provision of Division 6. A police officer or authorised person may remove the person from the special event site or prevent the person from entering the special event site. The power contained in subclause (2) do not apply if the person is arrested under a contravention of Division 6 or clause 358.

Division 6 — Offences**Unauthorised entry to a special event site**

Clause 281 provides an offence for a person must not enter or remain in a special event site unless the person has paid the entry fee if any, has the consent of the organiser or is otherwise authorised to enter or remain at the special event site.

Unauthorised entry to a restricted area

Clause 282 provides an offence for a person must not enter or remain in a restricted area of a special event site without a reasonable excuse.

Interference with a special event

Clause 283 provides an offence for a person to disrupt, interfere with, delay or obstruct the conduct of the special event or an associated activity or interfere with the reasonable enjoyment of the special event or associated activity.

Prohibited items

Clause 284 provides an offence for a person taking a prohibited item onto or possess a prohibited item at a special event site without a reasonable excuse.

Assault etc. of authorised person

Clause 285 provides an offence for assaulting or obstructing authorised person exercising a power under Part 2. Assault has the meaning given by the Criminal Code and obstruct includes hinder, resist and attempt to obstruct.

PART 3 — POWERS RELATING TO NOISE**Application of pt 3**

Clause 286 provides for the application of the part to the abatement of environmental nuisance caused by excessive noise. The part applies if excessive noise is emitted from a place by a musical instrument; an appliance for electrically producing or amplifying music or other sound a motor vehicle other than a motor vehicle on a road a gathering of people for a meeting, party, celebration or similar occasion and is audible in any residential or commercial premises.

Part 3 does not apply to excessive noise emitted from a place while being used for either an open—air concert, commercial entertainment or a public meeting under a permit under any Act or law authorising the amplification or reproduction of sound.

Complaint about noise

Clause 287 provides the basis for a person to make a complaint to a police officer if that person reasonably believes noise being emitted from a place is excessive. The clause also indicates that a police officer is to investigate or cause to be investigated the complaint as soon as practicable unless the police officer believes the complaint is frivolous or vexatious.

Powers of police officers on investigation of complaint

Clause 288 indicates a police officer may enter, without warrant, the place from which the noise is being emitted and direct the occupier of the place or other persons at the place who appear to the officer to be responsible for causing or permitting the noise to abate the excessive noise. This is termed as the noise abatement direction and may be given by written notice or orally.

Before giving the noise abatement direction the police officer must be reasonably satisfied the noise is excessive and is clearly audible at or near the complainant's residence or commercial premises. The police officer is to consider the circumstances regarding the complaint including the degree of interference the noise is causing or likely to cause to the activities ordinarily being conducted in the area and the lawful uses for premises in the neighbourhood.

Compliance with noise abatement direction

Clause 289 provides an offence for a person who is given a noise abatement direction not to comply immediately with the direction and refrain from causing or contributing to excessive noise from the place for a period of 12 hours from when the direction is given.

A further offence is provided for another person who knows that a noise abatement direction has been given and does not refrain from causing or contributing to excessive noise from the place for a period of 12 hours from when the direction is given.

Subclause (3) indicates that it is immaterial if the noise relating to the offences in this clause is not of the same level of the excessive noise which was responsible for the noise abatement direction being given.

Additional powers of police officers on later investigations

Clause 290 indicates a police officer may enter, without warrant, the place where a noise abatement direction has been given within 12 hours and have any property being used to produce or contribute to the production of excessive noise and seize and remove the property, make the property inoperable or do such things as to prevent its further use. The police officer is take all reasonable steps to ensure as little damage as possible is done to the property.

This clause applies if after a further investigation the police officer is satisfied that the noise is excessive in the circumstances as outlined in clause 287 and that the powers in clause 288 would be exercised.

Offence to interfere with locked etc. property

Clause 291 indicates that if a police officer has locked, sealed or otherwise dealt with property under clause 290(2)(b)(i) a person who unlocks, unseals or uses the property within 24 hours after the noise abatement direction is given commits an offence.

Recovery of seized property

Clause 292 provides that a person who had possession of the property when it was seized or is the owner of the property or a person acting for the possessor or the owner may claim the property during stated hours on a business day provided 24 hours has elapsed since it was seized.

A police officer is not to return the property unless that officer is satisfied the person is the person who had possession of the property when it was seized or is the owner of the property or a person acting for the possessor or the owner.

Nothing in this clause prevents a police officer from retaining the property if it is reasonably suspect that the property is evidence of the commission of an offence.

Recovery of costs of seizure etc.

Clause 293 provides the authority for the State to recover reasonable costs incurred by police in exercising powers under clause 288.

General powers and role of certain police officers

Clause 294 provides the authority for Aboriginal or Islander police officers to exercise the powers under part 3 in the Aboriginal or Islander local government area in which they are appointed.

Power to require answers to questions

Clause 295 provides that a police officer may require a person to answer questions about an offence if the officer reasonably suspects an offence against part 3 has happened and that person may be able to provide information about the offence.

PART 4 — POWERS RELATING TO NUISANCE IN MOVEABLE DWELLING PARKS**Behaviour in moveable dwelling park causing serious nuisance**

Clause 296 indicates that a person whilst in a moveable dwelling park causes a serious nuisance if the person causes the serious nuisance to residents or anyone else in the park.

Power to enter moveable dwellings

Clause 297 provides that a police officer who reasonably suspects there is a person in a moveable dwelling causing or has just caused a serious nuisance in the park may enter the dwelling without a warrant.

Initial direction about serious nuisance

Clause 298 applies if a police officer finds a person causing a serious nuisance in a moveable dwelling park or receives information or finds a person in circumstances that lead the officer to reasonably believe that a person has just caused a serious nuisance in a moveable dwelling park.

The police officer may then direct the person to immediately stop causing the nuisance and/or refrain from causing another nuisance. These directions are referred to as initial nuisance directions and may be given by written notice or orally.

Direction to leave park

Clause 299 applies if an initial nuisance direction has been given to a person and a police officer suspects on reasonable grounds that the person has contravened the direction not to cause another serious nuisance direction within 24 of the direction being given or the person otherwise contravenes a direction.

The police officer may then direct the person to leave the moveable dwelling park and not return for a period not longer than 24 hours. This direction is referred to as a final nuisance direction and may be given by written notice or orally.

PART 5 — MISCELLANEOUS POWERS**Entry of place to prevent offence, injury or domestic violence**

Clause 300 provides the power for a police officer to enter a place if the officer reasonably suspects there is imminent risk of injury to a person or an offence involving the damaging of property at the place or domestic violence has occurred or is occurring at the place. A place includes a vehicle in the place.

The police officer may enter and stay on the place for a time reasonably necessary to establish if the reason for entry exists, to ensure the imminent risk of violence does not exist and to give or arrange for reasonable help to any person on the place.

Subclause (4) provides the authority for the police officer to detain and search a person or search the place in relation to anything that may be or has been used to cause injury or damage or for an act of domestic violence and seize those items. The subclause also provides that the place may be searched for anyone who may be at risk of injury or an act of domestic violence. The occupier of the place must be informed that they can accompany the police officer whilst the place is searched.

Police officer may use assistance in exercising certain powers

Clause 301 provides that it is lawful for a police officer exercising powers under the Bill to seek the assistance of another person that the police officer reasonably requires to perform a function of the police service. This person is referred to as an assistant. The clause also provides it is lawful for a police officer to take the assistant, equipment, vehicle, animal or material as is reasonably required onto the place for exercising the power. The police officer, where practicable, is to inform the assistant of the action the assistant is authorised to take and the assistant's power under this clause. A police officer can not authorise an assistant to arrest a person or demand a person's name and address.

Protection for assistants from liability

Clause 302 provides an assistant does not incur a civil liability whilst being an assistant and that the civil liability attaches to the State.

Power to use force—exercise of certain powers

Clause 303 authorises the use of reasonably necessary force by a police officer, and anyone helping the police officer, when exercising a power under the Bill in relation to a thing.

Power to use force against individuals

Clause 304 authorises the use of reasonably necessary force by a police officer, and anyone the police officer, when exercising a power under the Bill against a person.

Power to use force against individuals in critical situations

Clause 305 applies if a police officer reasonably suspects a person has committed, is committing or is about to commit an offence punishable by life imprisonment or is has committed the offence punishable by life imprisonment and is attempting to escape arrest or has escaped arrest or custody. The clause also applies if a police officer reasonably suspects a person is doing or about to do something that is likely to cause grievous bodily harm or death to another person and the officer reasonably suspects that the only way to prevent the grievous bodily harm or death is to exercise the power authorised under this clause.

It is lawful for a police officer to use such force as is reasonably necessary to prevent the continuation or repetition of the offence or the commission of another offence punishable by life imprisonment, to apprehend the person, to prevent the persons escape or to prevent grievous bodily harm or death. The police officer may use force likely to cause grievous bodily harm or death to achieve this. The police officer should, if practicable, call upon the person to stop the unlawful behaviour before using force likely to cause grievous bodily harm or death.

CHAPTER 9 — OTHER STANDARD SAFEGUARDS

PART 1 — PRELIMINARY

Chapter does not apply to covert operations

Clause 306 indicates chapter 9 does not apply to the functions of a police officer performed in a covert way including anything done under a covert search warrant.

PART 2 — SAFEGUARD FOR THINGS SEIZED

Division 1 — Application of part 2

Application of pt 2

Clause 307 indicates part 2 does not apply if a police officer seizes a thing under another Act that must be taken before a stated person.

Division 2 — General safeguards**Receipt for seized property**

Clause 308 stipulates that a police officer is to provide or cause to be provided a receipt to the owner of a thing or the occupier of the premises from which a thing was seized as soon as practicable after the thing is seized. If the occupier is not present the receipt is to be left in a conspicuous place. The receipt must describe the thing and any other information required by the responsibilities code.

A receipt does not have to be provided if the police officer reasonably suspects it may obstruct any investigation but only applies for as long as the officer continues to have the reasonable suspicion and a police officer involved in the investigation remains in the vicinity of the place and keeps it under observation.

The requirement to provide a receipt does not apply if the police officer reasonably believes the thing has been abandoned or there is no one apparently in possession of the thing.

Right to inspect seized documents

Clause 309 indicates a police officer who seizes a document must allow a person entitled to the document to inspect it at any reasonable time from time to time and to take extracts or make copies of it. This requirement is relieved if a justice orders otherwise.

If a police officer seizes a document under a production order, a copy certified by the officer is to be given to the person to whom the order is addressed if requested by that person.

The police officer may refuse to allow a document to be viewed, copied or have extracts taken from it if the officer reasonably suspects the person will repeat or continue an offence or commit another offence.

Division 3 — Return of seized things**Application for return of seized things**

Clause 310 applies if a police officer seizes a thing under the Bill, the thing has not been returned to the owner or person in possession of it before

it was seized and at least 28 days has expired since the thing was seized. The owner or possessor may make application to a Magistrate in the approved form for the return of the item. The person must give the Attorney—General and the commissioner a copy of the application and notification of the date, time and place fixed for the hearing of the application. This clause also applies to a thing seized under a search warrant issued in relation to an interstate serious offence.

The court may order the return of the thing on the conditions the court considers appropriate if satisfied the reason for retaining the thing no longer exists. Subclause (5) provides for the circumstances when the court cannot order the return of property.

