

Queensland



# **POLICE POWERS AND RESPONSIBILITIES ACT 2000**

**Reprinted as in force on 20 June 2002  
(includes amendments up to Act No. 23 of 2002)**

**Replacement Reprint No. 2F revised edition**

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# Information about this reprint

This Act is reprinted as at 20 June 2002. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

Revised edition indicates further material has affected existing material. For example—

- a correction
- a retrospective provision
- other relevant information.

# Queensland



## POLICE POWERS AND RESPONSIBILITIES ACT 2000

### TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
<b>PART 1—GENERAL</b>		
1	Short title . . . . .	23
2	Commencement . . . . .	23
3	Dictionary . . . . .	24
4	Purposes of Act . . . . .	24
5	Compliance with Act by police officers . . . . .	24
6	Act does not affect certain principles . . . . .	25
<b>PART 2—EFFECT OF ACT ON OTHER LAWS</b>		
7	Act does not affect constable's common law powers etc. . . . .	25
8	Act does not affect court's common law discretion to exclude evidence . . . . .	25
9	Inconsistency . . . . .	26
10	Relationship to other Acts . . . . .	26
<b>PART 3—APPOINTMENT AS, AND HELPING, PUBLIC OFFICIALS</b>		
<i>Division 1—Provisions about appointments</i>		
11	Appointment of police officers as public officials for other Acts . . . . .	27
12	Declaration of police officers as public officials . . . . .	27
13	Authorising provisions of other Acts apply subject to ss 11-12 . . . . .	28
<i>Division 2—Helping public officials</i>		
14	Helping public officials exercise powers under other Acts . . . . .	28
15	Steps police officer may take for failure to give name and address etc. to public official . . . . .	29
16	Steps police officer may take for obstruction of public official . . . . .	29

**CHAPTER 2—GENERAL ENFORCEMENT POWERS****PART 1—ENTRY, INQUIRIES AND INSPECTION**

17	General power to enter to make inquiries, investigations or serve documents	30
18	What is a reasonable time to stay on a place. . . . .	31
19	General power to enter to arrest or detain someone or enforce warrant . . . .	31
20	Power to enter etc. for relevant laws . . . . .	32
21	What is a reasonable time for entry etc. for a relevant law . . . . .	33
22	Requirement by a police officer for a relevant law . . . . .	33
23	Power to demand production of licence etc. for weapons. . . . .	34

**PART 2—SEARCHING PERSONS, VEHICLES AND PLACES WITHOUT WARRANT***Division 1—Roadblocks*

24	Roadblocks . . . . .	35
25	Procedure for establishing roadblocks . . . . .	35
26	Record of roadblock to be made . . . . .	36

*Division 2—Searching persons without warrant*

27	Searching persons without warrant . . . . .	36
28	Prescribed circumstances for searching persons without warrant. . . . .	36

*Division 3—Searching vehicles without warrant*

29	Searching vehicles without warrant. . . . .	38
30	Prescribed circumstances for searching vehicle without warrant . . . . .	39

*Division 4—Searching public places without warrant*

31	Searching public places without warrant. . . . .	40
----	--	----

**PART 3—POWER TO REQUIRE NAME, ADDRESS OR AGE***Division 1—Powers relating to name and address*

32	Person may be required to state name and address . . . . .	41
33	Prescribed circumstances for requiring name and address . . . . .	42

*Division 2—Powers relating to age*

34	Power for age-related offences . . . . .	43
35	Unlawful supply of smoking products to children . . . . .	44

**PART 4—DIRECTIONS TO MOVE-ON**

36	Part does not apply to authorised public assemblies . . . . .	45
37	When power applies to behaviour . . . . .	45

38	When power applies to a person's presence . . . . .	46
39	Direction may be given to person . . . . .	46
40	Proposal for notified area . . . . .	47
41	Declaration of notified areas . . . . .	47

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

42	Dealing with breach of the peace . . . . .	48
43	Prevention of riot. . . . .	48
44	Prevention of offences. . . . .	49

**PART 6—POWERS RELATING TO VEHICLES, TRAFFIC AND  
ANIMALS**

*Division 1—Inquiry and investigation powers*

45	Power of inquiry into road use contraventions . . . . .	49
46	Power to require information about identity of drivers of vehicles etc. . . . .	50
47	Additional power of inquiry for relevant vehicle incidents. . . . .	50
48	Power of entry for ss 45-47 . . . . .	51
49	Production of driver licence . . . . .	51
50	Power for regulating traffic . . . . .	52
51	Stopping vehicles for prescribed purposes . . . . .	52
52	Power to require vehicles to be moved . . . . .	53
53	Requirement to remain at a place . . . . .	54
54	Power to inspect vehicles . . . . .	54
55	Power to enter vehicles etc. other than for vehicle inspection . . . . .	55
56	Power to require vehicle inspections. . . . .	56
57	Power to prohibit use of vehicles . . . . .	56
58	Power to prohibit persons driving . . . . .	57
59	Power to enable effective and safe exercise of other powers . . . . .	58

*Division 2—Removal powers*

60	Removal of vehicles and animals from roads and other places. . . . .	59
61	Prescribed circumstances for removing vehicles and animals . . . . .	59
62	Police officer may authorise tow . . . . .	60
63	Steps after seizing vehicle or animal. . . . .	61
64	Recovery of seized vehicle or animal . . . . .	61

*Police Powers and Responsibilities Act 2000*

65	Application of proceeds of sale . . . . .	61
	<b><i>Division 2A—Animal welfare directions</i></b>	
65A	Application of div 2A . . . . .	62
65B	Power to give animal welfare direction . . . . .	63
65C	Requirements for giving animal welfare direction . . . . .	64
65D	Review and appeal for animal welfare direction . . . . .	65
	<b><i>Division 3—Other provisions about animals</i></b>	
66	Power in relation to offences involving animals . . . . .	65
66A	Powers to provide relief to animal . . . . .	67
66B	Power to destroy animal . . . . .	67
67	Offence to interfere with seized animals . . . . .	68
	<b>CHAPTER 3—SEARCH WARRANTS, OBTAINING DOCUMENTS, AND CRIME SCENES</b>	
	<b>PART 1—SEARCHING PLACES WITH WARRANTS</b>	
68	Search warrant application . . . . .	68
69	Issue of search warrant . . . . .	70
70	If justice refuses application for search warrant . . . . .	70
71	Order in search warrants about documents . . . . .	70
72	When search warrant ends . . . . .	70
73	What search warrant must state . . . . .	70
74	Power under search warrants . . . . .	71
75	Copy of search warrant to be given to occupier . . . . .	73
	<b>PART 2—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE</b>	
76	Application of pt 2 . . . . .	73
77	Search to prevent loss of evidence . . . . .	74
78	Post-search approval . . . . .	74
79	Making of post-search approval order . . . . .	74
80	Appeal . . . . .	75
	<b>PART 3—CRIME SCENES</b>	
	<b><i>Division 1—Establishment of crime scenes</i></b>	
81	Gaining access to crime scenes . . . . .	75
82	Initial establishment of crime scene . . . . .	76

*Police Powers and Responsibilities Act 2000*


---

83	Responsibility after establishing crime scene . . . . .	77
84	Deciding limits of crime scene . . . . .	77
85	Restricting access to crime scene . . . . .	77
86	Preserving evidence at crime scene . . . . .	78
	<b><i>Division 2—Crime scene warrants</i></b>	
87	Application for crime scene warrant . . . . .	79
88	Consideration of application and issue of crime scene warrant . . . . .	79
89	What crime scene warrant must state . . . . .	80
90	Duration, extension and review of crime scene warrant . . . . .	80
91	Review of crime scene warrant . . . . .	80
92	Copy of crime scene warrant to be given to occupier . . . . .	81
	<b><i>Division 3—Powers at crime scenes</i></b>	
93	Powers at crime scene . . . . .	81
94	Powers of direction etc. at crime scene . . . . .	82
95	Exercise of crime scene powers in public place . . . . .	83
	<b><i>Division 4—General</i></b>	
96	Alternative accommodation to be provided in some cases . . . . .	83
	<b>PART 4—PRODUCTION NOTICES</b>	
97	Production notices . . . . .	84
98	Issue of production notice . . . . .	85
99	Copy of production notice to be given to cash dealer . . . . .	85
100	Procedural requirements—production notice . . . . .	85
101	Power under production notice . . . . .	85
102	If cash dealer claims documents contain privileged communications . . . . .	86
103	Making of access order . . . . .	86
104	Provisions about access order . . . . .	86
	<b>PART 5—PRODUCTION ORDERS</b>	
105	Application of pt 5 . . . . .	87
106	Production order applications . . . . .	87
107	Making of production orders . . . . .	88
108	What production order must state . . . . .	89
109	Powers under production order . . . . .	89

---

110	Variation of production order . . . . .	90
111	Offence to contravene production order . . . . .	90
112	Effect of compliance with production order . . . . .	90
	<b>PART 6—POWER TO SEIZE EVIDENCE AND ABANDONED AND ILLEGALLY PLACED PROPERTY</b>	
113	Power to seize evidence generally. . . . .	91
114	Power to remove property unlawfully on a place . . . . .	91
	<b>CHAPTER 4—COVERT EVIDENCE GATHERING POWERS</b>	
	<b>PART 1—MONITORING ORDERS</b>	
115	Meaning of “financial institution” for pt 1 . . . . .	92
116	Monitoring order applications. . . . .	92
117	Making of monitoring order . . . . .	93
118	What monitoring order must state. . . . .	93
119	When period stated in monitoring order starts . . . . .	94
120	Offence to contravene monitoring order . . . . .	94
121	Existence and operation of monitoring order not to be disclosed . . . . .	94
	<b>PART 2—SURVEILLANCE POWERS</b>	
	<i>Division 1—Preliminary</i>	
122	Certain Acts do not apply to this part . . . . .	96
123	Certain acts not prevented by divs 2–3 . . . . .	96
	<i>Division 2—Use of surveillance devices under warrant of Supreme Court judge</i>	
124	Surveillance warrant applications . . . . .	96
125	Who may be present at consideration of application for surveillance warrant . . . . .	97
126	Consideration of application for surveillance warrant . . . . .	98
127	Issue of surveillance warrant. . . . .	98
128	What surveillance warrant must state . . . . .	99
129	Report on use of surveillance devices . . . . .	100
130	Duration and extension of surveillance warrants . . . . .	100
131	Power under surveillance warrants . . . . .	101
	<i>Division 3—Emergency use of surveillance devices</i>	
132	Emergency use of surveillance devices. . . . .	101



*Police Powers and Responsibilities Act 2000*


---

133	Application for approval after emergency use of surveillance device. . . . .	102
134	Who may be present at consideration of application . . . . .	102
135	Consideration of application . . . . .	103
136	Judge may approve emergency use of powers . . . . .	103
137	Use of evidence and information. . . . .	103
	<b><i>Division 4—Use of surveillance devices under magistrate’s warrant</i></b>	
138	Surveillance warrant applications . . . . .	104
139	Who may be present at consideration of application . . . . .	105
140	Consideration of application . . . . .	105
141	Issue of surveillance warrant. . . . .	106
142	What warrant must state . . . . .	106
143	Duration and extension of surveillance warrants . . . . .	106
144	Powers under surveillance warrants . . . . .	107
	<b><i>Division 5—Other provisions about surveillance devices</i></b>	
145	Restriction about records and access to surveillance warrant applications etc. . . . .	107
146	Disclosure of information obtained using surveillance warrant . . . . .	108
147	Destruction of records . . . . .	109
	<b><i>Division 6—Covert searches</i></b>	
148	Covert search warrant applications . . . . .	110
149	Who may be present at consideration of application . . . . .	110
150	Consideration of application . . . . .	111
151	Issue of covert search warrant. . . . .	111
152	What covert search warrant must state . . . . .	111
153	Duration and extension of covert search warrant . . . . .	112
154	Restriction about records and access to covert search warrant applications . . . . .	112
155	Powers under covert search warrant . . . . .	113
156	Report on covert search. . . . .	113
	<b><i>Division 7—Public interest monitor</i></b>	
157	Public interest monitor . . . . .	114
158	Acting monitor . . . . .	114
159	Monitor’s functions . . . . .	115
160	Monitor’s annual report. . . . .	115