Return of seized things

Clause 311 provides the requirement that a police officer must return a thing seized to the owner or the person in possession of it before it was seized if the officer is satisfied it is no longer needed as evidence and it is lawful for that person to have possession of it. A police officer who seized a thing to prevent a person causing harm to himself, herself or someone else or to prevent an offence or a breach of the peace may retain the thing for a reasonable time not exceeding 28 days.

Division 4 — Disposal of seized things

Disposal of seized weapons

Clause 312 applies to a weapon or other thing seized under the *Domestic Violence (Family Protection) Act 1989* or otherwise seized by police before or after the commencement of the clause. After the appointed day the weapon or other thing may be delivered it to the owner or person entitled to possess it or a person nominated by the former if a police officer is satisfied someone is the owner or entitled to possess it under the *Weapons Act 1990* or a court so orders under section 39 of the *Justices Act 1886*.

A weapon or other thing may only be delivered to the mentioned person or persons if they satisfy the police officer who has the weapon or thing that the person is authorised to possess the weapon or other thing. This does not apply to a weapon or other thing forfeited to the State.

If a weapon or other thing has not been delivered within 3 months after the appointed day or a longer period determined by the commissioner in a particular case, the weapon is forfeited to the State.

What is the appointed day for disposal of seized weapons

Clause 313 defines the appointed day referred to in clause 312.

Application for order in relation to seized things

Clause 314 provides that unless subclause (1)(a) to (1)(g) applies a police officer must make application to a justice of the peace or a magistrate for an order under clause 315 within 28 days of seizing a thing. If no application is to be made because of subclause (1)(a) to (1)(g) a police officer must deal with the thing in the way specified in the responsibilities code unless the Bill provides otherwise. An application must also be made within 28 days if a proceedings started and discontinued in respect of the thing without any order being made or the consent to retain the thing is withdrawn. An application must be accompanied by any warrant under which the thing was seized and the record made of it.

Orders issuer may make in relation to seized thing

Clause 315 indicates that the justice of the peace or magistrate after considering the application may order the thing be dealt with in accordance with subclause (1)(a) to (1)(e) and the order may impose any conditions considered appropriate.

Disposal of seized things at end of proceedings

Clause 316 provides that at the end of a proceedings a court may order that a thing be returned, forfeited, destroyed, disposed of, that it be dealt with by way of section 39 of the *Justices Act 1886* or police retain it until it is dealt with according to law. A thing forfeit under the Bill becomes the property of the State. The commissioner is to decide how thing forfeited, to be destroyed or disposed of is dealt with and if the value of the thing exceeds a value prescribed under a regulation the Minister's approval as to how the thing is dealt with is required.

Division 5—Ministerial arrangements**Ministerial arrangements for transmission and return of seized things**

Clause 317 provides that a thing seized under this Bill and may be relevant to an investigation into an offence in another jurisdiction is to be given to the law enforcement agency for that jurisdiction and when the thing is no longer required for that investigation or a subsequent proceedings it is to be returned unless disposed of by order or direction of a court. This is subject to the Minister entering into an arrangement with a Minister that is responsible for the administration of a law declared by regulation to be a corresponding law for this clause. Similarly, clause 317 also provides that if the Minister has entered the arrangement with the other Minister, a thing seized under the corresponding law that is relevant to an investigation of an offence in Queensland is to be given to the commissioner. When the thing is no longer required for the investigation or subsequent proceedings it is to be returned provided a court has not ordered or directed its disposal.

A thing returned to a law enforcement agency under this clause is property in the custody or possession of police in the course of their duty within the meaning of the *Justices Act 1886*. If the owner of the thing is unknown or can not be located after reasonable inquiries the thing may be dealt with under the *Justices Act 1886*.

PART 3 — OTHER SAFEGUARDS***Division 1 — General provisions about searches of persons and vehicles*****General provisions about searches of persons**

Clause 318 provides guidelines that a police officer must follow to protect the privacy of a person being searched. The police officer must ensure the search causes minimal embarrassment to the person where reasonably practicable, take reasonable care to protect the dignity of the person, unless necessary restrict a search in public to an examination of outer clothing and if a more thorough search is necessary but not required immediately conduct the search out of public view.

Subclause (2) provides further safeguards which, unless the search is necessary immediately, require the police officer to be the same sex as the person being searched, have a person of the same sex as the person conduct the search acting at the direction of the police officer or have a doctor conduct the search acting at the direction of the police officer.

Taking a person to another place for search

Clause 319 indicates if it is impracticable to search a person for a thing that may be concealed a police officer may take the person to a place with adequate facilities for conducting the search. The police officer is to consider whether the thing can be concealed on the person, whether the search should be conducted elsewhere and the need to protect the dignity of the person before taking the person to another place.

Limitation on period of detention for search

Clause 320 provides that a police officer must not detain a person or vehicle for a search any longer than is reasonably necessary.

General provision about searches of vehicles

Clause 321 stipulates that a police officer must consider whether the search of vehicle would be more effective somewhere else because of the nature and size of the thing that may be concealed before moving the vehicle to a place with appropriate facilities.

If the police officer decides to take the vehicle to another place for a search and the person apparently in possession of the vehicle is known, the police officer must tell the person where the vehicle is to be taken and ask the person if they want to be present during the search.

If the police officer searches an unattended vehicle or anything in it, the police officer must leave a notice in a conspicuous place in or on the vehicle indicating that a search of the vehicle or particular thing has been conducted, the officers' name, rank and station and that a record of the search may be obtained from any police station. The police officer must ensure, where reasonably practicable, leave the vehicle secured at least to the extent it was before the search.

Dealing with persons who obstruct search of person or vehicle

Clause 322 indicates if a person obstructs a search of their person, of another person or of a vehicle, a police officer must warn the person it is an offence to obstruct a police officer in the performance of the officer's duties. The person should be given a reasonable opportunity to stop obstructing the officer before force is used. Subclause (2) provides for circumstances when it may not be reasonably practicable to provide the warning and subsequent opportunity to desist.

Division 2 — Searches involving removal of clothing**Removal of clothing for search**

Clause 323 indicates division 2 applies to the removal of clothing from the upper or lower part of the body of a female or the lower part of the body of a male.

Protecting the dignity of persons during search

Clause 324 provides that a search is to be conducted in a way providing reasonable privacy for the person. The police officer must, if reasonably practicable, inform the person they will be required to remove clothing during the search and why it is necessary to do so. The police officer must also, if reasonably practicable, give the person the opportunity to remain partly clothed during the search.

The search is to be conducted as quickly as possible with the person being allowed to dress as soon as the search is finished. The police officer is not to make contact with the genital or anal areas of the person but may make a visual inspection. If clothing is seized during the search the person must be left with or given reasonably appropriate clothing.

Special requirements for searching children and persons with impaired capacity

Clause 325 stipulates if the person to be searched is a child or a person who may not be able to understand the purpose of the search then a support person is required to be present. The police officer may search the person in the absence of the support person if the officer reasonably suspects the delay

will result in evidence being lost, concealed or destroyed or tan immediate search is necessary for the safety of a person.

If video cameras monitor place where person is searched

Clause 326 indicates if a video camera monitors the area where a person is to be searched then it must be turned off or the search is to be conducted out of the view of the camera unless the person viewing the monitor is a police officer or the same sex as the person being searched. Any video recording of the search must not be show to anyone other than the persons referred to in subclause (2).

Division 3 — Other Safeguards

Safeguards for directions or requirements

Clause 327 indicates if a police officer gives a direction or requirement to a person and the person fails to comply, the police officer must, if practicable, warn the person it is an offence to fail to comply with the requirement or direction without a reasonable excuse and the person may be arrested for the offence. The person is to be given a reasonable opportunity to comply with the requirement or direction.

Use of force to enter likely to cause damage

Clause 328 applies if a police officer intends to enter a place to arrest or detain someone, to search a place or establish a crime scene. Before the police officer uses force that may cause damage the police officer, if practicable, must ask the occupier to allow the police officer to enter and give the occupier a reasonable opportunity to allow the police officer entry. Subclause (2) provides for circumstances where it may not be reasonably practicable to comply with subclause (1).

Police officer to give notice of damage

Clause 329 applies if a police officer or a person assisting a police officer damages something when exercising a power under this Bill or another Act. The police officer must give written notice of the damage to the apparent

owner of the thing. The notice is to be left in a conspicuous place if the owner is not present. If the police officer believes the damage was caused by a defect in the thing or circumstances beyond the officer's control, this may be stated in the notice.

A notice does not have to be provided if the police officer reasonably suspects it may obstruct any investigation but only applies for as long as the officer continues to have the reasonable suspicion and a police officer involved in the investigation remains in the vicinity of the place and keeps it under observation. The clause does not apply to damage the officer reasonably believes is trivial or reasonably believes there is no—~~one~~ apparently in possession of thing or that it has been abandoned.

Supplying police officer's details

Clause 330 applies to the circumstances as outline in subclause (1)(a) to (1)(h). The police officer is to provide details of name, rank and station if in uniform and if not in uniform state that he or she is a police officer and produce for inspection his or her identity card. If a search is being conducted under a search warrant the police officer must state the purpose of the search and the reason for seizing any property. If more than one police officer is present during searches mentioned in subclause (5) only the senior officer is required to comply with the clause. However, if a person asks another officer for details that officer must comply.

Record of execution of warrant or order

Clause 331 indicates a police officer who executes a warrant or order, if reasonably practicable, must write the date and time of execution, the name of the person on whom it was executed, if available the name of the occupier of the place and the name, rank, registered number and station of the police officer on the back of the original warrant or order or form of the warrant or order and sign it.

CHAPTER 10 — ADMINISTRATION

PART 1 — WATCH—HOUSES

Control of persons in watchhouses

Clause 332 provides the authority for the manager of a watchhouse to give or cause to be given to a person in custody in the watchhouse any reasonable directions or steps for ensuring good management and control.

Transfer of persons in watchhouses

Clause 333 provides the authority for a manager of a watchhouse to transfer a person in custody from a watchhouse to a facility referred to in paragraphs (a) to (d).

PART 2 — REGISTERS

Division 1 — Application and purpose

Application of pt 2

Clause 334 explains the extent of the new part's application to police officers of the CJC, QCC, the NCA and the QPS.

The requirements under Divisions 2 and 3 cannot be imposed on the NCA as such provisions would conflict with the *National Crime Authority Act 1984* (Cth) and so would be invalid under section 109 of the *Constitution of the Commonwealth*.

Purpose and explanation of pt 1

Clause 335 explains the purpose of the new part and acknowledges the fact that operations may involve more than one agency.

Division 2 — Registers of surveillance and covert search warrants**Application of div 2**

Clause 336 limits the operation of the division to covert acts and to enforcement acts done when exercising powers under a surveillance warrant or covert search warrant.

Particular Acts do not apply to this division

Clause 337 provides that the *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to this division.

Register of covert acts

Clause 338 requires the CJC, the QCC and the QPS to keep a register of covert acts. The section also allows the Chairperson of the CJC, the Crime Commissioner and the Commissioner of the Police Service to determine form of the entity's register. However, the section requires the register to be kept secure.

Information to be recorded in register

Clause 339 specifies the information to be recorded with respect to covert search warrants. The information to be recorded in the register relating to other covert acts will be specified in the Responsibilities Code.