---

161	Secrecy . . . . .	116
162	Protection from liability . . . . .	116
<b>CHAPTER 5—CONTROLLED OPERATIONS AND CONTROLLED ACTIVITIES</b>		
<b>PART 1—PRELIMINARY</b>		
163	Object of ch 5 . . . . .	117
164	Investigation of minor matters not affected. . . . .	117
165	Lawfulness of particular actions . . . . .	118
166	Controlled operations and activities generally . . . . .	119
<b>PART 2—CONTROLLED OPERATIONS</b>		
<i>Division 1—Controlled operations committee</i>		
167	Establishment of controlled operations committee . . . . .	119
168	Independent member . . . . .	119
169	Acting independent member . . . . .	119
<i>Division 2—Committee’s functions and business</i>		
170	Committee’s functions. . . . .	120
171	Committee business. . . . .	120
172	Committee’s recommendations . . . . .	120
172A	Committee’s annual report . . . . .	121
<i>Division 3—Approval of controlled operations</i>		
173	Application for approval . . . . .	121
174	Application must be referred to committee. . . . .	123
175	Certain CMC controlled operations . . . . .	123
176	Procedure in urgent circumstances other than if s 175 applies . . . . .	123
177	Consideration and approval of application . . . . .	124
178	What approval must state . . . . .	125
179	Effect of approval . . . . .	125
<i>Division 4—Variation of approval for controlled operation</i>		
180	Application to vary approval . . . . .	125
181	Application must be referred to committee. . . . .	126
182	Certain CMC controlled operations . . . . .	127
183	Procedure in urgent circumstances other than if s 182 applies . . . . .	127
184	When approval may be given . . . . .	127

---

185	How approval may be varied . . . . .	127
	<i>Division 5—Special provisions about creating identity documents</i>	
186	Request for issue of document to conceal identity—general . . . . .	128
187	Request for issue of document to conceal identity—CMC . . . . .	128
188	Giving effect to authority under s 186 or 187 . . . . .	128
189	Special provisions about concealing identities of covert operatives . . . . .	129
	<b>PART 3—CONTROLLED ACTIVITIES</b>	
190	Authorised controlled activities . . . . .	130
191	Authorisation of controlled activities by CMC . . . . .	131
	<b>PART 4—MISCELLANEOUS</b>	
192	Disclosure of information . . . . .	131
193	Protection from liability . . . . .	132
194	Admissibility of evidence obtained through controlled operation and activities . . . . .	134
195	Cross-jurisdictional protection . . . . .	134
196	Evidentiary provision . . . . .	134
197	Powers not to be delegated . . . . .	135
	<b>CHAPTER 6—ARREST AND CUSTODY POWERS</b>	
	<b>PART 1—POWERS RELATING TO ARREST AND TAKING PEOPLE INTO CUSTODY</b>	
	<i>Division 1—Arrest without warrant</i>	
198	Arrest without warrant . . . . .	135
199	Arrest of escapees etc. . . . .	136
200	Arrest of person granted bail . . . . .	137
201	Arrest of person given notice to appear or summons . . . . .	138
	<i>Division 2—Arrest under warrant</i>	
202	Arrest under warrant . . . . .	138
203	Arrest warrant application . . . . .	139
204	Issue of arrest warrant . . . . .	139
205	What arrest warrant must state . . . . .	139
	<i>Division 3—Other provisions about arrest</i>	
206	Power of arrest for offences committed outside the State . . . . .	140
207	Police officer to consider alternatives to proceeding against child . . . . .	140

---

<b><i>Division 4—Discontinuing arrest</i></b>		
208	When arrest may be discontinued—general rule . . . . .	141
209	Additional case when arrest of adult may be discontinued . . . . .	142
210	Additional case when arrest for being drunk in a public place may be discontinued . . . . .	142
211	Additional case when arrest for minor drugs offence may be discontinued .	144
212	Additional case when arrest of child may be discontinued . . . . .	145
213	Limit on re-arrest. . . . .	146
<b><i>Division 5—Alternative to arrest</i></b>		
214	Notice to appear may be issued for offence . . . . .	146
215	Notice to appear form . . . . .	146
216	Notice to appear must be filed in court without cost to person . . . . .	147
217	General particulars only are required on a notice to appear . . . . .	147
218	Particulars of notice to appear offence must be given in the proceeding . . .	148
219	Notice to appear equivalent to a complaint and summons . . . . .	148
220	Court may order immediate arrest of person who fails to appear . . . . .	148
221	Court must strike out notice to appear if service insufficient . . . . .	149
<b><i>Division 6—Duties after arrest</i></b>		
222	Information to be given to arrested person . . . . .	149
223	Parent and chief executive must be advised of arrest of child. . . . .	149
224	Duty of police officer after arrest etc. of person . . . . .	150
225	Duty of police officer receiving custody of person arrested for offence. . . .	151
226	Duty of officer receiving custody of person arrested under warrant other than for offence . . . . .	152
<b>CHAPTER 7—POWERS AND RESPONSIBILITIES RELATING TO INVESTIGATIONS AND QUESTIONING FOR INDICTABLE OFFENCES</b>		
<b>PART 1—PRELIMINARY</b>		
<b><i>Division 1—Application of chapter</i></b>		
227	Chapter does not apply to covert operations . . . . .	153
<b><i>Division 2—Right to remain silent not affected</i></b>		
228	Right to remain silent not affected . . . . .	153

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

229	Application of pt 2 . . . . .	153
-----	-------------------------------	-----

*Division 2—Removal of persons from lawful custody*

230	Application for removal of person from lawful custody . . . . .	154
231	Chief executive must be advised of application for removal order . . . . .	155
232	When magistrate may make removal order . . . . .	155
233	What removal order must state . . . . .	155

*Division 3—Detention for investigation or questioning*

234	Initial period of detention for investigation or questioning . . . . .	156
235	What is a reasonable time to detain a person for questioning or investigation . . . . .	156
236	Application for extension of detention period . . . . .	157
237	When detention period may be extended . . . . .	158
238	What order must state . . . . .	159
239	Use of time out during extended detention period . . . . .	159
240	Effect of unforeseen delays on detention . . . . .	159
241	Effect of another arrest on questioning period . . . . .	160
242	When does detention period start for offenders arrested outside Queensland . . . . .	160

*Division 4—Other provisions about investigations and questioning*

243	When person detained may be taken to a place other than a police establishment . . . . .	161
244	Persons helping in covert investigations not under arrest . . . . .	161

**PART 3—SAFEGUARDS ENSURING RIGHTS OF AND FAIRNESS TO PERSONS QUESTIONED FOR INDICTABLE OFFENCES***Division 1—Preliminary*

245	Part applies only to indictable offences . . . . .	162
246	When does this part apply to a person . . . . .	162
247	Questioning generally . . . . .	162
248	Questioning of person after proceeding started . . . . .	162

*Division 2—Other persons may be present during questioning*

249	Right to communicate with friend, relative or lawyer . . . . .	163
250	Speaking to and presence of friend, relative or lawyer . . . . .	164

---

<b><i>Division 3—Special requirements for questioning particular persons</i></b>		
251	Questioning of aboriginal people and Torres Strait islanders . . . . .	164
252	Questioning of children . . . . .	165
253	Questioning of persons with impaired capacity . . . . .	166
254	Questioning of intoxicated persons . . . . .	166
<b><i>Division 4—Excluding persons unreasonably interfering with questioning</i></b>		
255	What is “unreasonable interference” for divs 2–3 . . . . .	166
256	Requirements before excluding persons unreasonably interfering with questioning . . . . .	167
257	If police officer excludes person from questioning . . . . .	167
258	Cautioning of persons . . . . .	168
259	Provision of information relating to a relevant person . . . . .	168
260	Right to interpreter . . . . .	169
261	Right of visiting foreign national to communicate with embassy etc. . . . .	169
262	Rights of a person to be electronically recorded . . . . .	170
<b><i>Division 5—Recording of questioning</i></b>		
263	Recording of questioning etc. . . . .	170
264	Requirements for written record of confession or admission . . . . .	171
265	Access to electronic recordings of questioning etc. . . . .	171
266	Admissibility of records of questioning etc. . . . .	172
<b><i>Division 6—General</i></b>		
267	List of support persons and interpreters . . . . .	172
268	When sections 249-253, 259 and 261 do not apply . . . . .	173
<b>CHAPTER 8—POWERS IN RELATION TO PERSONS IN CUSTODY</b>		
<b>PART 1—SEARCH OF PERSONS IN CUSTODY</b>		
269	Search of persons in custody . . . . .	173
<b>PART 2—GATHERING INFORMATION FOR IDENTIFYING SUSPECTS</b>		
<b><i>Division 1—Taking identifying particulars</i></b>		
270	Taking identifying particulars of person in custody . . . . .	175
271	Taking identifying particulars—proceedings started by notice to appear or complaint and summons . . . . .	175

*Police Powers and Responsibilities Act 2000*


---

272	Identifying particulars notice may be given . . . . .	176
273	Court may order taking of identifying particulars . . . . .	176
274	Destruction of identifying particulars . . . . .	177
<b><i>Division 2—Identifying suspects</i></b>		
275	Identification of suspects . . . . .	178
<b>PART 3—MEDICAL AND DENTAL PROCEDURES</b>		
<b><i>Division 1—Preliminary</i></b>		
276	Application of pt 3 . . . . .	179
277	Consent or approval needed for performing medical or dental procedure under this part . . . . .	179
278	Right to interpreter . . . . .	179
279	Person must be told of need for consent or approval . . . . .	179
280	Speaking to and presence of friend, relative or lawyer . . . . .	180
281	Special consent requirement for children and persons with impaired capacity . . . . .	181
282	Absence of independent person not to affect lawfulness of custody etc. . . . .	181
283	Requirements before excluding persons unreasonably interfering with performance of medical or dental procedure. . . . .	182
284	If police officer excludes person from performance of medical or dental procedure . . . . .	182
<b><i>Division 2—Performing medical or dental procedures with consent</i></b>		
285	Consent to be recorded . . . . .	183
286	Doctor’s powers. . . . .	183
287	Dentist’s powers . . . . .	184
<b><i>Division 3—Performing medical or dental procedures without consent</i></b>		
288	Application of div 3. . . . .	184
289	Application for order for performance of medical or dental procedure . . . . .	185
290	Making of order. . . . .	185
291	Copy of order to be given to person . . . . .	185
292	Performing medical procedures without consent . . . . .	186
293	Performing dental procedures without consent. . . . .	186
<b><i>Division 4—Miscellaneous</i></b>		
294	Power to analyse samples . . . . .	187
295	Samples and test results to be given to person . . . . .	187

**PART 4—DNA PROCEDURES*****Division 1—Application and purpose of pt 4***

296	Primary purpose of pt 4 . . . . .	188
-----	-----------------------------------	-----

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

297	Who may take DNA samples . . . . .	189
298	Where DNA samples may be taken. . . . .	189
299	How DNA samples may be taken . . . . .	190

***Division 3—Taking DNA samples with consent***

300	Informed consent needed for taking DNA sample . . . . .	190
301	Special requirements for obtaining consent from persons with impaired capacity . . . . .	190
302	Special requirement for obtaining consent from children . . . . .	191
303	Explanation to be given before asking for consent . . . . .	191
304	Explanation and consent to be recorded . . . . .	192

***Division 4—Taking DNA samples without consent***

305	Purpose of div 4. . . . .	192
306	Special requirement if person with impaired capacity . . . . .	192
307	Taking DNA sample if proceedings started against adult by arrest, notice to appear or complaint and summons . . . . .	193
308	DNA sample notice may be given . . . . .	193
309	Taking DNA sample from adult before court . . . . .	194
310	Taking DNA sample after conviction of adult. . . . .	195
311	Taking DNA sample from prisoner . . . . .	195
312	Taking DNA sample from child . . . . .	196

***Division 5—General requirements about taking DNA samples***

313	Protecting the dignity of persons while taking DNA samples . . . . .	197
314	Help with DNA sampling . . . . .	197

***Division 6—General***

315	Power to analyse etc. DNA samples . . . . .	198
316	When DNA samples and results must be destroyed . . . . .	198
317	DNA database . . . . .	199
318	Restricted use of DNA samples. . . . .	200



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

*Division 1—Preliminary*

319	Purpose of pt 5 . . . . .	200
320	Application of pt 5 . . . . .	201
321	Certain Acts do not apply to this part . . . . .	202

*Division 2—Taking blood and urine samples*

322	Application for order for blood and urine testing of person . . . . .	202
323	Notice to be given of application for disease test order for child . . . . .	202
324	Disease test order. . . . .	203
325	What disease test order must state. . . . .	203
326	Appeal against disease test order. . . . .	204
327	Taking blood and urine samples . . . . .	204

*Division 3—General*

328	Analysis of blood and urine samples. . . . .	205
329	Restriction on disclosure of results of analysis . . . . .	205
330	Certain evidence inadmissible. . . . .	206

**CHAPTER 9—OTHER POWERS**

**PART 1—DIRECTIONS IN STATE BUILDINGS**

*Division 1—Screening of entrants to state buildings*

331	Power to require reasons for entry to state building . . . . .	207
332	Use of electronic screening devices in state buildings . . . . .	207
333	Police officer may ask entrant to remove outer garment etc. . . . .	207
334	Direction by police officer to leave building. . . . .	208
335	Power to search person or vehicle without warrant not affected. . . . .	208

*Division 2—Miscellaneous powers for div 1*

336	Seizure of proscribed things . . . . .	209
337	Refusal of entry to and removal from building . . . . .	209

**PART 2—PRESERVING SAFETY FOR SPECIAL EVENTS**

*Division 1—Preliminary*

338	Application of pt 2. . . . .	209
339	Purpose of pt 2. . . . .	209

---

<b><i>Division 2—Declaration of special events</i></b>		
340	Declaration of special event . . . . .	210
341	Requirements for declaring special events . . . . .	210
342	Notice of declaration to be given. . . . .	211
<b><i>Division 3—Statutory conditions relating to entry to special event sites</i></b>		
343	Statutory conditions of entry . . . . .	211
344	Statutory condition about restricted areas . . . . .	211
<b><i>Division 4—Appointment of authorised persons</i></b>		
345	Appointment of authorised persons. . . . .	211
346	Identity card. . . . .	212
347	Production or display of authorised person’s identity card . . . . .	213
<b><i>Division 5—Powers for special event sites</i></b>		
348	Power to require reasons for entry to special event site . . . . .	213
349	Use of electronic screening devices at special event site . . . . .	213
350	Police officer or authorised person may ask entrant to remove outer garment etc. . . . .	214
351	Frisk search of persons . . . . .	215
352	Refusal of entry to and removal from site . . . . .	215
<b><i>Division 6—Offences</i></b>		
353	Unauthorised entry to a special event site . . . . .	215
354	Unauthorised entry to a restricted area . . . . .	216
355	Interference with a special event. . . . .	216
356	Prohibited items. . . . .	216
357	Assault etc. of authorised person. . . . .	216
<b>PART 3—POWERS RELATING TO NOISE</b>		
358	Application of pt 3. . . . .	217
359	Complaint about noise. . . . .	217
360	Powers of police officers on investigation of complaint . . . . .	218
361	Compliance with noise abatement direction . . . . .	218
362	Additional powers of police officers on later investigation. . . . .	219
363	Offence to interfere with locked etc. property. . . . .	219
364	Recovery of seized property . . . . .	220
365	Recovery of costs of seizure etc. . . . .	220

366	General powers and role of certain police officers . . . . .	220
367	Power to require answers to questions . . . . .	220
<b>PART 4—POWERS RELATING TO NUISANCE IN MOVEABLE DWELLING PARKS</b>		
368	Behaviour in moveable dwelling park causing serious nuisance . . . . .	221
369	Power to enter moveable dwellings. . . . .	221
370	Initial direction about serious nuisance. . . . .	221
371	Direction to leave park . . . . .	222
<b>PART 5—MISCELLANEOUS POWERS</b>		
371A	Power to seize potentially harmful things . . . . .	222
372	Entry of place to prevent offence, injury or domestic violence. . . . .	223
373	Police officer may use assistance in exercising certain powers. . . . .	224
374	Protection for assistants from liability. . . . .	225
375	Power to use force—exercise of certain powers . . . . .	225
376	Power to use force against individuals . . . . .	226
377	Power to use force against individuals in critical situations . . . . .	226
<b>CHAPTER 10—OTHER STANDARD SAFEGUARDS</b>		
<b>PART 1—PRELIMINARY</b>		
378	Chapter does not apply to covert operations . . . . .	227
<b>PART 2—SAFEGUARDS FOR THINGS SEIZED</b>		
<i>Division 1—Application of pt 2</i>		
379	Application of pt 2. . . . .	227
<i>Division 2—General safeguards</i>		
380	Receipt for seized property . . . . .	228
381	Right to inspect seized documents . . . . .	228
<b>PART 3—OTHER SAFEGUARDS</b>		
<i>Division 1—General provisions about searches of persons and vehicles</i>		
382	General provision about searches of persons . . . . .	229
383	Taking a person to another place for search . . . . .	230
384	Limitation on period of detention for search. . . . .	230
385	General provision about searches of vehicles . . . . .	230
386	Dealing with persons who obstruct search of person or vehicle. . . . .	231

---

<b><i>Division 2—Searches involving removal of clothing</i></b>	
387	Removal of clothing for search . . . . . 232
388	Protecting the dignity of persons during search . . . . . 232
389	Special requirements for searching children and persons with impaired capacity . . . . . 233
390	If video cameras monitor place where person is searched . . . . . 233
<b><i>Division 3—Other provisions</i></b>	
391	Safeguards for directions or requirements . . . . . 234
392	Use of force likely to cause damage to enter places . . . . . 234
393	Police officer to give notice of damage . . . . . 235
394	Supplying police officer’s details . . . . . 235
395	Record of execution of warrant or order . . . . . 237
<b>CHAPTER 11—ADMINISTRATION</b>	
<b>PART 1—WATCH-HOUSES</b>	
396	Control of persons in watch-houses . . . . . 237
397	Transfer of persons in watch-houses . . . . . 237
<b>PART 2—REGISTERS</b>	
<b><i>Division 1—Application and purpose</i></b>	
398	Application of pt 2 . . . . . 238
399	Purpose and explanation of pt 2 . . . . . 238
<b><i>Division 2—Register of surveillance and covert search warrants</i></b>	
400	Application of div 2 . . . . . 239
401	Particular Acts do not apply to this division . . . . . 239
402	Register of covert acts . . . . . 239
403	Information to be recorded in register . . . . . 240
404	Who must record information in register . . . . . 240
405	Which register to be used . . . . . 241
406	Who may inspect police service register . . . . . 241
408	Who may inspect CMC’s register . . . . . 241
409	Other authorised inspections . . . . . 242
410	General restrictions on inspections by monitor . . . . . 242
<b><i>Division 3—Enforcement registers</i></b>	
411	Application of div 3 . . . . . 242

*Police Powers and Responsibilities Act 2000*


---

412	Register of enforcement acts . . . . .	243
413	Who must record information in register . . . . .	243
414	Which register to be used . . . . .	244
415	Persons to be given copy of information in register . . . . .	244
416	Restriction on disclosure of certain information . . . . .	245
	<b><i>Division 4—Provisions about covert acts and enforcement acts done for the NCA</i></b>	
417	Application of div 4. . . . .	245
418	Information to be given to NCA . . . . .	246
	<b><i>Division 5—General provisions</i></b>	
419	Correcting registers . . . . .	246
	<b>PART 3—DEALING WITH THINGS IN THE POSSESSION OF POLICE SERVICE</b>	
	<b><i>Division 1—Preliminary</i></b>	
420	Application of pt 3. . . . .	247
421	Object of pt 3. . . . .	247
422	Responsibilities of police officer taking possession of relevant thing. . . . .	248
	<b><i>Division 2—Return of seized things</i></b>	
423	Return of seized things . . . . .	249
424	Application by owner etc. for return of relevant things. . . . .	250
425	Application by police officer for order if ownership dispute . . . . .	251
426	Application for order in relation to seized things . . . . .	251
427	Orders issuer may make in relation to seized thing. . . . .	252
428	Disposal of seized things at end of proceeding. . . . .	253
429	Commissioner to decide way of destruction or disposal. . . . .	254
	<b><i>Division 3—Dealing with dangerous drugs etc.</i></b>	
430	Application of div 3. . . . .	254
431	Destruction of drug evidence soon after seizure . . . . .	254
432	Destruction of dangerous drug after notice . . . . .	255
433	Destruction of things used in the administration of a dangerous drug . . . . .	257
	<b><i>Division 4—Dealing with weapons</i></b>	
434	Disposal of weapons . . . . .	257
435	What is the appointed day for disposal of weapons under s 434 . . . . .	258

---

<b><i>Division 5—Dealing with other things</i></b>		
436	Perishable things . . . . .	258
<b><i>Division 6—Forfeiture</i></b>		
437	Application of div 6 . . . . .	259
438	Order for forfeiture of particular relevant things . . . . .	259
439	Order for forfeiture of relevant things connected with offences . . . . .	260
<b><i>Division 7—Dealing with forfeited things</i></b>		
440	Application of div 7 . . . . .	261
441	Dealing with forfeited things . . . . .	261
<b><i>Division 8—Arrangements about relevant things</i></b>		
442	Ministerial arrangements for transmission and return of seized things . . . . .	262
443	Commissioner may make arrangements . . . . .	263
<b>CHAPTER 12—GENERAL</b>		
<b>PART 1—OFFENCES</b>		
444	Offence to assault or obstruct police officer . . . . .	263
445	Offence to contravene direction or requirement of police officer . . . . .	264
<b>PART 2—OTHER GENERAL PROVISIONS</b>		
446	Performance of duty . . . . .	265
447	Assistance at fire or chemical incidents . . . . .	265
448	Assistance to courts, etc . . . . .	265
449	Service and enforcement of process . . . . .	266
450	Provisions restricting starting of proceeding . . . . .	266
451	Obtaining warrants, orders and authorities, etc., by telephone or similar facility . . . . .	266
452	Steps after issue of prescribed authority . . . . .	267
453	Presumption about exercise of powers under prescribed authority . . . . .	267
454	Protection of methodologies . . . . .	268
455	Compensation . . . . .	269
456	Availability of Act . . . . .	269
457	Approved forms . . . . .	270
458	Review of Act . . . . .	270
459	Regulation-making power . . . . .	270

---

**CHAPTER 13—REPEALS, TRANSITIONAL PROVISIONS AND  
AMENDMENTS**

**PART 1—ACTS REPEALED AND AMENDED**

460	Acts repealed . . . . .	270
-----	-------------------------	-----

**PART 2—TRANSITIONAL PROVISIONS**

*Division 2—Transitional provisions commencing at a later date*

466	Definitions for div 2. . . . .	271
468	Transitional provision about warrants, orders and notices . . . . .	271
469	Transitional provision about noise abatement. . . . .	271
470	Transitional provision about nuisance in moveable dwelling parks . . . . .	272
471	Transitional provisions about registers of covert and enforcement acts . . . . .	272
472	Transitional provision about entries in registers . . . . .	272
473	Transitional provision about public interest monitor . . . . .	272

	<b>SCHEDULE 1</b> . . . . .	274
--	-----------------------------	-----

**ACTS NOT AFFECTED BY THIS ACT**

	<b>SCHEDULE 4</b> . . . . .	275
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**DICTIONARY**

**ENDNOTES**

1	Index to endnotes. . . . .	300
2	Date to which amendments incorporated. . . . .	300
3	Key . . . . .	301
4	Table of reprints. . . . .	301
5	Tables in earlier reprints. . . . .	301
6	List of legislation . . . . .	301
7	List of annotations . . . . .	304
8	List of forms. . . . .	328
9	Provisions that have not commenced and are not incorporated into reprint . . . . .	332





# **POLICE POWERS AND RESPONSIBILITIES ACT 2000**

[as amended by all amendments that commenced on or before 20 June 2002]

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

### **CHAPTER 1—PRELIMINARY**

#### **PART 1—GENERAL**

##### **1 Short title**

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

##### **2 Commencement**

(1) This Act, other than sections 211, 373, 374, 375, 376 and 377 and schedules 2 and 3,<sup>1</sup> commences on a day to be fixed by proclamation or 1 July 2000, whichever happens first.