Who must record information in register

Clause 340 requires a police officer who does a covert act to cause the prescribed information to be recorded in the covert register. If 2 or more police officers are doing that covert act, the requirement is imposed on the senior police officer involved.

The section requires the information to be recorded as soon as reasonably practicable after the act is done or the information becomes available. Some of the information to be included in the register, for example, information about any proceedings started because of evidence or intelligence obtained from using a surveillance warrant, would not be available until long after the covert act is done.

Which register to be used

Clause 341 specifies when the register kept by the CJC, QCC and the QPS is to be used to record information. However, if a covert act is done as part of a joint operation the information may be included in 1 or more entity's register.

Who may inspect police service register

Clause 342 restricts inspection of the covert register kept by the QPS.

Who may inspect CJC's register

Clause 343 restricts inspection of the covert register kept by the CJC.

Who may inspect QCC's register

Clause 344 restricts inspection of the covert register kept by the QCC.

Other authorised inspections

Clause 345 allows the Chairperson of the CJC, the Crime Commissioner and the Commissioner of the Police Service to authorise inspections of their entity's register for specified purposes.

Some authorisations given to individuals within the CJC, QCC and the QPS are, because of their nature and purpose, expected to be uninterrupted. For example, an authority to inspect the register for maintaining it and for preparing applications for surveillance warrants and covert search warrants. An perpetual authorisation to inspect the register for monitoring compliance with the Act, to satisfy internal auditing standards.

General restrictions on inspections by monitor

Clause 346 confirms an implied limitation on the monitor's authority to inspect a covert register, that is, to the extent necessary for performing the monitor's functions.

Division 3 — Enforcement registers**Application of div 3**

Clause 347 limits the application of the division to enforcement acts, other than enforcement acts done when exercising powers under a surveillance warrant or covert search warrant.

Register of enforcement acts

Clause 348 requires the CJC, the QCC and the QPS to keep a register of enforcement acts.

This register may form part of another register kept under this or another Act. For example, the register may form part of a register which records search powers exercised under the *Domestic Violence (Family Protection) Act 1989* or the *Child Protection Act 1999*.

The section also allows the Chairperson of the CJC, the Crime Commissioner and the Commissioner of the Police Service to determine the form of the entity's register.

The register is to be kept in a way that enables police officers of the entity to comply with the information disclosure requirements under the Act.

However, the entity may also keep the register in a way that prevents officers of another entity inspecting all or part of the register.

Information contained in this register of enforcement acts is not of a covert nature and so is to be available for inspection by all police officers of the relevant entity.

It is expected that the register of enforcement acts kept by the QPS will generally be available for inspection by police officers of the CJC, the QCC and the NCA.

Who must record information in register

Clause 349 requires a police officer, who does an enforcement act, to cause the prescribed information to be recorded in the register of enforcement acts. If 2 or more police officers are doing that enforcement act, the requirement is imposed on the senior police officer involved.

The section requires the information to be recorded as soon as reasonably practicable after the act is done or the information becomes available. Some of the information to be included in the register, for example, information about any proceedings started because of evidence obtained from exercising powers relating to a search warrant, may not be available until long after the search is done.

Which register to be used

Clause 350 specifies when the information is to be recorded in the register kept by the CJC, QCC and the QPS. However, if an enforcement act is done as part of a joint operation the information may be included in 1 or more entities register.

The section also provides for circumstances when the enforcement act is done for other declared law enforcement agencies, for example, the execution of a search warrant issued under the *Criminal Investigation (Extra—Territorial Offences) Act 1985*.

Persons to be given copy of information in register

Clause 351 replaces section 117 of the PPRA 1997 (omitted by *clause 13* of the Bill) and extends its application to a register of enforcement acts kept by the CJC and QCC.

A person, to whom an enforcement act is done, may obtain a copy or print—out of the information relating to the act. However, the request for information must be made within 3 years of the enforcement act. This allows the information to be removed from the computer database and archived after 3 years.

The time limitation does not prevent a person later obtaining a copy of the information under the *Freedom of Information Act 1992*.

Restriction on disclosure of certain information

Clause 352 allows the Chief Executive Officer of an entity to direct that information in the register not be generally available in certain circumstances. For example, if making the information available may hinder an investigation or cause embarrassment to the person to whom the information relates.

A person who would be entitled to a copy or print—out of the information in the register may apply to the chief executive officer of the entity for the information within 3 years of the enforcement act being done. The information must be supplied.

Division 4 — Provisions about covert acts and enforcement acts done for the NCA

Application of div 4

Clause 353 provides the division applies only to covert acts and enforcement acts done by a police officer performing a function for the NCA. Application of the part depends on whether or not the officer is performing a function for the NCA and not on whether the officer is a member of the staff of the NCA.

The NCA is a Commonwealth body that is created and regulated by the *National Crime Authority Act 1984* (Cth) (the NCA Act). A concern has been raised about whether State legislation can validly impose requirements on the NCA or on a police officer who is a member of the staff of the NCA.

An opinion provided by the Crown Solicitor confirms that a requirement for the NCA to keep a register is likely to be inconsistent with the NCA Act and therefore invalid under section 109 of the *Constitution of the Commonwealth*.

The Crown Solicitor was also of the opinion that some proposed requirements were likely to be in direct conflict with the secrecy provisions under section 51 of the NCA Act and therefore also invalid under section 109 of the *Constitution of the Commonwealth*.

Consequently, division 4 only imposes a requirement on a police officer, who performs a function for the NCA, to give the relevant information about the act to the NCA.

Information to be given to NCA

Clause 354 requires a police officer who does a covert act or an enforcement act for the NCA, to give the NCA information that would have otherwise been recorded in a register under this part.

The NCA can require the information be recorded in another entity's register.

Division 5 — General provisions**Correcting registers**

Clause 355 allows the information recorded in one entity's register to be relocated to another entity's register if that is more appropriate.

The section also provides that recording the information in one entity's register when it should have been recorded in another entity's register does not itself invalidate the act or anything done following the act.

PART 3 — OFFENCES**Offence to assault or obstruct police officer**

Clause 356 provides for the offence of obstructing a police officer in the performance of the officer's duties and includes provision that a person who obstructs a police dog or police horse is taken to obstruct the police officer controlling the dog or horse.

Offence to contravene requirement or direction of police officer

Clause 357 provides an offence for a person to contravene a requirement or direction given by a police officer under this Bill without a reasonable excuse.

CHAPTER 11 — GENERAL**Performance of duty**

Clause 358 indicates a police officer performing a function is performing a duty of a police officer even if the function could be performed by someone other than a police officer.

Assistance at fire or chemical incidents

Clause 359 imposes a duty on a police officer to assist a fire officer, where reasonable, at the scene of a fire or chemical incident.

Assistance to courts, etc.

Clause 360 provides the responsibility of a police officer to comply with a lawful direction, request or order of a tribunal and any request the judge or other presiding officer may make under that Act. This applies if the tribunal has the power to issue a warrant of apprehension of a person, to lawfully order the detention of a person or to order the exclusion or removal of a person from the place where the tribunal is held. The clause provides a definition of tribunal.

Service and enforcement of process

Clause 361 provides any police officer may serve or enforce a warrant, summons, order or command of any court, judge, magistrate or justice.

Provision restricting starting of proceeding

Clause 362 provides the authority for a police officer to commence proceedings against a person for an offence under another Act even though that Act restricts the police officer commencing proceedings. The proceedings may be commenced if the Act is prescribed under a regulation allowing police to commence proceedings. The police officer must inform the chief executive of the department by which the Act is administered of the proceedings being commenced as soon as reasonably practicable.

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

Clause 363 is a machinery clause which allows a police officer to obtain a warrant, order, etc., by telephone, radio, facsimile, etc. where it is not practicable for the police officer to make application for the document in person.

Steps after issue of prescribed authority

Clause 364 provides the procedures to be followed by the issuer mentioned in clause 361 and the police officer after the issuing of the prescribed authority.

Presumption about exercise of powers under prescribed authority

Clause 365 provides the court may presume the exercise of the power performed by a police officer was not authorised by a prescribed authority if a question arises in a proceeding in or before a court as to whether or not the power was authorised by the prescribed authority and the authority is not produced to the court.

Protection of methodologies

Clause 366 identifies those matters which a court should take into account in considering public interest immunity and crown privilege.

Subclause(1) provides for a police officer to refuse to disclose information mentioned in subclause (2) in a proceedings for an offence unless the court is satisfied that the disclosure is—

- (a) necessary for the fair trial of the offender; or
- (b) necessary to find out whether the scope of law enforcement investigation has exceeded the limits imposed by law; or
- (c) otherwise necessary in the public interest.

Subclause (2) provides the information for subclause(1) is information that could, if disclosed, reasonably be expected to—

- (a) prejudice an investigation of a contravention or possible contravention of the law; or

Example—

Where the disclosure would alert suspects to an ongoing covert investigation such as drug dealing.

- (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or

Examples—

1. Where the name of an informant may be revealed.
 2. Where an informant may be identified because information was revealed to the informant by the offender either alone or in the presence of a very limited number of the offender's associates.
- (c) endanger a person's life or physical safety; or

Examples—

1. Where the information would lead to the identification of an informant and place the informant in physical danger through retribution.
 2. Where the information would disclose the location of a safe house where a witness whose life may be in danger from the offender is kept.
 3. Where the information may lead to an offender or his or her associates learning the true home address of an undercover police officer or his or her family and therefore place that officer or his or her family in danger.
- (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or

Examples—

1. Where the frequency at which a listening device broadcasts a conversation is revealed.
 2. Where the information reveals the location on a car of secret vehicle identification numbers placed there by the manufacturer to assist in the identification of stolen cars.
 3. Where the information would reveal the procedures adopting in conducting covert surveillance activities.
- (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or

Examples—

1. Where the information is likely to reveal specific security methods which are used at major events.
 2. Where the information is likely to reveal the methods used to identify or dismantle an explosive device.
- (f) facilitate a person's escape from lawful custody.

Examples—

1. Where the information is likely to reveal the strength of staff at a watchhouse or watchhouse procedures used to prevent escape.

2. Where the information reveals the times and dates that prisoners are to be transferred from one place to another and the methods to be used in the transfer.
3. Where the information reveals special measures which are put in place to protect security in a court during a proceeding.

Compensation

Clause 367 allows a person who is not complicit in an offence to claim compensation arising from damages caused to the person's property due to an action of a police officer exercising a power under this Bill or any other Act. An application for compensation may be made to the Minister and if accepted the applicant can be compensated for loss without the matter needing to go to court.

Compensation is not payable to a person who is found guilty of an indictable offence because of the exercise of the powers, nor is compensation payable for the lawful seizure of a thing under this Bill.

Availability of Act

Clause 368 requires the commissioner to have a copy of the Act available at every police station and establishment for inspection by anyone who asks for it. The copy may be electronic.

Approved forms

Clause 369 provides that the commissioner may approve forms for use under the Bill.

Example—

The design of a notice to appear.

Review of Act

Clause 370 provides that the Minister must ensure that the operation of the Bill is regularly reviewed. The first review must start no sooner than 6 months after the commencement of the Act and be completed within 3 years.