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

(3) Section 211 and schedule 3 commence on a day to be fixed by proclamation.

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<sup>1</sup> Section 211 (Additional case when arrest for minor drugs offence may be discontinued). Sections 373, 374, 375, 376 and 377 are transitional provisions and have expired. Schedules 2 (Acts amended on assent) and 3 (Acts amended after assent) were omitted in Reprint 1 (see RA section 40).

### **3 Dictionary**

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

### **4 Purposes of Act**

The purposes of this Act are as follows—

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

### **5 Compliance with Act by police officers**

(1) It is Parliament's intention that police officers should comply with this Act in exercising powers and performing responsibilities under it.

(2) For ensuring compliance with Parliament's intention, a police officer who contravenes this Act may be dealt with as provided by law.

*Examples—*

1. A minor contravention, for example, forgetting to make an entry in a register, may amount to a breach of discipline under the *Police Service Administration Act 1990* for which a police officer may be dealt with under that Act, including by correction by way of counselling.
2. A contravention, for example, a police officer maliciously strip-searching a suspect in a public place, may amount to misconduct under the *Police Service Administration Act 1990*.
3. A contravention, for example, a police officer improperly disclosing to a criminal information obtained through the use of a listening device, may amount to official misconduct under the *Crime and Misconduct Act 2001*.

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

## **6 Act does not affect certain principles**

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

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

## **PART 2—EFFECT OF ACT ON OTHER LAWS**

### **7 Act does not affect constable's common law powers etc.**

Unless this Act otherwise provides, this Act does not affect—

- (a) the powers, obligations and liabilities a constable has at common law; or
- (b) the powers a police officer may lawfully exercise as an individual, including for example, powers for protecting property.

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

This Act does not affect the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion.

## **9 Inconsistency**

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

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

(3) To the extent of any inconsistency, this Act prevails over the provision, whether enacted before or after this Act, unless the provision makes express provision to the contrary.

(4) This section applies subject to section 10.

## **10 Relationship to other Acts**

(1) This Act does not affect the powers or responsibilities a police officer has under an Act included in schedule 1.

*Example—*

A police officer who has entered a place under section 372 may, under the *Mental Health Act 2000*, section 34, take a person to an authorised mental health service under that Act if the circumstances mentioned in section 33 of that Act apply.<sup>2</sup>

(2) However, subsection (1) does not prevent a police officer from exercising a power or performing a responsibility under this Act for giving effect to an Act included in schedule 1.

*Example—*

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

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

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<sup>2</sup> The *Mental Health Act 2000*, sections 33 and 34, are in chapter 2 (Involuntary assessment), part 3 (Procedures leading to involuntary assessment), division 3 (Emergency examination orders), subdivision 1 (Emergency examination orders by police officers and ambulance officers)

## **PART 3—APPOINTMENT AS, AND HELPING, PUBLIC OFFICIALS**

### *Division 1—Provisions about appointments*

#### **11 Appointment of police officers as public officials for other Acts**

(1) This section applies if—

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

(2) Despite the authorising law, the appointer may appoint a police officer as a public official for the authorising law only with the commissioner’s written approval to the proposed appointment.

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

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

(4) A police officer may exercise powers as a public official under an authorising law only if and to the extent the commissioner approves the police officer’s appointment under this section.

(5) If, under the authorising law, the commissioner is the appointer for police officers, this section does not prevent the commissioner from appointing a police officer as a public official under the authorising law.

#### **12 Declaration of police officers as public officials**

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

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

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

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

*Example for subsection (3)—*

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

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

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

## *Division 2—Helping public officials*

### **14 Helping public officials exercise powers under other Acts**

(1) This section applies if an Act (“**authorising law**”) authorises a public official to perform functions in relation to a person or thing.

(2) However, this section only applies to a police officer who is not a public official for the authorising law.

(3) If a public official asks, a police officer may help the public official perform the public official’s functions under the authorising law.

(4) Before the police officer helps the public official, the public official must explain to the police officer the powers the public official has under the authorising law.

(5) If the public official is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied giving the help in the public official’s absence is reasonably necessary in the particular circumstances.

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

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

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

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

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

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

- (a) the person's name and address;
- (b) the person's date of birth.<sup>4</sup>

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

### **16 Steps police officer may take for obstruction of public official**

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

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

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

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

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

4 Under section 445 (Offence to contravene direction or requirement of police officer) it is an offence to contravene a direction or requirement of a police officer.

## CHAPTER 2—GENERAL ENFORCEMENT POWERS

### PART 1—ENTRY, INQUIRIES AND INSPECTION

#### **17 General power to enter to make inquiries, investigations or serve documents**

(1) The purpose of this section is to ensure a police officer performing a function of the police service may enter and stay on a place in circumstances that may otherwise be trespass.

(2) However, this section does not authorise entry to a private place if a provision of this Act or another Act provides for entry in the particular circumstances only under a search warrant or other stated authority.<sup>5</sup>

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

*Examples for subsection (3)—*

1. The entry may be to a public area of a place such as a hotel or a nightclub for finding out if an offence is being or has been committed on the place.
2. The entry may be for finding out if a person reasonably suspected of being involved in the commission of an offence is at a place.
3. The entry may be for finding out if a missing person is in the place.

(4) Also, a police officer may enter and stay for a reasonable time on a place to serve a document.

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

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

*Example for subsection (6)—*

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

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



**18 What is a reasonable time to stay on a place**

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

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

- (a) ask questions of anyone present at the place;
- (b) make any reasonable investigation or observation.<sup>6</sup>

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

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

(1) A police officer may enter a place<sup>7</sup> and stay for a reasonable time on the place—

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

(2) If the place contains a dwelling, a police officer may enter the dwelling without the consent of the occupier to arrest or detain a person only if the police officer reasonably suspects the person to be arrested or detained is at the dwelling.

(3) If the place is a vehicle, a police officer may stop and detain the vehicle and enter it to arrest or detain the person.

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

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<sup>6</sup> For the functions of the police service, see the *Police Service Administration Act 1990*, section 2.3 (Functions of service).

<sup>7</sup> See section 392 (Use of force likely to cause damage to enter places) for relevant safeguards.

(5) In this section—

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

## **20 Power to enter etc. for relevant laws**

(1) For ensuring compliance with a relevant law, a police officer may do any of the following—

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

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

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

- (a) give the person from whom it is taken a receipt for the item as if it had been seized under this Act; and
- (b) return the item to the place from which it was taken—
  - (i) as soon as practicable, but no later than the end of the next day the place is open for business; or
  - (ii) if a later time is agreed in writing between the police officer and the person from whom it was taken, no later than the later time.

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

- (a) the *Drugs Misuse Act 1986*, section 43D;<sup>8</sup> or
- (b) the Road Use Management Act, section 133;<sup>9</sup>

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

(5) In this section—

“inspect” includes examine and test.

“prescribed item” means—

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

## **21 What is a reasonable time for entry etc. for a relevant law**

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

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

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

## **22 Requirement by a police officer for a relevant law**

(1) This section applies if a police officer requires a licence holder or person apparently in possession or in charge of a place used for a purpose

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

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

under a licence under a relevant law to give the police officer reasonable help.

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

*Examples for subsection (2)—*

1. It may be reasonable for a person who can operate a computer to help a police officer to gain access to a document on the computer so it can be inspected.
2. It may be reasonable for a person to open a safe or strong room where prescribed items are kept.

### **23 Power to demand production of licence etc. for weapons**

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

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

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

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

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

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

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

## **PART 2—SEARCHING PERSONS, VEHICLES AND PLACES WITHOUT WARRANT**

### *Division 1—Roadblocks*

#### **24 Roadblocks**

(1) A police officer may establish a roadblock if the police officer reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle who—

- (a) has committed a seven year imprisonment offence; or
- (b) may be unlawfully depriving someone else of liberty;<sup>10</sup> or
- (c) is being unlawfully deprived of liberty; or
- (d) has escaped from lawful custody; or
- (e) may be endangering the life or safety of someone else.

(2) In deciding whether to establish a roadblock, the police officer must have regard to the following—

- (a) when and where the relevant circumstances happened;
- (b) information the police officer has about where the person sought may be travelling in a vehicle.

(3) A police officer may stop all vehicles or any vehicle at the roadblock and detain each vehicle stopped for the time reasonably necessary to search it to find out if a person mentioned in subsection (1) is in it.

#### **25 Procedure for establishing roadblocks**

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

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

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<sup>10</sup> For what is unlawful deprivation of liberty, see the Criminal Code, section 355.

- (c) any other relevant safety considerations.

*Example—*

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

## **26 Record of roadblock to be made**

The senior police officer present at a roadblock must ensure—

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

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

## **27 Searching persons without warrant**

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

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

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

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

## **28 Prescribed circumstances for searching persons without warrant**

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

*Police Powers and Responsibilities Act 2000*

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- (a) the person has something that may be—
  - (i) a weapon, knife or explosive the person may not lawfully possess; or
  - (ii) an unlawful dangerous drug; or
  - (iii) stolen property; or
  - (iv) unlawfully obtained property; or
  - (v) tainted property; or
  - (vi) evidence of the commission of a seven year imprisonment offence the police officer reasonably suspects may be concealed on the person or destroyed;
- (b) the person possesses an antique firearm and is not a fit and proper person to be in possession of the firearm—
  - (i) because of the person's mental and physical fitness; or
  - (ii) because a domestic violence order has been made against the person; or
  - (iii) because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;
- (c) the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug;
- (d) the person has something the person intends to use to cause harm to himself, herself or someone else;
- (e) the person is at a casino and may have contravened, or attempted to contravene, the *Casino Control Act 1982*, section 103 or 104;<sup>11</sup>
- (f) the person has committed, is committing, or is about to commit—
  - (i) an offence against the *Racing and Betting Act 1980*; or

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

- (ii) an offence against the *Corrective Services Act 2000*, section 96, 97 or 100;<sup>12</sup> 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***

## **29 Searching vehicles without warrant**

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

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

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

- (a) the vehicle is being used unlawfully; or
- (b) a person in the vehicle may be arrested without warrant under section 198<sup>13</sup> or under a warrant under the *Corrective Services Act 2000*.

(3) If the driver or a passenger in the vehicle is arrested for an offence involving something the police officer may search for under this part without a warrant, a police officer may also detain the vehicle and anyone in it and search the vehicle and anything in it.

(4) If it is impracticable to search for a thing that may be concealed in a vehicle at the place where the vehicle is stopped, the police officer may take the vehicle to a place with appropriate facilities for searching the vehicle and search the vehicle at that place.

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

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12 *Corrective Services Act 2000*, section 96 (Prohibited things), 97 (Removing things from facilities) or 100 (Interviewing and photographing prisoners etc.)

13 Section 198 (Arrest without warrant)



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

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

### **30 Prescribed circumstances for searching vehicle without warrant**

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

- (a) may be a weapon or explosive a person may not lawfully possess; or
- (b) may be an antique firearm that a person possesses and the person is not a fit and proper person to possess the firearm—
  - (i) because of the person’s mental and physical fitness; or
  - (ii) because a domestic violence order has been made against the person; or
  - (iii) because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon; or
- (c) may be an unlawful dangerous drug; or
- (d) may be stolen property; or
- (e) may be unlawfully obtained property; or
- (f) may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug; or
- (g) may be evidence of the commission of an offence against any of the following—
  - the *Racing and Betting Act 1980*

- the *Corrective Services Act 2000*, section 96, 97 or 100<sup>14</sup>
  - the *Nature Conservation Act 1992*; or
- (h) may have been used, is being used, or is intended to be used, to commit an offence that may threaten the security or management of a prison or the security of a prisoner; or
- (i) may be tainted property; or
- (j) may be evidence of the commission of a seven year imprisonment offence the police officer reasonably suspects may be concealed or destroyed; or
- (k) may be something the person intends to use to cause harm to himself, herself or someone else.

***Division 4—Searching public places without warrant***

**31 Searching public places without warrant**

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

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

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<sup>14</sup> *Corrective Services Act 2000*, section 96 (Prohibited things), 97 (Removing things from facilities) or 100 (Interviewing and photographing prisoners etc.)

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

- (a) with the consent of the occupier of the place; or
- (b) under a search warrant; or
- (c) under chapter 3, part 2.<sup>15</sup>

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

## **PART 3—POWER TO REQUIRE NAME, ADDRESS OR AGE**

### *Division 1—Powers relating to name and address*

#### **32 Person may be required to state name and address**

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

(2) Also, the police officer may require the person to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name or address or to otherwise be able to give the evidence.

(3) A person does not commit an offence against section 445<sup>16</sup> if the person was required by a police officer to state the person's name and address and the person is not proved—

- (a) for section 33(a) or (b)—to have committed the offence; or
- (b) for section 33(e)—to be the person named in the warrant, summons or court document; or

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

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

- (c) for section 33(g)—to have been involved or to be about to be involved in an act of domestic violence or associated domestic violence; or
  - (d) for section 33(h) or (i)—to have been able to help in the investigation.
- (4) Also, a person does not commit an offence against section 445 if—
- (a) the person was required by a police officer to state the person’s name and address for enforcing the *Tobacco and Other Smoking Products Act 1998* in relation to the supply of a smoking product to a child; and
  - (b) no-one is proved to have committed an offence against that Act.
- (5) In this section—

“**address**” means current place of residence.

### **33 Prescribed circumstances for requiring name and address**

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

- (a) a police officer finds the person committing an offence;
- (b) a police officer reasonably suspects the person has committed an offence;
- (c) a police officer is about to take—
  - (i) the person’s identifying particulars under an identifying particulars notice; or
  - (ii) a DNA sample from the person under a DNA sample notice;
- (d) a police officer is about to give, is giving, or has given someone a noise abatement direction, an initial nuisance direction or a final nuisance direction;
- (e) a police officer is attempting to enforce a warrant or serve a summons or other court document on a person;
- (f) a police officer reasonably believes obtaining the person’s name and address is necessary for the administration or enforcement of an Act prescribed under a regulation for this section;

*Police Powers and Responsibilities Act 2000*

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- (g) a police officer reasonably suspects the person has been or is about to be involved in an act of domestic violence or associated domestic violence;
- (h) a police officer reasonably suspects the person may be able to help in the investigation of—
  - (i) an act of domestic violence or associated domestic violence; or
  - (ii) a relevant vehicle incident;
- (i) a police officer reasonably suspects the person may be able to help in the investigation of an alleged indictable offence because the person was near the place where the alleged offence happened before, when, or soon after it happened;
- (j) the person is the person in control of a vehicle that is stationary on a road or has been stopped under section 51.<sup>17</sup>

***Division 2—Powers relating to age***

**34 Power for age-related offences**

- (1) This section applies if—
- (a) a person is at a place and the age of the person is relevant to the person’s entitlement to be at the place; or
  - (b) a person is engaging in an activity and the age of the person is relevant to the person’s entitlement to engage in the activity.

*Examples for subsection (1)—*

1. The age of a person is relevant to a person’s entitlement to be on licensed premises.
2. The age of a person is relevant to a person’s entitlement to play a gaming machine at a casino or a club.

(2) A police officer may require a person to state the person’s correct date of birth, whether or not when requiring the person to state the person’s correct name and address.

(3) Also, the police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would

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<sup>17</sup> Section 51 (Stopping vehicles for prescribed purposes)

be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.

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

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

*Example for subsection (4)—*

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

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

### **35 Unlawful supply of smoking products to children**

(1) This section applies if a police officer—

- (a) either—
  - (i) observes a person being supplied a thing that the police officer reasonably suspects is a smoking product; or
  - (ii) reasonably suspects a person has just been supplied a smoking product; and
- (b) reasonably suspects the person is a child.

(2) A police officer may—

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

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

- (a) either—
  - (i) refuses, or is unable, to comply with the request; or
  - (ii) shows acceptable evidence of age of the person showing the person is a child; and

- (b) the police officer reasonably suspects the smoking product is evidence of an offence against the *Tobacco and Other Smoking Products Act 1998*.

(4) In this section—

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

“**smoking product**” has the meaning given to it by the *Tobacco and Other Smoking Products Act 1998*, schedule.

## **PART 4—DIRECTIONS TO MOVE-ON**

### **36 Part does not apply to authorised public assemblies**

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

### **37 When power applies to behaviour**

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

- (a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or
- (b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
- (c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or
- (d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person’s behaviour.

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

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

### **38 When power applies to a person's presence**

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

- (a) causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances; or
- (b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or
- (c) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.

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

### **39 Direction may be given to person**

(1) A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances.

*Examples for subsection (1)—*

1. If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
2. If a group of people have been fighting in a night club car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.
3. If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.

(2) However, a police officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—



- (a) public safety; or
- (b) public order; or
- (c) the protection of the rights and freedoms of other persons.

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

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

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

- (a) leave the prescribed place and not return within a stated reasonable time of not more than 24 hours;
- (b) move from a particular location for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place for a stated reasonable time of not more than 24 hours.

(4) The police officer must tell the person or group of persons the reasons for giving the direction.

#### **40 Proposal for notified area**

(1) A government entity or a local government may apply to the Minister for the declaration of a stated area as a notified area.

(2) Before the Governor in Council declares an area to be a notified area, the Minister must ensure any requirements prescribed under a regulation for this section have been complied with.

#### **41 Declaration of notified areas**

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

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

### **42 Dealing with breach of the peace**

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

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

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

*Examples for subsection (2)—*

1. The police officer may detain a person until the need for the detention no longer exists.
2. A person who pushes in to the front of a queue may be directed to go to the end of the queue.
3. Property that may be used in or for breaching the peace may be seized to prevent the breach.

(3) It is lawful for a police officer—

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

### **43 Prevention of riot**

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

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

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

#### **44 Prevention of offences**

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

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

*Example of preventing the commission of an offence—*

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

*Examples of continuation of an offence—*

1. A police officer may direct a person who is obstructing an ambulance officer acting under the authority of the *Ambulance Service Act 1991* to leave the place where the person is and, if the person fails to leave, may use reasonably necessary force to remove the person.
2. A police officer may remove or deface an obscene or indecent placard, picture, writing or advertisement attached to a place or thing if it contravenes an Act because it is visible to members of the public.

## **PART 6—POWERS RELATING TO VEHICLES, TRAFFIC AND ANIMALS**

### *Division 1—Inquiry and investigation powers*

#### **45 Power of inquiry into road use contraventions**

(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed.

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

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

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

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

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

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

**47 Additional power of inquiry for relevant vehicle incidents**

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

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

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

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

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<sup>19</sup> Failure to comply with the requirement is an offence against section 445 (Offence to contravene direction or requirement of police officer).

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

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

#### **48 Power of entry for ss 45-47**

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

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

#### **49 Production of driver licence**

(1) This section applies if a police officer—

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

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

(3) A person who holds an open driver licence issued under the Road Use Management Act but is unable to comply with the requirement immediately may comply with the requirement by producing the licence to

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<sup>20</sup> Failure to comply with the requirement is an offence against section 445 (Offence to contravene direction or requirement of police officer).

the officer in charge of a nominated police establishment within 48 hours after the requirement is made.

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

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

## **50 Power for regulating traffic**

(1) A police officer may give to a driver of a vehicle or animal or to a pedestrian on or about to enter a road, or to a passenger in a vehicle, any direction, signal or order the police officer reasonably considers necessary for the safe and effective regulation of traffic on the road.

(2) Also, if an emergency exists, a police officer may give to a driver of or passenger in a train any direction, signal or order the police officer reasonably considers necessary.

(3) If a police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic, the police officer may take any action and give or cause to be given any direction, signal or order the police officer reasonably considers necessary or desirable to control traffic and pedestrians on a road.

*Examples for subsection (3)—*

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

(4) A direction under subsection (1) or (3) may include a direction to the owner or driver of a parked vehicle to move the vehicle as soon as practicable.

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

## **51 Stopping vehicles for prescribed purposes**

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

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

Maximum penalty—

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

*Example of a reasonable excuse for subsection (2)—*

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

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

(3) The prescribed purposes are as follows—

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

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

*Examples for subsection (4)—*

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

## **52 Power to require vehicles to be moved**

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

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

*Example for subsection (2)—*

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

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

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

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

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

Maximum penalty—

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

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

### **53 Requirement to remain at a place**

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

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

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

Maximum penalty—

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

### **54 Power to inspect vehicles**

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

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



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

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

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

The police officer may—

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

## **55 Power to enter vehicles etc. other than for vehicle inspection**

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

- (a) a vehicle at a place the police officer has entered under this Act is used, or is being used, to transport dangerous goods; or
- (b) a heavy vehicle is being, or has just been, used to transport dangerous goods; or
- (c) a vehicle is being, or has just been, used to commit an offence against a transport Act; or
- (d) a vehicle, or a thing in or on it, may provide evidence of the commission of an offence against a transport Act; or
- (e) the driver of a heavy vehicle is required under a transport Act to keep a document relating to driving hours.

(2) The police officer may, for enforcing a transport Act—

- (a) enter the vehicle; or
- (b) search any part of the vehicle; or
- (c) inspect, measure, test, photograph or film the vehicle or anything in or on it; or
- (d) take samples of the vehicle or anything in it; or
- (e) copy a document in the vehicle; or
- (f) move the vehicle's load.

**56 Power to require vehicle inspections**

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

(2) The requirement—

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

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

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

**57 Power to prohibit use of vehicles**

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

- (a) it is inspected at a stated reasonable place and found to comply with the Road Use Management Act; or
- (b) stated reasonable action is taken in relation to the vehicle to ensure it complies with the Road Use Management Act.

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

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

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

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

Maximum penalty—

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

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

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

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

Maximum penalty—30 penalty units.

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

Maximum penalty—30 penalty units.

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

(8) In this section—

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

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

“**motor dealer**” means a motor dealer under the *Property Agents and Motor Dealers Act 2000*.

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

## **58 Power to prohibit persons driving**

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

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

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

Maximum penalty for subsection (3)—

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

## **59 Power to enable effective and safe exercise of other powers**

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

*Examples of requirements for effectively exercising powers—*

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

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

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

*Examples of safety requirements—*

1. Requiring the persons in a vehicle to get out of the vehicle while the police officer inspects the vehicle's undercarriage.
2. Requiring a person who has just left the vehicle to stand back from the road.
3. Requiring a person to remain in control of a vehicle for a reasonable time.

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

Maximum penalty for subsection (3)—

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

***Division 2—Removal powers*****60 Removal of vehicles and animals from roads and other places**

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

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

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

**61 Prescribed circumstances for removing vehicles and animals**

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

- (a) the person in control of a vehicle or animal has been arrested;
- (b) a police officer reasonably suspects the person who was last in control of a vehicle or animal has abandoned it;
- (c) a police officer—
  - (i) reasonably suspects a vehicle or animal has been involved in a relevant vehicle incident; and
  - (ii) reasonably believes it is necessary to detain the vehicle or animal for completing inquiries and investigations into the incident;
- (d) a police officer reasonably suspects a vehicle or animal has been left on a road unattended, temporarily or otherwise, and because of the time for which it has been left unattended, the way it has been left unattended, or the place, condition, or circumstances in which it has been left unattended, its presence on the road—
  - (i) may be dangerous to others; or
  - (ii) may prevent or hinder the lawful use by others of the road or a part of the road;

- (e) a police officer reasonably suspects a vehicle or animal has been left in circumstances that are an offence against any of the following Acts and the person in control of the vehicle or animal can not be easily located or fails to comply with a direction of the police officer to move the vehicle or animal immediately—
- the Road Use Management Act
  - the *Brisbane Forest Park Act 1977*
  - the *Recreation Areas Management Act 1988*
  - the *Nature Conservation Act 1992*;
- (f) a police officer reasonably suspects—
- (i) a contravention of an Act has happened; and
  - (ii) the contravention involves an animal; and
  - (iii) it is necessary to take steps to protect the animal.