Regulation making power

Clause 371 provides that the Governor in Council may make regulations not inconsistent with this Bill. A regulation may include the Responsibilities Code. However, an instructional guideline does not form part of a regulation.

Example—

An instructional guideline may suggest ways of defining the perimeter of a crime scene such as placing tape around the scene or parking a vehicle across the entrance to a place.

**CHAPTER 12 — REPEALS, AMENDMENTS AND
TRANSITIONAL PROVISIONS****PART 1 — ACTS REPEALED AND AMENDED****Acts repealed**

Clause 372 provides for the repeal of—

1. *Gaming Act 1850 (NSW)* as it applies in Queensland.
2. the *Criminal Investigation (Extraterritorial Offences) Act 1985*.
3. the *Police Powers and Responsibilities Act 1997*.

Acts amended

Clause 373 provides for relevant Acts in Schedules 2 and 3 to be amended.

PART 2 — TRANSITIONAL PROVISIONS

Division 1 — Transitional provisions commencing on date of assent

Definition for Div 1

Clause 374 indicates the *Police Powers and Responsibilities Act 1997* is referred to as the 1997 Act.

Continued operation of 1997 Act, s 8(3) and (4)

Clause 375 provides a machinery section for the continued operation of 1997 Act, s 8.

Continued operation of 1997 Act, s 136

Clause 376 provides a machinery section for the continued operation of 1997 Act, s 136.

Expiry of division

Clause 377 provides a machinery provision for this division.

Division 2 — Transitional provisions commencing at a later date

Definitions for Div 2

Clause 378 provides the definitions of amended Act and repealed Act for Part 2

Transitional provision about change in way powers may be exercised

Clause 379 excuses a police officer from exercising powers that existed prior to the Proclamation of the Bill for a period of 7 days. By way of example, the clause allows for errors which may be made due to the fact that an officer may have been absent from duty at the time of Proclamation and unaware of the Proclamation.

Transitional provisions about warrants, orders and notices

Clause 380 applies if a warrant, notice or order under a provision of an amended Act that is repealed by this Act or under a repealed Act is in force immediately before the amendment or repeal of the relevant Act. A warrant, notice or order continues to have effect until it expires and the provisions of the Bill apply to anything done under the warrant, order or notice after this clause commences.

Transitional provision about noise abatement

Clause 381 provides for the enforcement of noise abatement directions given under the *Environmental Protection Act 1994*.

Transitional provision about nuisance in moveable dwelling parks

Clause 382 provides for the enforcement of nuisance directions given under the *Residential Tenancies Act 1994*.

Transitional provisions about registers of covert and enforcement acts

Clause 383 provides that a register of covert acts or enforcement acts kept under a repealed Act are taken to be a register of those Acts for the Bill. This clause also applies to a register kept under a repealed Act by the commissioner, the CJC or the QCC.

Transitional provision about entries in registers

Clause 384 provides that a failure, before the commencement of this section, to keep or record information in the way required by the Bill before the commencement does not and never did affect anything done in relation to the act concerned before or after the failure.

Transitional provision about public interest monitor

Clause 385 provides for the continued appointment of a monitor or acting monitor.

PART 3—AMENDMENT OF CRIME COMMISSION ACT 1997

This part amends the *Crime Commission Act 1997* to ensure continued consistency with police powers and responsibilities under the Bill.

Schedule 1

Acts not affected by this Act

This schedule contains a list of preserved provisions that are not affected by the Bill.

Schedule 2

Acts amended on assent

Schedule 2 amends Acts that contain police powers and responsibilities. The amendments in schedule 2 commence on assent as the powers and responsibilities contained in these Acts are already provided under the PPRA 1997.

AGRICULTURAL CHEMICALS DISTRIBUTION CONTROL ACT 1966

Section 34(1)(d)

The amendment removes the reference to assistance by police officers as police officers may assist public officials under the Bill.

AUCTIONEERS AND AGENTS ACT 1971

Section 51(a)

The amendment removes the reference to police officer as police officers have sufficient powers under the Bill to require the production of a licence required under the *Auctioneers and Agents Act 1971*.

Section 58(2)

The amendment removes the reference to a police officer as there are sufficient powers under the Bill to require the production of registers for inspection.

Section 67(a)

The amendment removes the reference to a police officer as there are sufficient powers under the Bill to require the production of a licence required under the *Auctioneers and Agents Act 1971*.

BANANA INDUSTRY PROTECTION ACT 1989

Section 21(1)(h)

The amendment removes the reference to a police officer. The Bill allows for police officers to provide assistance to an authorised person if asked.

BURIALS ASSISTANCE ACT 1965

Section 5(2)

The amendment omits a regulation making power with respect to the duties of police officers. A regulation may be made under the *Police Service Administration Act 1990* or the Bill with respect to any duties that need to be imposed on police officers.

COMMISSIONS OF INQUIRY ACT 1951

The amendments are consequential to other amendments to the *Invasion of Privacy Act 1971*. The effect of the section is unchanged.

COMMUNITY SERVICES (ABORIGINES) ACT 1984

Section 45B(1)(a)

The amendment removes the reference to a police officer. The Bill provides a power for a police officer to assist authorised officers.

COMMUNITY SERVICES (TORRES STRAIT) ACT 1984

Section 43B(1)(a)

The amendment removes the reference to a police officer. The Bill provides a power for a police officer to assist authorised officers.

COOPERATIVES ACT 1997

Sections 395(11) and 407

The Bill omits section 395(11) and section 407 as the Bill provides power for police officers to assist inspectors if asked.

CRIMINAL CODE

Section 1, definition “police officer”

The definition is omitted as police officer is defined in the Acts Interpretation Act 1954.

Section 137, after ‘wilfully’

The amendment inserts the words ‘and without lawful excuse’ to recognise that police officers may lawfully delay taking an arrested person before a court, for example, when questioning the arrested person or where investigative procedures are necessary.

Sections 256 and 259

Section 256 is omitted as the Bill allows a police officer to use force reasonably necessary to prevent escape from lawful custody. Section 259 is omitted as powers and responsibilities for searches and examinations of persons in custody is provided under the Bill. The Bill provides safeguards relating to protecting a person's dignity during a search of the person.

Section 255(1)

The section is amended to provide that a person executing any process or warrant should have it with them if reasonably practicable. The amendment recognises that warrants are generally held centrally or electronically to avoid the risk of arrest warrants being executed twice. It may not be possible for a police officer to physically have the warrant when arresting a person.

Section 260(2)

Subsection (2) is omitted as a power of a police officer to take steps reasonably necessary to prevent a breach of the peace exists in the Bill.

Section 262

The amendment omits the reference to a police officer in the heading and the section as these powers for police officers are contained in the Bill.

Sections 679 and 680A

Section 679 is omitted as search warrant powers and procedures are provided with respect to “evidence of the commission of an offence” under the Bill.

Section 685B(1)

The reference to police officer is omitted as a similar authority is provided under the Bill.

**CULTURAL RECORD (LANDSCAPES QUEENSLAND
AND QUEENSLAND ESTATE) ACT 1987****Section 51**

This section is omitted as the Bill provides the power for a police officer to assist a protector if asked.

DISEASES IN TIMBER ACT 1975**Section 6(1)(h)**

This paragraph is omitted as the Bill allows police officers to provide assistance to a forest officer if asked.

Section 6(1)(i)

The amendment renumbers the paragraph as (h).

DRUGS MISUSE ACT 1986**Part 3**

The amendment omits this part as the powers and duties contained in the part are adequately provided for in the Bill.

Part 4

The amendment omits this part as the powers and duties contained in this part are adequately provided for in the Bill.

Section 43A, definition “authorised officer”

The amendment removes the reference to police officer from the definition of "authorised officer" as police officers have sufficient powers under the Bill.

Section 43H(1)

The amendment removes the reference to police officers in uniform. Police officers will no longer be authorised officers under the part.

Section 43Q(2)

This subsection is omitted as an offence for obstructing a police officer is provided for in the Bill.

Section 53

This section is omitted as the powers to use assistance and the use of force when exercising powers is provided for in the Bill.

EXOTIC DISEASES IN ANIMALS ACT 1981**Section 12(2A)**

This section is amended by removing the reference to a police officer. The Bill allows police officers to provide assistance to an inspector if asked.

Section 20(1)(k)

This section is amended by removing the reference to a police officer. The Bill allows police officers to provide assistance to an inspector if asked.

FISHERIES ACT 1994**Section 144(1)**

Subsection (1) is amended to state the section does not apply to a police officer. The Bill provides similar requirements in relation to police officers producing identification.

Section 144(2)(a)

This amendment is a consequence to amendment 1.

FOOD ACT 1981**Section 28(1)(d), from ‘officer’s aid’**

The reference to police officer is omitted as the Bill allows for police officers to assist authorised officers if required.

Section 28A

This section is omitted as the power of a police officer to demand name and address is provided for in the Bill. Also, the power of arrest for police officers is provided in the Bill.

FORESTRY ACT 1959**Section 18(1)(a)**

This paragraph is omitted as the power for a police officer to assist a public official when asked is provided for in the Bill.

GAMING MACHINE ACT 1991

Section 34(1)(a)

This paragraph is omitted as the power for a police officer to assist a public official when asked is provided for in the Bill.

Section 181(3)(i)

This paragraph is omitted as the power for a police officer to assist a public official when asked is provided for in the Bill.

Section 202

This section is omitted as the power to take fingerprints etc. is provided in the Bill.

GRAIN INDUSTRY (RESTRUCTURING) ACT 1991

Section 3, definition “inspector”

The definition is amended by removing the reference to a police officer. Police officers have sufficient powers under the Bill.

Section 39(2)

The amendment omits the reference to police officers.

Section 43(1)

The amendment omits the reference to police officers.

HEALTH ACT 1937

Section 131A

This section is omitted as search warrants and related powers are provided for in the Bill.

Section 168

This section is omitted as a power for a police officer to demand a person's name and address and the offence for failing to state name and address are provided for in the Bill.

Section 168A

This section is omitted as search warrants and related powers are provided for in the Bill. Some aspects of this section would also be covered under the *Child Protection Act 1999*.

INTEGRATED RESORT DEVELOPMENT ACT 1987**Section 98**

The Bill omits the reference to police officer as the powers conferred by the section may be subject to the inconsistency provision in the Bill.

Section 98A, new section—“Primary and secondary thoroughfares are public places for certain purposes”

The Bill inserts a new provision declaring a primary thoroughfare or secondary thoroughfare to be a public place for a police officer exercising powers or performing functions. The new section maintains the effect of section 98.

JURY ACT 1995**Section 12**

This section is replaced to remove the duty applying to a police officer and instead refer to the Sheriff or Electoral Commission making arrangements with the commissioner for assistance.

JUSTICES ACT 1886

Section 35

The amendment omits the reference to police officer as duties with respect to arrested persons is covered under the Bill.

Section 61

This section is omitted. A similar authority under s 3.5 of the *Police Service Administration Act* is also to be consolidated into the Bill.

Section 65

This section is amended to state that the section does not apply to a police officer as a police officers duties with respect to arrested persons is covered under the the Bill.

LAND ACT 1994

Section 398(3)

This subsection is amended to state the section does not apply to a police officer. This is because the requirement for police officers to produce identification when exercising powers is provided for in the Bill.