## **62 Police officer may authorise tow**

(1) This section applies if—

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

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

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

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

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

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

**63 Steps after seizing vehicle or animal**

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

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

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

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

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

**64 Recovery of seized vehicle or animal**

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

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

**65 Application of proceeds of sale**

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

- (a) in payment of the expenses of the sale;

*Police Powers and Responsibilities Act 2000*

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

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

*Division 2A—Animal welfare directions*

**65A Application of div 2A**

(1) This division applies if a police officer reasonably suspects—

- (a) a person has committed, is committing or is about to commit, an animal welfare offence; or
- (b) an animal—
  - (i) is not being cared for properly; or
  - (ii) is experiencing undue pain; or
  - (iii) requires veterinary treatment; or
  - (iv) should not be used for work.

*Example for subparagraph (iv)—*

A horse with ‘saddle sore’ should not be used by a riding school.

(2) This division also applies if an animal has been seized under section 66(2)(d).

(3) In this section—

**“animal”** means an animal under the Animal Care and Protection Act.

**“veterinary treatment”**, of an animal, means—

- (a) consulting with a veterinary surgeon about the animal’s condition; or
- (b) a medical or surgical procedure performed on the animal by a veterinary surgeon;
- (c) a medical procedure of a curative or preventive nature performed on the animal by someone other than a veterinary surgeon if the procedure is performed under a veterinary surgeon’s directions.



**65B Power to give animal welfare direction**

(1) The police officer may give a written direction (an “**animal welfare direction**”) requiring stated action about the animal or its environment.<sup>21</sup>

(2) The direction may be given to—

- (a) a person who owns or has a lease, licence or other proprietary interest in the animal; or
- (b) a person who has care, control or custody of the animal; or
- (c) a person who is employing or has engaged someone else who has care, control or custody of the animal and the care, control or custody is within the scope of the employment or engagement; or
- (d) a person whom the police officer reasonably suspects is a person mentioned in paragraph (a), (b) or (c) (a “**person in charge**” of the animal); or
- (e) if the animal has been seized under section 65(2)(d)—
  - (i) a person who, immediately before the seizure, was a person in charge of the animal; or
  - (ii) a person whom the police officer reasonably suspects was, immediately before the seizure, a person in charge of the animal.

(3) Despite subsection (2)(a), the direction may be given to a person who holds a mortgage or other security interest in the animal only if the person has taken a step to enforce the mortgage or other security interest.

(4) Without limiting subsection (2), the direction may require any of the following action to be taken—

- (a) care for, or treat, the animal in stated way;
- (b) provide the animal with stated accommodation, food, rest, water or other living conditions;
- (c) consult a veterinary surgeon about the animal’s condition before a stated time;
- (d) move the animal from the place where it is situated when the direction is given to another stated place for a purpose mentioned in paragraph (a), (b) or (c);

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<sup>21</sup> See the Animal Care and Protection Act, section 161 (Failure to comply with animal welfare direction) and the schedule, definition “animal welfare direction”.

- (e) not to move the animal from the place where it is situated when the direction is given.

(5) However, action may be required only if the police officer considers it to be necessary and reasonable in the interests of the animal's welfare.

(6) The direction may state how the person given the direction may show that the stated action has been taken.

### **65C Requirements for giving animal welfare direction**

(1) An animal welfare direction must—

- (a) be in the approved form for an animal welfare direction under the Animal Care and Protection Act; and
- (b) describe—
  - (i) the animal in a way that reasonably allows the person given the direction to identify it; or
  - (ii) if the direction is given because the police officer reasonably suspects a person has committed, is committing or is about to commit, an animal welfare offence—the type of animal to which the offence relates; and
- (c) state—
  - (i) each requirement; and
  - (ii) a time for the person to comply with each requirement; and
- (d) include an information notice under the Animal Care and Protection Act about the decision to give the direction.

(2) Despite subsection (1)(a), an animal welfare direction may be given orally if—

- (a) the police officer considers it to be in the interests of the animal's welfare to give the direction immediately; and
- (b) for any reason it is not practicable to immediately give the direction in the approved form; and
- (c) the police officer warns the person it is an offence not to comply with the direction unless the person has a reasonable excuse.

(3) If the direction is given orally, the police officer must confirm the direction by also giving it in the approved form as soon as practicable after giving it orally.

(4) An animal welfare direction may state that a police officer proposes, at a stated time or at stated intervals, to enter the following where an animal the subject of the direction is kept at to check compliance with the direction—

- (a) a vehicle of which the person is the person in control;
- (b) another place of which the person is the occupier.

### **65D Review and appeal for animal welfare direction**

If an animal welfare direction has been given, the Animal Care and Protection Act, chapter 7, part 4, applies to the decision to give the direction as if—

- (a) the decision were an original decision under that Act; and
- (b) the person given the direction were, under that part, an interested person for the decision.

### *Division 3—Other provisions about animals*

## **66 Power in relation to offences involving animals**

(1) This section applies if—

- (a) a police officer reasonably suspects—
  - (i) an offence involving an animal has been, is being or is about to be committed at or involving a place; or
  - (ii) an animal at a place has just sustained a severe injury and the injury is likely to remain untreated, or untreated for an unreasonable period; or
  - (iii) there is an imminent risk of death or injury to an animal at a place because of an accident or an animal welfare offence; or
- (b) the occupier of a place has been given an animal welfare direction under this Act or the Animal Care and Protection Act and—
  - (i) the direction states a time or interval for a police officer to enter the place to check compliance with the direction; and

*Police Powers and Responsibilities Act 2000*

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- (ii) a police officer proposes to enter the place at the stated time or interval to check compliance with the direction.

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

- (a) search for and inspect—
  - (i) any animal; or
  - (ii) any brand, mark, branding instrument, pliers or other device used to identify an animal;
- (b) open anything in the relevant place that is locked;
- (c) seize anything the officer reasonably suspects is evidence of the commission of an offence involving an animal;
- (d) seize an animal at the place if—
  - (i) the police officer reasonably suspects the animal is under an imminent risk of death or injury, requires veterinary treatment or is experiencing undue pain and the interests of its welfare require its immediate seizure; and

*Examples of 'imminent risk of death or injury'—*

1. A prohibited event under the Animal Care and Protection Act is being conducted at the place.
  2. The animal is being beaten or tortured.
- (ii) the person in charge of the animal has contravened, or is contravening, an animal welfare direction, under this Act or the Animal Care and Protection Act, or a court order about the animal;
  - (e) muster, yard, detain, clip or otherwise deal with the animal.
  - (f) take reasonable measures to relieve the pain of an animal at the place.

*Examples of 'measures'—*

Feeding, untethering or watering the animal.

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

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

(4) In this section—

“**animal**” includes livestock.

### **66A Powers to provide relief to animal**

(1) Subsection (2) applies if—

- (a) a police officer reasonably suspects—
  - (i) an animal at a place, other than a vehicle, is suffering from lack of food or water or is entangled; and
  - (ii) the person in charge of the animal is not, or is apparently not, present at the place; and
- (b) the animal is not at a part of the place at which a person resides, or apparently resides.

(2) The police officer may enter and stay at the place while it is reasonably necessary to provide the food or water or to disentangle the animal.

(3) Before leaving a place entered under subsection (2), the police officer must leave a notice in a conspicuous position and in a reasonably secure way stating the following—

- (a) the police officer’s name and business address or telephone number;
- (b) the action taken by the police officer under subsection (2);
- (c) when the action was taken.

(4) A police officer may enter a vehicle if the officer reasonably suspects there is a need to enter the vehicle to relieve an animal in pain in the vehicle or prevent an animal in the vehicle from suffering pain.

(5) If a police officer enters a vehicle under subsection (4), the officer may take reasonable measures to relieve the pain of an animal at the place.

*Examples of ‘measures’—*

Feeding, untethering or watering the animal.

(6) This section does not limit section 66.

### **66B Power to destroy animal**

A police officer may destroy an animal, or cause it to be destroyed, if—

- (a) the animal has been seized under section 66(2)(d) or the animal's owner has given written consent to the destruction; and
- (b) the police officer reasonably believes that the animal is in pain to the extent that it is cruel to keep it alive.

### **67 Offence to interfere with seized animals**

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

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

- (a) interfere with the animal; or
- (b) enter or be on the place where the animal is being kept; or
- (c) move the animal from where it is being kept; or
- (d) attempt to do anything mentioned in paragraph (a), (b) or (c); or
- (e) have the animal in the person's possession or under the person's control.

Maximum penalty—20 penalty units or 6 months imprisonment.

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

### **PART 1—SEARCHING PLACES WITH WARRANTS**

#### **68 Search warrant application**

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

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

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

*Police Powers and Responsibilities Act 2000*

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

*Example for paragraph (a)(ii)—*

The search may be for evidence for which an application for a restraining order may be made under the *Crimes (Confiscation) Act 1989*, section 40.

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

(5) An application under this section must—

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

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

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

(7) The justice, magistrate or judge (the “**issuer**”) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

*Example—*

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

**69 Issue of search warrant**

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

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

**70 If justice refuses application for search warrant**

(1) If a justice refuses to issue a warrant, the police officer may apply to a magistrate or a judge for the issue of the warrant.

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

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

**71 Order in search warrants about documents**

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

**72 When search warrant ends**

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

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

**73 What search warrant must state**

(1) A search warrant must state—

- (a) that a police officer may enter the place and exercise search warrant powers at the place; and
- (b) if the warrant is issued in relation to—



- (i) an offence—brief particulars of the offence for which the warrant is issued; or
- (ii) a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised; and
- (c) any evidence that may be seized under the warrant; and
- (d) if the warrant is to be executed at night, the hours when the place may be entered; and
- (e) the day and time the warrant ends.

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

(3) If a magistrate makes an order under section 71, the warrant must also state that failure, without reasonable excuse, to comply with the order may be dealt with under the Criminal Code, section 205.<sup>22</sup>

## 74 Power under search warrants

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

- (a) power to enter the place stated in the warrant (the “**relevant place**”) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;
- (e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;

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

*Police Powers and Responsibilities Act 2000*

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- (f) if the police officer reasonably suspects a person on the relevant place has been involved in the commission of the offence, power to detain the person for the time taken to search the place;
- (g) power to dig up land;
- (h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably suspects may be evidence of the commission of an offence to which the warrant relates;
- (i) power to muster, hold and inspect any animal the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence to which the warrant relates;
- (k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for evidence of the commission of an offence.

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

- (a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;
- (b) power to do whichever of the following is authorised—
  - (i) to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;
  - (ii) to take a vehicle to, and search for evidence of the commission of an offence that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

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

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

**75 Copy of search warrant to be given to occupier**

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

- (a) if the occupier is present at the place—give to the occupier a copy of the warrant and a statement in the approved form summarising the person’s rights and obligations under the warrant; or
- (b) if the occupier is not present—leave the copy in a conspicuous place.

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

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

**PART 2—SEARCH OF PLACE TO PREVENT LOSS OF EVIDENCE****76 Application of pt 2**

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

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

## **77 Search to prevent loss of evidence**

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

- (a) a thing at or about a place, or in the possession of a person at or about a place is evidence of the commission of a part 2 offence; and
- (b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.

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

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

## **78 Post-search approval**

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

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

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

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

*Example—*

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

## **79 Making of post-search approval order**

(1) The magistrate may make a post-search approval order only if satisfied—

- (a) in the circumstances existing before the search—

- (i) the police officer, before exercising the powers, had a reasonable suspicion for exercising the powers; and
  - (ii) there was a reasonable likelihood that the evidence would be concealed or destroyed or may have caused injury to a person; or
- (b) having regard to the nature of the evidence found during the search it is in the public interest to make the order.

(2) The magistrate may also make an order under section 424 or 425,<sup>23</sup> whether or not a post-search approval order is made.

## **80 Appeal**

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

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

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

(3) The court may make an order under section 424 or 425 whether or not the appeal is upheld.

## **PART 3—CRIME SCENES**

### *Division 1—Establishment of crime scenes*

## **81 Gaining access to crime scenes**

(1) It is lawful for a police officer—

- (a) to enter a place to reach another place that the police officer reasonably suspects is a crime scene; and

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<sup>23</sup> Section 424 (Application by owner etc. for return of relevant things) or 425 (Application by police officer for order if ownership dispute)

- (b) to enter a place that the police officer reasonably suspects is a crime scene and stay on the place for the time reasonably necessary to decide whether or not to establish a crime scene.