LAND TAX ACT 1915

Section 4AB

This section is omitted as the investigation and enforcement provisions are rarely used. Also, the assistance provisions in the Bill are sufficient.

LIQUID FUEL SUPPLY ACT 1984

Section 5, definition “authorised person”,

The Bill omits the reference to police officer from the definition of authorised person, as police officers will have sufficient powers under the Bill to assist authorised persons.

MEDICAL AND OTHER ACTS (ADMINISTRATION) ACT 1966

Section 14(1)(c)

The reference to police officer is omitted as the power for a police officer to provide assistance to an inspector is provided under the Bill.

METROPOLITAN WATER SUPPLY AND SEWERAGE ACT 1909

Section 135—

This section is omitted as police officers have powers to demand a person’s name and address under the Bill.

MINERAL RESOURCES ACT 1989

Section 342(1)(j)(ii), 343(14) and 400(2)

The reference to police officer in these sections is omitted as the Bill provides police officers with the power to assist public officials if requested

Section 401

The Bill omits the reference to police officer, as provisions relating to a police officer’s liability are included in the *Police Service Administration Act 1990*.

Section 402(2), from ‘officer duly’

The reference to police officer in this section is omitted as the Bill provides police officers with the power to assist public officials if requested

Section 404(a)

The amendment removes the reference to police officer as the offence of assaulting or obstructing a police officer is provided under the Bill.

MIXED USE DEVELOPMENT ACT 1993**Section 165(4)(c)**

The amendment omits the reference to police officer in paragraph (c) of the definition of authorised person as a definition of this type will otherwise be subject to the Bill.

Section 165A, new section—“Community property and precinct property is public place for certain purposes”

The new section maintains the effect of section 165 by declaring that community and precinct property is deemed to be a public place for the purposes of any law conferring powers or imposing functions on police officers.

**PASTORAL WORKERS’ ACCOMMODATION ACT
1980****Section 23(b)**

The amendment omits the reference to police officer. The power for a police officer to assist an inspector when asked is provided for in the Bill.

PLANT PROTECTION ACT 1989

Section 19(1)(l)

The amendment omits the reference to police officer. The power for a police officer to assist an inspector when asked is provided for in the Bill.

PRIVATE EMPLOYMENT AGENCIES ACT 1983

Section 9(1)(g)

The amendment omits the reference to police officer. The power for a police officer to assist an inspector when asked is provided for in the Bill.

PROFITEERING PREVENTION ACT 1948

Section 55(3)

The amendment omits the reference to police officer. The power for a police officer to assist an authorised officer when asked is provided for in the Bill.

Section 58

The amendment omits the reference to police officer. The power for a police officer to assist an authorised officer when asked is provided for in the Bill.

PROSTITUTION ACT 1999

Schedule 3, amendments to *Police Powers and Responsibilities Act 1997*

The amendment omits amendments to the PPRA 1997 in schedule 3 of that Act as these amendments have been incorporated into the the Bill.

QUEENSLAND LAW SOCIETY ACT 1952

Section 11A

This section is amended by inserting a further provision requiring the order to state the powers the assisting police officers may exercise under the order and requiring the person executing the order to explain the order to assisting police officers, in a similar way that public officials receiving assistance are required to explain their power in accordance with the Bill.

RACING AND BETTING ACT 1982

Section 9

This section is omitted as the general powers function and duties of police officers is provided for in the Bill.

Section 154(2)

The reference to a police officer is omitted as police officers may provide assistance under the Bill.

Section 229

The reference to a police officer in this section is omitted as similar offences with respect to police officers exist under the Bill.

Sections 231, 232A and 234

Section 231 is omitted as the power relating to the entry and search of places with warrants is provided for in the Bill.

Section 232A is omitted as police officers may now release an arrested person after serving a notice to appear, instead of granting bail.

Section 234 is omitted as powers relating to the searching of persons are provided for in the Bill.

Section 257(2)(a), from ‘betting inspectors’ — 5

The reference to a police officer in paragraph (a) is omitted as a regulation with respect to the duties of police officers may be made under the *Police Service Administration Act 1990*.

SANCTUARY COVE RESORT ACT 1985

Section 54

The Bill omits the reference to police officer as the powers conferred by the section may be subject to the inconsistency provision in the Bill.

Section 54A, new section—“Primary and secondary thoroughfares are public places for certain purposes”

The Bill inserts a new provision declaring a primary thoroughfare or secondary thoroughfare to be a public place for a police officer exercising powers or performing functions. The new section maintains the effect of section 54.

STAMP ACT 1894

Section 29(7)

This subsection is omitted as the investigation and enforcement provisions are rarely used and because the police assistance provisions in the Bill are sufficient.

STOCK ACT 1915

Section 24(1),

The Bill amends this section to remove the reference to police officer.

Section 29(1)(r)

The Bill amends paragraph (r) by removing the reference to police officer. The Bill allows police officers to provide assistance to an inspector if asked.

Section 37(3)

The Bill omits the reference to police officer in this section as the power for a police officer to seize evidence generally is provided for in the Bill

TRADING (ALLOWABLE HOURS) ACT 1990

Section 8(1)(b)

The Bill omits this paragraph as the power for a police officer to assist an industrial inspector when asked is provided for in the Bill.

Section 8(1)(b)

The Bill omits this paragraph as the power for a police officer to assist an industrial inspector when asked is provided for in the Bill.

TRAVEL AGENTS ACT 1988

Section 6, definition “authorised officer”, paragraph (c)

The Bill omits the reference to police officer in paragraph (c) of the definition of authorised officer, as the power to investigate offences is contained in the Bill.

VAGRANTS, GAMING AND OTHER OFFENCES ACT 1931

Section 2, definition “Gaming Acts”

The Bill amends the definition to update the references in the definition. For example, the Gaming Act of 1850 (NSW) will, as a result of this Bill, no longer apply in Queensland.

Section 6

The Bill omits subsection (1), as adequate powers to seize things are provided under the Bill. The Bill updates the language used in subsection (2)

Section 7A(2) to (4A)

The Bill omits these subsections, as adequate search warrant powers are provided under the Bill.

Section 11, 23, 24, and 26

The Bill omits section 11, as powers to enter places to arrest a person for an offence is provided under the Bill

The Bill omits section 23, as powers to enter vehicles and arrest persons is provided under the Bill.

The Bill omits section 24, as powers to search persons and vessels without a warrant is provided under the Bil

The Bill omits section 26, as search warrant powers are provided under the Bill.

Section 14(2)

The amendment redrafts the subsection to update the drafting style and to remove the reference to the non—existent rank of sub—inspector of police.

Section 14(3)

The amendment updates the language used in the subsection.

Section 15

The Bill omits this section, as search warrants and associated powers of police officers are provided under the Bill.

Section 16

The Bill omits this section, as the power for a police officer to seize evidence generally is provided under the Bill. The authority provided in subsection (4) is consolidated into the the Bill.

Section 21

The Bill omits subsection (1) as search warrants and associated powers of police officers is provided under the the Bill. Offences related to gaming are adequately dealt with elsewhere

Section 21A

The Bill omits subsection (1) as search warrants and associated powers of police officers are provided for in the Bill. The Bill restructures the section to account for the omission

Section 23

The Bill omits this section, as powers to enter vehicles and arrest persons is provided under the Bill

Section 24

The Bill omits this section, as the power to search persons and vessels without a warrant is provided under the Bill.

Section 26

The Bill omits this section, as search warrant powers are provided under the Bill.

Section 31

The Bill omits subsection (1) and (1A) and the provisions associated heading, as a similar provisions exist under the *Racing and Betting Act 1980*. An equivalent search power will be provided under the Bill with respect to offences under the *Racing and Betting Act*.

Section 34(2)

The Bill omits subsection (2). The power of arrest for a police officer is provided under the Bill. A specific arrest power for railway employees to be unnecessary

Section 36

The Bill omits this section, as the statutes that define "institution" no longer exist.

Section 37B(4)

The Bill omits the reference to police officer, as the offence of obstructing a police officer is provided under the Bill.

Section 47

The Bill omits subsection (1) and its related heading as this issue is addressed by the *Acts Interpretation Act*.

Section 55(e)

The Bill amends this section to remove the reference to making the arrest and insert the term "starting the proceeding", to recognise that prosecutions are now more often started without an arrest.

WORKERS' ACCOMMODATION ACT 1952

Section 8(1)(b)

The Bill omits this paragraph as the power for a police officer to assist an industrial inspector when asked is provided for in the Bill.

Section 9(b)

The Bill omits the reference to police officer as the power for a police officer to assist an inspector when asked is provided under the Bill.

Schedule 3

Acts amended after assent

Schedule 3 amends Acts that contain police powers and responsibilities. The amendments in schedule 3 will commence at various dates after assent as the powers and responsibilities contained in these Acts are not generally provided under the PPRA 1997.

AMBULANCE SERVICE ACT 1991

Section 46(2) and (3)

The Bill amends subsection (2) as power of arrest for a police officer is provided under the Bill. The authority under subsection (2) to give a person a direction is consolidated into the prevention of offences powers under the Bill.

ANIMALS PROTECTION ACT 1925

Section 3, definition “officer”

The Bill redrafts the definition of “officer” and includes a footnote with a reference to the Bill.

Section 10

The Bill omits section 10 as the power of arrest for an offence is provided under Bill.

Section 11

The Bill amends the section so it does not apply to police officers as police officers will have sufficient powers under the Bill.

Section 15A(2)

The Bill omits section 15A(2) as the power of a police officer to demand name and address and to arrest is provided under the Bill.

AUCTIONEERS AND AGENTS ACT 1971**Section 59(1)**

The Bill amends subsection (1) to remove the reference to police officer as police officers will have sufficient powers under the Bill.

Section 59(2)

The Bill amends subsection (2) to remove the reference to a police officer as the offence of obstructing a police officer is provided for under the Bill.

BAIL ACT 1980**Section 6, definition “precincts”**

This definition is omitted as it is only used in section 29, which is also being omitted.

Section 6

The Bill inserts a new definition, watch—house manager.

Section 7

The Bill amends this section to ensure consistency with the terminology and drafting style of the Bill. Further, the section recognises the power to detain persons under the Bill for investigations and questioning.

The new section will also allow a person arrested on a warrant for failing to appear in response to a notice to appear, to be released on an undertaking if that is appropriate in the circumstance. For example, the person may satisfy a watchhouse manager that the person was unable to attend court under a notice to appear because the person was in hospital following a car accident.

Section 14

The Bill amends this section to ensure consistency with the terminology and drafting style of the Bill.

Section 28A(1)(a)(iii)

The Bill amends reference to section 7, as a consequence to the above amendment to that section.

Section 29

The arrest power in this section is omitted as it is now provided under the Bill.

Schedule, entry relating to the *Gaming Act 1850 (NSW)*

The Bill omits the reference this Act as it will no longer have application in Queensland as a result of this Bill.

BRISBANE FOREST PARK ACT 1977**Section 46**

The Bill omits the reference to police officer as sufficient powers are provided under the Bill.

BUILDING ACT 1975**Section 27**

The Bill omits the reference to police officer as powers to assist public officials are provided under the Bill. To remove any doubt the section now declares an officer of a local government to be a public official under the Bill.

CASINO CONTROL ACT 1982**Section 88(1)(i)(i)**

The Bill omits the reference to police officer as the Bill provides the power for police officers to assist an inspector.