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

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

## **82 Initial establishment of crime scene**

(1) If a police officer enters a place that may be a crime scene, or is lawfully at a place, and decides the place is a crime scene, the police officer (the “**responsible officer**”) may establish a crime scene and exercise crime scene powers at the place.<sup>24</sup>

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

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

*Examples—*

1. A police officer may stand at a door to stop people entering a building and tell them they can not enter the building.
2. A police officer may put around a place barricades or tapes indicating the place is a crime scene.
3. A police officer may display a written notice stating the place is a crime scene and unauthorised entry is prohibited.

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24 For crime scene powers, see division 3.

### **83 Responsibility after establishing crime scene**

(1) As soon as reasonably practicable after the responsible officer establishes the crime scene, a police officer must apply to a Supreme Court judge or magistrate for a crime scene warrant.<sup>25</sup>

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

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

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

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

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

### **84 Deciding limits of crime scene**

The responsible officer at a crime scene must—

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

*Example for paragraph (b)—*

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

### **85 Restricting access to crime scene**

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

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<sup>25</sup> For provisions about crime scene warrants, see division 2.

*Police Powers and Responsibilities Act 2000*

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- (a) to ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene; and
- (b) to prevent unnecessary movement inside the boundaries of the crime scene; and
- (c) to establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be on the place.

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

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

*Examples for subsection (2)(a)—*

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

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

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

## **86 Preserving evidence at crime scene**

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

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



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

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

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

### *Division 2—Crime scene warrants*

#### **87 Application for crime scene warrant**

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

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

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

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

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

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

*Example—*

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

#### **88 Consideration of application and issue of crime scene warrant**

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

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

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

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

### **89 What crime scene warrant must state**

(1) A crime scene warrant must state—

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

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

### **90 Duration, extension and review of crime scene warrant**

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

(2) The issuer may, on the application of a police officer made before a crime scene warrant stops having effect, extend the warrant for a stated reasonable time of not more than 7 days.

### **91 Review of crime scene warrant**

(1) If an application for a crime scene warrant was made in the absence, and without the knowledge, of the occupier of the place or the occupier had a genuine reason for not being present, the occupier may apply to the issuer for an order revoking the warrant.

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

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

## **92 Copy of crime scene warrant to be given to occupier**

(1) If a police officer exercises powers under a crime scene warrant for a place that is occupied, the police officer must give to the occupier a copy of the warrant and a statement in the approved form summarising the person's rights and obligations under the warrant.

(2) If the occupier is not present, the police officer must leave the copy in a conspicuous place.

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

## **93 Powers at crime scene**

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

- (a) enter the crime scene;
- (b) if reasonably necessary, enter another place to gain access to the crime scene;
- (c) perform any necessary investigation, including, for example, a search and inspection of the crime scene and anything in it to obtain evidence of the commission of an offence;
- (d) open anything at the crime scene that is locked;
- (e) take electricity for use at the crime scene;
- (f) dig up anything at the crime scene;
- (g) remove wall or ceiling linings or floors of a building, or panels or fittings of a vehicle;
- (h) remove or cause to be removed an obstruction from the crime scene;
- (i) photograph the crime scene and anything in it;

- (j) seize all or part of a thing that may provide evidence of the commission of an offence.

*Example for paragraph (j)—*

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

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

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

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

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

## **94 Powers of direction etc. at crime scene**

The responsible officer or a police officer acting under the direction of the responsible officer may, at a crime scene, do any of the following—

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

**95 Exercise of crime scene powers in public place**

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

(2) However, if—

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

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

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

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

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

***Division 4—General*****96 Alternative accommodation to be provided in some cases**

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

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

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

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

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

## **PART 4—PRODUCTION NOTICES**

### **97 Production notices**

(1) This section applies if a police officer reasonably suspects a cash dealer holds documents that may be evidence of the commission of an offence by someone else.

(2) The police officer may, instead of applying for a search warrant, apply to a magistrate for the issue of a notice (“**production notice**”) requiring the cash dealer to produce documents stated in the production notice to a police officer.

(3) The application must—

- (a) be sworn and state the grounds on which the production notice is sought; and
- (b) include information required under the responsibilities code about any production notices issued within the previous year in relation to the person suspected of being involved in the commission of the offence or suspected offence to which the application relates.

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

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

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

*Example—*

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

**98 Issue of production notice**

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

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

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

**99 Copy of production notice to be given to cash dealer**

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

**100 Procedural requirements—production notice**

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

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

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

**101 Power under production notice**

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

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

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

### **102 If cash dealer claims documents contain privileged communications**

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

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

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

(3) Also, the police officer must—

- (a) place the document in a container or envelope; and
- (b) seal the container or envelope; and
- (c) sign the seal on the container or envelope; and
- (d) ask the person producing the document for the cash dealer to sign the seal; and
- (e) tell the person producing the document for the cash dealer the document will be retained and an application will be made for an order for access to the document.

### **103 Making of access order**

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

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

### **104 Provisions about access order**

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



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

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

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

## **PART 5—PRODUCTION ORDERS**

### **105 Application of pt 5**

- (1) This part applies to—
- (a) a serious offence within the meaning of the Confiscation Act; and
  - (b) an interstate serious offence within the meaning of the Confiscation Act.

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

### **106 Production order applications**

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

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

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

(3) The application must—

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

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

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

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

*Example—*

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

## **107 Making of production orders**

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

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

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

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

(3) In deciding whether to treat a document as a property-tracking document in relation to an offence, the judge may have regard to the matters mentioned in the Confiscation Act, section 37.<sup>26</sup>

### 108 What production order must state

(1) The production order must—

(a) order a stated person—

- (i) to produce to a police officer any documents, other than a financial institution's books, of the kind mentioned in section 106(1) that are in the person's possession; or
- (ii) to make available to a police officer, for inspection, any documents of that kind that are in the person's possession; and

(b) state when and the place where—

- (i) documents that must be produced are to be produced; or
- (ii) documents that must be made available for inspection are to be made available; and

(c) state that a police officer may enter the place and exercise the powers under section 109.

(2) In this section—

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

### 109 Powers under production order

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

- (a) power to inspect the document;
- (b) power to take extracts from the document;
- (c) power to make copies of the document;

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<sup>26</sup> Confiscation Act, section 37 (Assessment of benefits)

- (d) power to seize the document if the officer reasonably suspects it is evidence of the commission of an offence.

### **110 Variation of production order**

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

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

### **111 Offence to contravene production order**

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

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

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

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

Maximum penalty—350 penalty units or 7 years imprisonment.

### **112 Effect of compliance with production order**

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

- (a) producing or making the document available might tend to incriminate the person or make the person liable to a penalty; or
- (b) producing or making the document available would be in breach of an obligation, whether imposed by any law or otherwise, of

the person not to disclose the existence or contents of the document.

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

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

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

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

### **113 Power to seize evidence generally**

(1) This section applies if a police officer lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence.

(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if the police officer is acting under a warrant, whether or not the offence is one in relation to which the warrant is issued.

(3) Also, the police officer may photograph the thing seized or the place from which the thing was seized.

(4) The police officer may stay on the place and re-enter it for the time reasonably necessary to remove the thing from the place.

### **114 Power to remove property unlawfully on a place**

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

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

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

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

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

## **CHAPTER 4—COVERT EVIDENCE GATHERING POWERS**

### **PART 1—MONITORING ORDERS**

#### **115 Meaning of “financial institution” for pt 1**

In this part—

“**financial institution**” includes—

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

#### **116 Monitoring order applications**

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

(2) The application must—

- (a) be sworn and state the grounds on which the order is sought; and
- (b) include information required under the responsibilities code about any monitoring orders issued within the previous year in

relation to an account held with the financial institution by the named person.

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

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

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

*Example—*

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

### **117 Making of monitoring order**

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

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

### **118 What monitoring order must state**

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

- (a) the name or names in which the account is believed to be held; and
- (b) the type of information the institution is required to give; and
- (c) the period, of not more than 3 months from the date of its making, the order is in force; and

- (d) that the order applies to transactions conducted during the period stated in the order; and
- (e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.

(2) In this section—

**“transaction conducted through an account”** includes—

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

### **119 When period stated in monitoring order starts**

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

### **120 Offence to contravene monitoring order**

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

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

Maximum penalty—1 000 penalty units.

### **121 Existence and operation of monitoring order not to be disclosed**

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

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



*Police Powers and Responsibilities Act 2000*

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

- (a) while the person is a police officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—
  - (i) if the person is a police officer—performing the person’s duties; or
  - (ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or
  - (iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or
- (b) when the person is no longer a police officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

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

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

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

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

Maximum penalty—350 penalty units or 7 years imprisonment.

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

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

(7) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing

information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(8) In this section—

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

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

## **PART 2—SURVEILLANCE POWERS**

### *Division 1—Preliminary*

#### **122 Certain Acts do not apply to this part**

The Public Records Act and the *Freedom of Information Act 1992* do not apply to activities or records under this part.

#### **123 Certain acts not prevented by divs 2–3**

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

*Example—*

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

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

#### **124 Surveillance warrant applications**

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

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

(3) The police officer may apply for a surveillance warrant for a class A surveillance device only if the offence is a serious indictable offence.

(4) The application must—

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

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

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

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

(7) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

*Example—*

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

## **125 Who may be present at consideration of application for surveillance warrant**

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

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

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

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

### **126 Consideration of application for surveillance warrant**

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

- (a) the nature and seriousness of the suspected offence;
- (b) for a class A surveillance device, if the warrant is issued, the likely extent of interference with the privacy of—
  - (i) the relevant person; or
  - (ii) any other occupant of the place;
- (c) the extent to which issuing the warrant would help prevent, detect or provide evidence of the offence;
- (d) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (e) the extent to which police officers investigating the offence have used or can use conventional ways of investigation;
- (f) how much the use of conventional ways of investigation would be likely to help in the investigation of the offence;
- (g) how much the use of conventional ways of investigation would prejudice the investigation of the offence because of delay or for another reason;
- (h) any submissions made by a monitor.

### **127 Issue of surveillance warrant**

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

*Police Powers and Responsibilities Act 2000*

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

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

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

- (a) a condition requiring regular reporting to a judge on activities under the warrant; and
- (b) a condition requiring that, if a listening device is to be used in a public place or a class of place, the police officer, before installing or using the device, must have a reasonable belief that the relevant person is or will be in the place where the device is to be used.

*Example for subsection 3(b)—*

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

## **128 What surveillance warrant must state**

The surveillance warrant must state the following—

- (a) that a police officer may exercise surveillance powers under the warrant;
- (b) the name of the relevant person, if known;
- (c) the place where the surveillance device authorised under the warrant may be used;
- (d) the type of surveillance device that may be used under the warrant;

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

### **129 Report on use of surveillance devices**

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

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

### **130 Duration and extension of surveillance warrants**

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

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

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

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

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

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

**131 Power under surveillance warrants**

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

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

***Division 3—Emergency use of surveillance devices*****132 Emergency use of surveillance devices**

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

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

*Examples for subsection (1)—*

1. A siege.
2. A terrorist incident.
3. An act of deprivation of liberty in which the victim’s life may be in danger.

4. An act of extortion involving a threat of imminent injury to someone else.

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

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

### **133 Application for approval after emergency use of surveillance device**

(1) Within 2 business days after authorising the use of a surveillance device, the police officer who authorised its use must apply to a Supreme Court judge for approval of the exercise of the powers.

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

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

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

*Example—*

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

### **134 Who may be present at consideration of application**

(1) The judge must hear an application under section 133 in the absence of anyone other than the following—

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

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



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

### **135 Consideration of application**

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

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

### **136 Judge may approve emergency use of powers**

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

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

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

### **137 Use of evidence and information**

(1) Evidence obtained because of the exercise of powers approved under section 136 is admissible in a proceeding for an offence.

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

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

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

### **138 Surveillance warrant applications**

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

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

(3) The application must—

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

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

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

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

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

*Example—*

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

**139 Who may be present at consideration of application**

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

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

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

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

**140 Consideration of application**

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

- (a) the nature and seriousness of the suspected offence;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of the offence;
- (c) the benefits derived from the issue of any previous surveillance warrants in relation to the relevant person;
- (d) the extent to which police officers investigating the offence have used or can use conventional ways of investigation;
- (e) how much the use of conventional ways of investigation would be likely to help in the investigation of the offence;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the offence because of delay or for another reason;
- (g) any submissions made by a monitor.