Sections 106

The Bill omits this section, as an equivalent authority to search a person with respect to an offence under section 103 or 104 of the *Casino Control Act* is provided under the Bill.

Section 113(1) and (2)

The Bill omits section 113 as police officers have a general authority to enter public places under the Bill. The new subsection (2) is a consequence to this amendment.

Section 114

The Bill omits this section as the power for a police officer to demand a person's name and address is provided under the Bill.

Section 115

The Bill omits this section as the power for a police officer to take a person's fingerprints etc. is provided under the Bill.

Section 121

The Bill omits this section as all arrest powers are omitted from and Act. Nothing in the Bill prevents a police officer starting a proceeding by complaint and summons under the *Justices Act 1886*.

Section 124(1)

The Bill redrafts this section as a consequence to section 106 of the Act being omitted.

CLASSIFICATION OF COMPUTER GAMES AND IMAGES ACT 1995

Section 33(1)

The Bill amends this section so it has no application to an inspector who is a police officer. The Bill imposes similar requirements on police officers with respect to the production of identification.

Section 47(7)

The Bill omits this subsection as the power for a police officer to assist an inspector is provided under the Bill.

Section 48

The Bill omits this section as the steps that a police officer must take in circumstances where a person has failed to give a public official their name and address, and an arrest power is provided under the Bill.

Section 51

The Bill amends this section as the power for a police officer to assist an inspector is provided under the Bill.

Section 52

The Bill omits this section as the steps that a police officer must take in circumstances where a person obstructs a public official, and an arrest power is provided under the Bill.

CLASSIFICATION OF FILMS ACT 1991**Section 4(1)**

The Bill amends this section as the reference to the agreement of the Commissioner is unnecessary. The Bill will require all appointments of police officers as public officials be approved by the Commissioner.

CLASSIFICATION OF PUBLICATIONS ACT 1991**Section 5(1)**

The Bill amends this section as the reference to the agreement of the Commissioner is unnecessary. The Bill will require all appointments of police officers as public officials to be approved by the Commissioner.

COLLECTIONS ACT 1966**Section 25**

The Bill omits the reference to police officer in subsections (2), (3)(g) and (3)(i), as the Bill provides power for police officers to assist public officials if asked, to exercise powers under the Act.

Also, police officers have powers under the search warrant provisions under the Bill, to enable the production of stated documents to a police officer.

Section 26(5)

The Bill omits subsection (5) as police officers have similar powers under the Bill, if the Act is declared by regulation to be a “relevant Act”.

Section 26A

The Bill omits the reference to police officer in this section as police officers have a power to obtain search warrants in respect to any offence under the Bill.

Section 27(2) and 28

The Bill omits the reference to police officer in section 27 as police officers will have sufficient general powers to investigate offences under the Bill. The appointment power under section 27 is very broad. The amended section does not prevent a police officer being appointed as an inspector with the approval of the Commissioner.

The Bill omits the reference to police officer in section 28 as the Bill imposes requirements and responsibilities on police officers when dealing with seized property.

Section 30(2)

The Bill omits the reference to police officer in this section as police officers are generally not involved in these matters.

Section 37(1)(b) and (g)

The Bill omits the reference to police officer in this section as it is consequential to other amendments proposed. Offences for assaulting or obstructing a police officer are provided under the Bill.

Section 39B

The Bill omits this section as the Bill allows a police officer to require a person to provide their name and address for the administration or enforcement of an Act prescribed under a regulation. It is intended to include the as a Act under the regulation. Also, arrest powers are provided under the Bill when a person contravenes the requirement.

Section 43(1)(a) and (b)

The Bill omits the reference to police officer in this section as a consequence to other amendments relating to the appointment of police officers.

Section 47(3)(zn)

The Bill omits the reference to police officer in this section as regulations about the powers or functions of police officers should as far as practicable be made under the Bill.

CORRECTIVE SERVICES ACT 1988**Section 10, definition “police gaol”, “watch-house manager”**

The Bill replaces the term “police gaol” with “watch-house”. Consequently, this definition is omitted.

The Bill inserts a new definition of “watch-house manager” as a consequence to later amendments to the Act.

Section 32(2), (3), (4), (5) and 33(3)

The Bill replaces the use of the term “police gaol” with the more commonly identified term “watch-house”.

Section 63(5)

The Bill replaces the phrase “or in a police gaol”, with the phrase “or delivered into the custody of a watch-house manager”, to ensure consistency with the language used in the Bill with respect to a police officer’s duties after arrest.

Section 74(2)

The Bill amends the section for the same reasons stated with respect to the amendment to sections 32 & 33.

Section 85(1), from ‘discharged,’ to ‘written application’

The Bill amends the section to remove the authority of a police officer arrest without warrant a prisoner who is discharged by error. The Bill provides police officers with a without warrant arrest power in these circumstances.

Section 85(5)

The Bill amends the section for the same reasons stated with respect to the amendment to section 63.

Section 86(10)

The Bill amends the section for the same reasons stated with respect to the amendment to section 63.

Section 94

The Bill amends the section to remove the authority of a police officer arrest without warrant a prisoner who has escaped, is unlawfully at large etc. The Bill provides police officers with a without warrant arrest power in these circumstances.

Also, the Bill amends the section for the same reasons stated with respect to the amendment to section 63.

Section 95(2)

The Bill amends the section for the same reasons stated with respect to the amendment to sections 32 & 33.

Section 104(7)

The Bill omits the reference to police officer, as the authority to give directions in circumstances where the security of prisoner may be threatened has been consolidated into the Bill under the prevention of offences authority. Police officers will not be excluded from acting under the section as police officers would be a “person having custody or control of a prisoner”.

Section 107

The Bill omits the reference to police officer in this section, as a similar authority for a police officer to search a person is included in the Bill.

Police officers also have powers of arrest under the Bill.

Section 114(3)

The Bill amends the section for the same reasons stated with respect to the amendment to sections 32 & 33.

Section 119(1)(a)

The Bill amends the section for the same reasons stated with respect to the amendment to sections 32 & 33.

CRIMES (CONFISCATION) ACT 1989**Section 4, definitions**

The Bill inserts a new definition of “monitoring order” and “search warrant” as the authority to apply for these types of authorities have been consolidated into the Bill.

Part 5, divisions 1, 2 and 3

The Bill omits part 5, divisions 1, 2 and 3 as powers and responsibilities with respect to production orders, searches with and without warrant, and monitoring orders are provided under the Bill.

The Bill amends the part heading and omits the heading for division 4 as a consequence of divisions 1 to 3 being omitted.

Section 90

The amendment to section 90 maintains the effect of section 72(8). The Bill omits section 72, as it is included in part 5 division 3 of the Act.

Section 92

The amendment to section 92 maintains the effect of section 72(8). The Bill omits section 72, as it is included in part 5 division 3 of the Act.

Section 107

The Bill omits this section as the power of arrest for a police officer is provided for under the Bill.

CRIMINAL CODE**Section 56B(2)**

The Bill amends this section to omit the search powers of a police officer, as the Bill provides the power for a police officer to search for and seize weapons and anything the person intends to use to cause harm to someone.

Section 229M

The Bill omits this section as the Bill allows a police officer to require a person's name and address found committing an offence, reasonably suspected of committing an offence, or where the person's name and address is necessary for the administration or enforcement of an Act prescribed by regulation.

Section 258

The Bill amends section 258 to expressly state that the section does not limit the exercise of powers by police officers under the Bill.

Section 260(3)

The Bill omits this subsection, as the authority for a police officer to receive a person into custody who has been detained under section 260, following a breach of the peace, is provided under the Bill.

Section 450A

The Bill omits the reference to police officer, as police officers have sufficient arrest powers under the Bill.

Section 455

The Bill omits the reference to police officer, as police officers have sufficient arrest powers under the Bill.

Section 479

The Bill omits the reference to police officer, as police officers have sufficient arrest powers under the Bill.

Part 8, chapter 58, new section 545A

The Bill inserts a new section at the beginning of part 8, chapter 58 (Arrest) to state the chapter, in particular the powers contained in the chapter, does not apply to a police officer, as police officers have sufficient arrest powers under the Bill.

Section 546(a) & (f)

The Bill omits the reference to police officer in paragraphs (a) and (f), as police officers have sufficient arrest powers under the Bill.

Section 548(1)

The Bill omits the reference to police officer, as police officers have sufficient arrest powers under the Bill.

Section 679B

The Bill omits the section as police officers will have sufficient powers with respect to offences involving animals under the Bill.

CRIMINAL JUSTICE ACT 1989

The Bill updates the references in the Act with respect to the term watch—house manager.

DISTRICT COURT ACT 1967**Section 47**

The Bill omits the section as the duty for a police officer to assist courts and other tribunals is provided under the Bill.

**DOMESTIC VIOLENCE (FAMILY PROTECTION)
ACT 1989****Section 3**

The Bill inserts a new definition of watch—house manager to update the references in the Act.

Section 68

The Bill omits the section, as the powers for a police officer to require a person's name and address are provided under the Bill. The Bill also provides arrest powers for police officers if a person contravenes the requirement without reasonable excuse.

Section 70(1) & (1A)

The Bill amends the section to make the responsibilities following the detention of a person under the Act consistent with the responsibilities following the arrest of a person.

Section 70(2) & (3)

The Bill omits subsection (2) as this restriction is now inconsistent with the authority of a police officer to question a person after arrest.

The omits subsection (3) as the Bill provides the authority of a police officer to search a person detained under another Act.

Section 73

The Bill omits this section as an authority to enter a search a place where domestic violence is occurring or has occurred before the officers arrival is provided under the Bill. The Bill also imposes register requirements when ever a police officer searches a premises.

Section 74(5)

The Bill omits this subsection as the powers and responsibilities relating to a police officer using reasonable force when exercising a power under this or any other Act is provided under the Bill.

Section 75

The Bill omits the reference to register requirements for a search of premises and seizure of weapons under section 73 of the Act. Information about a search of a premises or seizing of anything is recorded in a register of enforcement acts under the Bill. The Bill also requires a police officer, if asked, to allow the person subject of the power to inspect the register.

Section 77

The Bill omits this section as an arrest power with respect to an offence against section 80 is provided to police officers under the Bill.

Section 79

The Bill omits this section as powers under the *Weapons Act* are also being consolidated into the Bill.

DRUGS MISUSE ACT 1986**Section 10(5)**

The Bill omits this subsection as arrest powers for police officers are provided under the Bill.

Section 10A(1A)

The Bill omits this subsection as arrest powers for police officers are provided under the Bill.

Section 43P

The Bill omits this subsection as arrest powers for police officers are provided under the Bill.

Section 52

The Bill omits this section as it is intended to allow a police officer to destroy dangerous drugs under a regulation made under the Bill.

EDUCATION (GENERAL PROVISIONS) ACT 1989**Section 118(2)**

The Bill omits the reference to police officer being permitted to start a proceeding for an offence against the section. The authority to start a proceeding, despite such restrictive provisions, is included in the Bill for Acts listed in a regulation.

ENVIRONMENTAL PROTECTION ACT 1994**Chapter 4, part 3, heading**

The Bill omits the reference to police officers from the part heading, as police officers powers are removed from the Act by later amendments.

Section 144

The Bill omits section 144(1)(c) as only police officers may give noise abatement directions.

The Bill omits subsection (4) as arrest powers for police officers are provided under the Bill.

Chapter 4, part 4

The Bill omits this part as powers for police officers to give directions relating to excessive noise are included in the Bill.

FIRE AND RESCUE AUTHORITY ACT 1990**Section 136**

The obligation imposes on the Commissioner and officers in charge of police stations to send officers to assist at a fire or chemical incident is omitted and inserted into the Police Service Administration Act.

The duty of a police officer to assist at a fire or chemical incident is included in the Bill.

Section 152

The Bill omits this section as arrest powers for police officers are provided under the Bill.

FISHERIES ACT 1994**Section 171(5)**

The Bill omits this subsection as arrest powers for police officers are provided under the Bill.

Section 180

The Bill amends this section to the effect that a police officer who is an inspector is not required under the section to give notice of damage, as a similar notice requirement is imposed on police officers generally under the Bill.

FUEL SUBSIDY ACT 1997**Section 128**

The Bill omits this section as the powers for a police officer to assist a public official are included under the Bill.

Section 140(5)

The Bill omits this subsection as the powers for a police officer to assist a public official are included under the Bill.

Section 142

The Bill omits this section, as the steps a police officer may take when the officer is called to assist a public official because a person fails to provide their name and address to the public official, are included in the Bill.

Section 158

The Bill amends this section to remove the powers of a police officer to assist a public official as similar powers are provided under the Bill. The Bill amends the section to require the public official to inform the person who is obstructing that the authorised person may ask a police officer for assistance.

Section 159

The Bill omits this section, as the steps a police officer must take when the officer is called to assist a public official because a person is obstructing the public official, are included in the Bill.

FOSSICKING ACT 1994

Section 91(4)(b)(ii)

The Bill amends the section to replace the reference to the *Weapons Act 1990* with a reference to the *Police Powers and Responsibilities Act 2000*, as the power to dispose of weapons is provided under the Bill.

GAMING MACHINE ACT 1991

Section 123, definition “authorised person”

The Bill omits police officer from the definition as powers for age related offences are provided to police officers under the Bill.

Section 124

The Bill amends the section to omit the reference to police officer, as powers for a police officer to seize evidence of an offence are provided under the Bill.

Section 198

The Bill omits the section, as powers to arrest, to search an arrested person and to seize evidence is provided to police officers under the Bill.

Section 201

The Bill omits the section, as the powers for a police officer to require a person’s name and address for the administration or enforcement of a prescribed Act is provided under the Bill. The Bill also provides powers to require details of a persons age in certain circumstances, and arrest powers. The Bill requires a police officer making a name and address requirement to state the officers details and to show identification if not in uniform.

Section 207

The Bill omits the section and inserts a new provision to maintain the effect of subsection (2). The powers provided to a police officer to start a proceeding despite a restrictive provision are included in the Bill for prescribed Acts. The authority to appear before a Magistrates Court for a police officer is provided under the *Police Service Administration Act 1990*.

Subsection (3) is not replaced as nothing in the Bill prevents a police officer commencing a proceeding under the *Justices Act 1886*, instead of by an arrest.

HAWKERS ACT 1984**Section 6, definition “arrest”, “authorised police officer”, “officer in charge of police” and “police establishment”**

The Bill omits these definitions as a consequence to later amendments to the Act.

Section 8

The Bill amends the section to remove the capacity to appoint a police officer as an authorised officer, as police officers will have sufficient powers for enforcing the Act under the Bill.

Section 36

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person’s name and address.

Section 38

The Bill omits this section, as police officers will have sufficient powers under the Bill to search a person or a vehicle for stolen and unlawfully obtained property.

Section 39

The Bill omits this section, as police officers will have arrest powers under the Bill.

Section 40

The Bill omits this section, as police officers will have powers under the Bill to fingerprint etc. persons.

HEALTH RIGHTS COMMISSION ACT 1991**Section 24**

The Bill amends the section to remove the capacity to appoint a police officer as an authorised person, as police officers will have sufficient powers for enforcing the Act under the Bill.

Section 112

The Bill omits the reference to police officer in uniform as police officer will not be appointed as authorised person's.

Section 113

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist authorised persons.

INDUSTRIAL RELATIONS ACT 1999**Section 285(6 and (7)**

The Bill omits these subsections, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 660(4)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to assist the industrial tribunal with the exclusion of a person interrupting etc. the tribunal's proceedings.

INVASION OF PRIVACY ACT 1971**Section 43(2)**

The Bill amends this section to provide general exemption to the offence relating to the use of a listening device, where the use of the device is under a provision of an Act that authorises the use of a listening device. The following other Queensland statutes (after commencement of this Bill) will authorise the use of a listening device—

- *Commission of Inquiry Act 1950*;
- *Crime Commission Act 1997*;
- *Criminal Justice Act 1989*.

Currently, each of these statutes includes a provision that provides an exemption to the offence under section 43, where use of the listening device is authorised under the particular Act. The Bill omits such provisions because of the amendment under this section.

Section 43(3), (4), (4A) and (5)

The Bill omits these subsections, as provisions under the Act relating to approvals by a Judge of the Supreme Court to use a listening device, have been replaced by authorising provisions under other Acts.

Section 45(2)(e)

The Bill amends the section as a consequence to the amendment to section 43.

Section 47

The Bill omits this section as destruction requirements are imposed by other Acts authorising the use of listening devices.

Section 48A(7)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to fingerprint etc. persons.

JURY ACT 1995**Section 71**

The Bill omits this section, as duties of police officers to assist courts is provided under the Bill.

JUSTICES ACT 1886**Section 34**

The Bill omits this section, as duties of police officer to comply with any lawful direction or order of a court is provided under the Bill.

Section 59(2)

The Bill amends this subsection, as provisions authorising the arrest of an offender without warrant under the various Acts are being omitted by the Bill. The new test for issuing an arrest warrant (warrant of the first instance) is that proceeding by way of complaint and summons would be ineffective.

JUVENILE JUSTICE ACT 1992**Sections 10(10) and 194A(5)**

The Bill omits these subsections, as arrest powers for juveniles who are found committing or reasonably suspected of committing an offence are provided under the Bill.

KENO ACT 1996**Section 183**

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist inspectors.

Section 196(5)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to assist inspectors.

Section 198

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person fails to provide their name and address to the inspector, are included in the Bill.

Section 215

The Bill amends this section to remove the powers of a police officer to assist a public official as similar powers are provided under the Bill. The Bill amends the section to require the public official to inform the person who is obstructing that the authorised person may ask a police officer for assistance.

Section 216

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person is obstructing the inspector, are included in the Bill.

LIQUOR ACT 1992**Section 164**

The Bill omits these subsections, as police officers have sufficient powers under the Bill to arrest person's for offences.

Section 184(1)(e)

The Bill omits this paragraph, as police officers have sufficient powers under the Bill to arrest person's for offences.

**LOCAL GOVERNMENT (ABORIGINAL LANDS) ACT
1978****Section 26(2)**

The Bill amends the section by inserting the word "shall" with "must if practicable" to recognise it may not always be possible for a police officer to assist with the removal of a person, due to other operational demands.

Section 67(3)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to arrest person's for offences.

Section 82(7)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to assist authorised officers.

Section 83

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an authorised officer because a person fails to provide their name and address to the officer, are included in the Bill.

Section 87

The Bill amends this section to remove the powers of a police officer to assist an authorised officer as similar powers are provided under the Bill. The Bill amends the section to require the authorised officer to inform the person who is obstructing that the authorised person may ask a police officer for assistance.

Section 88

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an authorised officer because a person is obstructing the officer, are included in the Bill.

**LOCAL GOVERNMENT (CHINA TOWN AND THE
VALLEY MALLS) ACT 1984****Section 41**

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person's name and address, and to arrest a person for an offence.

Section 42

The Bill omits this section, as police officers will have sufficient powers under the Bill to give directions to persons in the malls.

Section 43

The Bill omits this section, as police officer will have sufficient powers under the Bill to arrest a person for an offence.

**LOCAL GOVERNMENT (QUEEN STREET MALL)
ACT 1981****Section 35**

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person's name and address, and to arrest a person for an offence.

Section 36

The Bill omits this section, as police officers will have sufficient powers under the Bill to give directions to persons in the mall.

Section 37

The Bill omits this section, as police officer will have sufficient powers under the Bill to arrest a person for an offence.

LOCAL GOVERNMENT ACT 1993**Section 1073**

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person's name and address, and to arrest a person for an offence.

Section 1074

The Bill omits this section, as police officers will have sufficient powers under the Bill to give directions to persons in malls.

Section 1075

The Bill omits this section, as police officer will have sufficient powers under the Bill to arrest a person for an offence.

LOTTERIES ACT 1997**Section 169**

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist inspectors.

Section 182(5)

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist inspectors.

Section 184

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person fails to provide their name and address to the inspector, are included in the Bill.

Section 201

The Bill amends this section to remove the powers of a police officer to assist an inspector as similar powers are provided under the Bill. The Bill amends the section to require the inspector to inform the person who is obstructing that the authorised person may ask a police officer for assistance.

Section 202

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person is obstructing the inspector, are included in the Bill.

NATURE CONSERVATION ACT 1992**Section 127**

The Bill amends this section to replace the declaration that every police officer is a conservation officer, with a capacity to appoint police officer's as conservation officers, as police officers will generally have sufficient powers under the Bill for enforcing the Act.

Section 130(1)(a)

The Bill amends this section so that it does not apply to a police officer, as identification requirements for police officers exercising powers as public officials is provided under the Bill.

Section 154(1)(d)

The Bill omits the reference to police officers, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 170

The Bill omits this section, as police officers will have sufficient powers under the Bill to fingerprint etc. persons.

PAWNBROKERS ACT 1984**Section 6, definition “arrest”, “authorised police officer”, “officer in charge of police” and “police establishment”**

The Bill omits these definitions as a consequence to later amendments to the Act.

Section 8

The Bill amends the section to remove the capacity to appoint a police officer as an authorised officer, as police officers will have sufficient powers for enforcing the Act under the Bill.

Section 35(6)

The Bill omits this subsection, as police officers has sufficient powers under the Bill to require pawnbrokers to produce documents.

Section 48

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person’s name and address, when enforcing the Act.

Section 50(1)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to enter pawnbrokers to monitor compliance with the Act.

Section 51

The Bill omits this section, as police officers will have sufficient powers under the Bill to obtain a search warrant with respect to stolen or unlawfully obtained property.

Section 53

The Bill omits this section, as police officers will have sufficient powers under the Bill to fingerprint etc. persons.

POLICE SERVICE ADMINISTRATION ACT 1990**Section 2.3(g)**

The Bill amends this section by stating the functions of the Police Service include the provision of assistance that is reasonably sought of officers by public officials.

Section 2.3A—new section “Presence of police officers at fire or chemical incident”

The Bill inserts a new section that replaces section 136 of the *Fire and Rescue Authority Act*.

Section 3.5

The Bill omits this section, as it has been relocated into the Bill.

Section 10.21B—new section “Local laws do not apply in relation to police dogs or horses etc.”

The Bill inserts a new section into the Act, that currently appears as section 10.1 of the *Police Service (Administration) Regulations 1990*. Including the section in the Act was considered necessary to overcome any uncertainty where there is a conflict between subordinate legislation under the Act and any by—laws made, as police officers will sometimes use animals when exercising powers under the Bill.

Section 10.22

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence and to fingerprint etc. persons.

Section 10.24

The Bill omits this section and replaces it with a similar section to consolidate the authorities for a police officer to appear and prosecute matters under statutes such as the *Transport Operations (Road Use Management) Act*, the *Public Safety Preservation Act*, the *Domestic Violence (Family Protection) Act* and the *Juvenile Justice Act*.

PUBLIC SAFETY PRESERVATION ACT 1986**Part 3**

The Bill omits this part, as police officers will have sufficient powers under the Bill to require a person's name and address, arrest a person for an offence, and to take a person's fingerprints etc. An offence for assaulting or obstructing a police officer is also included in the Bill.

Section 16(4) and (5)

The Bill omits subsection (4), as section 44 of the *Acts Interpretation Act* declares an offence to be a summary offence if a provision does not expressly or impliedly make the offence an indictable offence.

The Bill omits subsection (5), as the authority for a police officer to appear and prosecute matters has been consolidated into the *Police Service Administration Act*.

PUBLIC TRUSTEE ACT 1978**Section 117O**

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist inspectors.

RACING AND BETTING ACT 1980

Section 153(6)

The Bill amends the section by omitting the reference to police officer, as police officers will have sufficient powers under the Bill to require a bookmaker to produce records. A court hearing an offence may impose a penalty under the Bill or a higher penalty permitted under the Act.

Section 160

The Bill amend the section by omitting the reference to police officer. The Bill omits subsection (4) as police officers will have sufficient arrest powers under the Bill. The Bill also declares an agent or employee of a club to be a public official for the Bill. Consequently, police officers will be able to assist with the removal of a person under the section.

Section 225(2) and (3)

The Bill omits these subsections, as police officers will have sufficient powers under the Bill to search persons for evidence of an offence against the Act. The Bill inserts a new subsection (2) to maintain the effect of the existing forfeiture authority under subsection (3).

Section 232

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 233

The Bill omits the reference to police officer, as police officers will have sufficient powers under the Bill to require a person's name and address.

Section 235

The Bill omits this section, as police officers will have sufficient powers under the Bill to search persons and vehicles for evidence of an offence against the Act.

Section 243

The Bill omits this section, as police officers will have sufficient powers under the Bill to direct persons to leave a racing venue or a place where a trial is being conducted.

Section 246

The Bill omits this section, as police officers will have sufficient powers under the Bill to take a person's fingerprints etc.

RECREATIONAL AREAS MANAGEMENT ACT 1988**Section 23(1)(a)**

The Bill omits this paragraph, as police officers will have sufficient powers under the Bill to assist authorised officers.

Section 42

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

REGULATORY OFFENCES ACT 1985**Section 8**

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence and to take a person's fingerprints etc.

RESIDENTIAL TENANCIES ACT 1994**Section 278**

The Bill amends this section to insert a footnote to advise readers that the powers for a police officer to give directions to persons causing serious nuisance etc. is not provided under the Bill.

Sections 279, 280, 281, 282 and 285

The Bill omits these sections, as police officers will have sufficient powers under the Bill to enter moveable dwellings, give directions, to require a person's name and address, and to arrest person contravening a direction, if a person causes serious nuisance in a moveable dwelling park.

Schedule 3

The Bill amends the dictionary in schedule 3 to replace the definitions "final nuisance direction" and "initial nuisance direction".

**SECOND-HAND DEALERS AND COLLECTORS ACT
1984****Section 6, definition "arrest", "authorised police officer", "officer in charge of police" and "police establishment"**

The Bill omits these definitions as a consequence to later amendments to the Act.

Section 8

The Bill amends the section to remove the capacity to appoint a police officer as an authorised officer, as police officers will have sufficient powers for enforcing the Act under the Bill.

Sections 8A(1) and 8B

The Bill amends these sections, as police officers will no longer be appointed as authorised officer's.

Section 55

The Bill omits this section, as police officers will have sufficient powers under the Bill to require a person's name and address, when enforcing the Act.

Section 57(1)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to enter pawnbrokers to monitor compliance with the Act.

Section 58

The Bill omits this section, as police officers will have sufficient powers under the Bill to obtain a search warrant with respect to stolen or unlawfully obtained property.

Section 60

The Bill omits this section, as police officers will have sufficient powers under the Bill to fingerprint etc. persons.

SOUTH BANK CORPORATION ACT 1989**Section 37B**

The Bill omits the reference to police officer in this section, as police officers will have sufficient powers under the Bill to give directions to persons causing public nuisance at South Bank Park lands.

Section 37D

The Bill omits the reference to police officer in this section, as police officers will have sufficient powers under the Bill to require a person's name and address.

Section 37F

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

STATE BUILDING PROTECTIVE SECURITY ACT 1983

Section 25

The Bill omits this section, as police officers will have sufficient powers under the Bill with respect to State Buildings.

Section 26

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 27

The Bill omits this section, as police officers will have sufficient powers under the Bill to take a person's fingerprints etc.

STOCK ACT 1915

Section 43(1)(b)

The Bill omits this paragraph, as police officers will have sufficient powers under the Bill to prosecute offences under prescribed Acts despite the existence of a restriction imposed by those Acts.

TOBACCO PRODUCTS (PREVENTION OF SUPPLY TO CHILDREN) ACT 1998

Section 27(3)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to enforce the Act without being an authorised person.

Section 29(1)

The Bill amends this section, as police officers will no longer be authorised person's for the Act.

Section 30

The Bill amends this section, as police officers will no longer be authorised person's for the Act.

TOW TRUCK ACT 1973**Section 4, definition "authorised officer"**

The Bill omits police officer from the definition of authorised officer, as police officers will have sufficient powers under the Bill without being authorised officer's.

Section 4, definition "seized"

The Bill amends this definition, to update the cross reference to the *Transport Operations (Road Use Management) Act*, as a consequence of amendments under this Bill.

TRANSPORT INFRASTRUCTURE ACT 1994**Section 147**

The Bill omits this section, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 164(1)(j)

The Bill omits this paragraph, as police officers will have sufficient powers under the Bill to arrest a person for an offence, without the need to make a regulation.

TRANSPORT OPERATIONS (MARINE SAFETY) ACT 1994

Section 79

The Bill amends this section, so that a delegation of powers to a police officer is subject to the same approval process as an appointment of a police officer as a public official.

Section 160(1)

The Bill amends subsection (1) so that the section does not apply to a police officer, as police officer's have a similar requirement under the Bill when exercising a power as a public official.

Section 173(5)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 182

The Bill amends this section to remove the powers of a police officer to assist a shipping inspector as similar powers are provided under the Bill. The Bill amends the section to require the inspector to inform the person who is obstructing that the inspector may ask a police officer for assistance.

TRANSPORT OPERATIONS (PASSENGER TRANSPORT) ACT 1994

Section 113

The Bill amends subsection (1) so that the section does not apply to a police officer, as police officer's have a similar requirement under the Bill when exercising a power as a public official.

Section 118

The Bill amends subsection (1) so that the section does not apply to a police officer, as police officer's have a similar requirement under the Bill when exercising a power as a public official.

Section 127(5)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 137(6)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Section 141(2)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

TRANSPORT OPERATIONS (ROAD USE MANAGEMENT) ACT 1995

Section 20

The Bill includes a new subsection, as most powers conferred on police officers as authorised officer's under part 3 are provided under the Bill.

Section 25

The Bill amends this section so that the section does not apply to a police officer, as police officer's have a similar requirement under the Bill when exercising a power as a public official.

Section 31

The Bill amends this section by removing the reference to police officers, as police officers will have sufficient powers under the Bill to stop vehicles.

Section 48(1)(c) and (d)

The Bill omits paragraph (c), as police officers will have sufficient powers under the Bill to require a person's name and address who is in control of a stopped vehicle. The Bill amends paragraph (d) to omit the reference to an authorised person who is not a police officer as police officers will not exercise powers under this section.

Chapter 3, Part 4

The Bill omits this part, as police officers will have sufficient powers under the Bill to arrest a person for an offence.

Sections 93, 95, 97, 98, 99, 100(1) to (6B)

The Bill omits these sections, as police officers will have sufficient powers under the Bill with respect to traffic related powers.

Section 110

The Bill replaces the section without the reference to police officers, as police officers will have sufficient powers under the Bill to give directions to the owner or driver of a parked vehicle for the safe and effective regulation of traffic etc.

Section 122

The Bill omits this section, as police officers will have sufficient powers under the *Police Service Administration Act* to appear and represent officers in court.

Section 133

The Bill amends this section, as police officers will have sufficient powers under the Bill to enter garages and inspect records etc.

**VAGRANTS, GAMING AND OTHER OFFENCES ACT
1931****Section 2, definition of “arrest”**

The Bill omits this definition because of other amendments to the Act.

Section 31(4) to (7)

The Bill omits these subsections, as these search powers relating boxing stadiums are considered unnecessary. Also, police officers will have sufficient powers under the Bill to require a person’s name and address.

Section 35

The Bill amend this section, as police officers will have sufficient powers under the Bill to prevent offences and breaches of the peace, and to arrest a person for an offence.

Section 37B(4)

The Bill omits the reference to police officer, as the offence for obstructing a police officer is provided under the Bill.

Section 38, 42, 45, 46, 56, 57

The Bill omits these sections, as police officers will have sufficient powers under the Bill to arrest a person for an offence, require a person’s name and address. Also, police officers will have sufficient powers under the *Police Service Administration Act* to appear and represent officers in court.

WATER RESOURCES ACT 1989

Section 224A(4)

The Bill omits this subsection, as the steps that a police officer may take where a person has failed to give a public official their name and address are provided under the Bill.

WEAPONS ACT 1990

Section 128(1)(c)

The Bill omits paragraph (c), as police officers will have sufficient powers under the Bill to inspect registers of a security organisation. The Bill also clarifies the application of penalties for subsections (1) and (2).

Section 130

The Bill omits this section, as police officers will have sufficient powers under the Bill with respect to the inspection of registers required to be kept under the Act.

Part 5

The Bill omits this part, as police officers will have sufficient powers under the Bill to require a person's name and address, require the production of a weapons licence, search for and seize weapons, obtain search warrants, arrest a person for an offence and to take a person's fingerprints etc.

Section 154

The Bill omits this part, as police officers will have sufficient powers under the Bill to dispose of seized weapons.

WORKPLACE HEALTH AND SAFETY ACT 1995**Section 116**

The Bill omits this section, as police officers will have sufficient powers under the Bill to assist an inspector.

Section 120(7)

The Bill omits this subsection, as police officers will have sufficient powers under the Bill to assist an inspector.

Section 121

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person fails to provide their name and address to the inspector, are included in the Bill.

Section 173

The Bill amends this section to remove the powers of a police officer to assist an inspector as similar powers are provided under the Bill. The Bill amends the section to require the inspector to inform the person who is obstructing that the inspector may ask a police officer for assistance.

Section 174

The Bill omits this section, as the steps a police officer may take when the officer is called to assist an inspector because a person is obstructing the inspector, are included in the Bill.

SCHEDULE 4

DICTIONARY

Schedule 4 contains definitions for terms used in the Bill.