**141 Issue of surveillance warrant**

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

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

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

**142 What warrant must state**

The warrant must state the following—

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

**143 Duration and extension of surveillance warrants**

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

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

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

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

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

#### **144 Powers under surveillance warrants**

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

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

*Examples for paragraph (a)—*

1. Installing a tracking device on a vehicle located in a public undercover car park where entry is gained by any member of the public by paying a fee, or on a vehicle on a street.
2. Installing a tracking device on a parcel inside a shipping container located in a storage yard, if the parcel is reasonably believed to contain unlawful drugs.

#### ***Division 5—Other provisions about surveillance devices***

#### **145 Restriction about records and access to surveillance warrant applications etc.**

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

- (a) an application to a Supreme Court judge or a magistrate for—
  - (i) a surveillance warrant; or
  - (ii) the extension of a surveillance warrant;

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

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

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

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

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

#### **146 Disclosure of information obtained using surveillance warrant**

(1) This section applies to information that has not been disclosed in a proceeding in open court and was obtained under a surveillance warrant (the “**relevant information**”).

(2) A police officer who obtained relevant information must not disclose the information to someone other than—

- (a) the judge or magistrate who issued the warrant; or
- (b) a judge hearing an application for—
  - (i) an extension of the warrant; or
  - (ii) approval of the emergency use of a surveillance device; or
  - (iii) a warrant in relation to the same or a different person; or
- (c) a magistrate hearing an application for an extension of the warrant or a warrant in relation to the same or a different person; or
- (d) a court taking evidence about a charge of an offence in which the information is evidence; or
- (e) the responsible chief executive officer for the surveillance warrant or a person authorised by that chief executive officer; or
- (f) another police officer involved in—
  - (i) the investigation into the major crime for which the powers were exercised; or

- (ii) an investigation of any indictable offence started because of information obtained under the warrant or linked to the offence under investigation; or
- (iii) a proceeding in which the information is evidence; or
- (g) a declared law enforcement agency; or
- (h) a public prosecutor, but only for—
  - (i) use in a proceeding in which the information is evidence; or
  - (ii) an application for an extension of the warrant; or
  - (iii) an application under section 133; or
  - (iv) the issue of another surveillance warrant; or
- (i) a lawyer representing a person in a proceeding in which the information is evidence; or
- (j) a monitor; or
- (k) a person transcribing or making copies of recordings.

### **147 Destruction of records**

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

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

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

***Division 6—Covert searches*****148 Covert search warrant applications**

(1) A police officer of at least the rank of inspector may apply to a Supreme Court judge for a warrant (“**covert search warrant**”) to enter and search a place for evidence of organised crime.

(2) The application must—

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

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

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

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

(5) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

*Example—*

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

**149 Who may be present at consideration of application**

(1) The judge must hear an application for a covert search warrant in the absence of anyone other than the following—

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



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

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

### **150 Consideration of application**

Before deciding the application the judge must, in particular, and being mindful of the highly intrusive nature of a covert search warrant, consider the following—

- (a) the nature and seriousness of the suspected offence;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of, the offence;
- (c) the benefits derived from any previous covert search warrants, search warrants or surveillance warrants in relation to the relevant person or place;
- (d) the extent to which police officers investigating the matter have used or can use conventional ways of investigation;
- (e) how much the use of conventional ways of investigation would be likely to help in the investigation of the matter;
- (f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;
- (g) any submissions made by a monitor.

### **151 Issue of covert search warrant**

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

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

### **152 What covert search warrant must state**

A covert search warrant must state the following—

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

### **153 Duration and extension of covert search warrant**

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

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

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

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

### **154 Restriction about records and access to covert search warrant applications**

(1) Despite the *Recording of Evidence Act 1962*, a transcript of an application for a covert search warrant and any order made on it must not be made.

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

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

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for a covert search warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

### **155 Powers under covert search warrant**

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

- (a) power to enter the place stated in the warrant (the “**relevant place**”), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay on it for the time reasonably necessary;
- (b) power to pass over, through, along or under another place to enter the relevant place;
- (c) power to search the relevant place for anything sought under the warrant;
- (d) power to open anything in the relevant place that is locked;
- (e) power to seize a thing or part of a thing found on the relevant place that the police officer reasonably believes is evidence of the commission of an offence relating to organised crime stated in the warrant;
- (f) power to photograph anything the police officer reasonably believes may provide evidence of the commission of an offence relating to organised crime stated in the warrant;
- (g) power to inspect or test anything found on the place.

### **156 Report on covert search**

(1) Within 7 days after executing a covert search warrant, a police officer must give to the Supreme Court judge who issued the warrant and the monitor a report complying with the responsibilities code on the exercise of the powers under the warrant.

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

(3) The judge may, in relation to a thing mentioned in subsection (2), order that it—

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

***Division 7—Public interest monitor*****157 Public interest monitor**

(1) The Governor in Council may appoint a person (the “**public interest monitor**”) to monitor applications for, and the use of, surveillance warrants and covert search warrants.

(2) The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

(3) The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

(4) The *Public Service Act 1996* does not apply to the appointment of a monitor.

(5) A monitor must not be a person who is, or who is a member of, or who is employed in or by or to help, any of the following—

- (a) the director of public prosecutions;
- (b) the office of the director of public prosecutions;
- (c) CMC;
- (d) the police service;
- (e) the Commissioner for Children and Young People.

**158 Acting monitor**

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

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

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

- (a) during a vacancy in the office; or

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

### **159 Monitor's functions**

(1) The public interest monitor has the functions mentioned in subsection (2) for surveillance warrants and covert search warrants.

(2) The functions are—

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

(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b) and (c).

### **160 Monitor's annual report**

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of surveillance warrants and covert search warrants under this Act.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(3) The annual report must not contain information that—

- (a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or
- (b) indicates a particular investigation has been, is being, or is to be conducted.

(4) The public interest monitor's report may form part of another annual report the monitor is required to prepare under another Act.

### **161 Secrecy**

(1) A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

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

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information in the performance of his or her functions under this Act.

(3) A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

### **162 Protection from liability**

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

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

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

### **PART 1—PRELIMINARY**

#### **163 Object of ch 5**

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

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

#### **164 Investigation of minor matters not affected**

The enactment of this chapter is not to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned

but involve the participation of police officers in activities that may be unlawful.

### **165 Lawfulness of particular actions**

To remove doubt, it is declared—

- (a) that it is lawful for a person acting in accordance with this chapter—
  - (i) to recommend that other persons be authorised to engage in an activity that may be unlawful as part of an investigation of a suspected indictable offence, a suspected misconduct offence or into suspected organised crime (“**chapter 5 criminal activity**”); or
  - (ii) to authorise other persons to engage in an activity that may be unlawful as part of an investigation of chapter 5 criminal activity; and
- (b) that it is lawful for a person acting as a covert operative under an approval under section 175, 176 or 177<sup>27</sup> to engage in activities stated in the approval that may be unlawful as part of the investigation of chapter 5 criminal activity; and
- (c) that it is lawful for a police officer of at least the rank of inspector, acting in accordance with procedures established by an entity’s chief executive officer, to authorise another police officer to engage in a stated controlled activity for the entity; and
- (ca) that it is lawful for the CMC chairperson, or a CMC assistant commissioner, acting in accordance with procedures established by the CMC chairperson, to authorise a police officer or a CMC officer to engage in a stated controlled activity for the CMC; and
- (d) that it is lawful for a person acting under an authority given under section 190 or 191<sup>28</sup> to engage in a controlled activity in accordance with the authority and procedures established by the relevant entity’s chief executive officer.

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

28 Section 190 (Authorised controlled activities) or 191 (Authorisation of controlled activities by CMC)



**166 Controlled operations and activities generally**

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

**PART 2—CONTROLLED OPERATIONS***Division 1—Controlled operations committee***167 Establishment of controlled operations committee**

- (1) The commissioner must establish a controlled operations committee.
- (2) The committee must include—
  - (a) an independent member; and
  - (b) the chief executive officer of each entity or the chief executive's nominee.

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

**168 Independent member**

- (1) The Minister may appoint a retired Supreme Court or District Court judge to be the independent member of the committee.
- (2) Before appointing the independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

**169 Acting independent member**

- (1) The Minister may appoint a retired Supreme Court or District Court judge to act as the independent member—
  - (a) during any vacancy in the office; or

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

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

### *Division 2—Committee’s functions and business*

#### **170 Committee’s functions**

The committee has the following functions—

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

#### **171 Committee business**

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

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

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

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

#### **172 Committee’s recommendations**

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

- (a) that an approving officer approve or refuse to approve a particular controlled operation; or

- (b) for a particular controlled operation, that it is appropriate to use a birth certificate created to help conceal the identity of a covert operative.

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

### **172A Committee's annual report**

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the committee must prepare and give to the Minister a written report on the committee's activities under this Act.

(2) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(3) The annual report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of—

(i) any covert operative; or

(ii) any person who has been, is being, or is to be, investigated;  
or

(b) indicates a particular investigation has been, is being, or is to be conducted.

### *Division 3—Approval of controlled operations*

#### **173 Application for approval**

(1) A police officer or, for an entity other than the police service, an officer authorised by the entity's chief executive officer to apply for an approval under this division, may apply to the relevant entity's approving officer for approval to conduct an operation under this part ("**controlled operation**").

(2) The approving officer must be—

*Police Powers and Responsibilities Act 2000*

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

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

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

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

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

- (a) an identifying name or number;
- (b) a description of the chapter 5 criminal activity in relation to which it is proposed to conduct the operation;
- (c) if a previous application relating to the same chapter 5 criminal activity has been made under this division, whether the application was approved or refused;
- (d) the name of each person who it is intended will act as a covert operative for the operation;
- (e) a precise description of each otherwise unlawful activity a covert operative who is not a police officer or a CMC officer may be required to engage in as part of the operation;
- (f) a description of the general classes of otherwise unlawful activities a covert operative who is a police officer or a CMC officer may be required to engage in as part of the operation.

**174 Application must be referred to committee**

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

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

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

**175 Certain CMC controlled operations**

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

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

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

**176 Procedure in urgent circumstances other than if s 175 applies**

(1) This section applies to an application for approval to conduct a controlled operation made to an approving officer in urgent circumstances.

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

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

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

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

**177 Consideration and approval of application**

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

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

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

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

- (a) the purpose of the proposed controlled operation is to gather evidence of chapter 5 criminal activity; and
- (b) a controlled operation represents an effective use of public resources for investigating the chapter 5 criminal activity; and
- (c) any proposed covert operative for the operation has received appropriate training for the purpose; and
- (d) if a proposed covert operative for the operation is not a police officer or a CMC officer, it is wholly impractical in the circumstances for a police officer or a CMC officer to perform the role the proposed covert operative is to perform in the operation; and
- (e) the committee has recommended the controlled operation be approved.

(4) Subsection (1) and (3)(e) do not apply to the approval of a controlled operation mentioned in section 175 or 176.<sup>29</sup>

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

**178 What approval must state**

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

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

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

**179 Effect of approval**

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

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

***Division 4—Variation of approval for controlled operation*****180 Application to vary approval**

(1) A police officer, or an officer authorised by an entity's chief executive officer to apply for an approval under this division, may apply to

the relevant entity's approving officer for a variation of an approval for a controlled operation.

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

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

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

- (a) the identifying name or number for the operation;
- (b) a description of the chapter 5 criminal activity in relation to which the operation was approved;
- (c) if a previous application for variation of the approval for the operation has been made under this division, whether the approval was varied because of the application;
- (d) if it is intended to change particulars relating to persons who are or are intended to be covert operatives, the name of each person to whom the change relates and particulars of the change sought;
- (e) if it is intended to change the description of the chapter 5 criminal activity in relation to which the operation was approved, a description of the chapter 5 criminal activity for which approval is sought.

### **181 Application must be referred to committee**

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

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

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



**182 Certain CMC controlled operations**

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

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

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

**183 Procedure in urgent circumstances other than if s 182 applies**

(1) This section applies to an application for the variation of an approval for a controlled operation that is made to an approving officer in urgent circumstances.

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

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

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

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

**184 When approval may be given**

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

**185 How approval may be varied**

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

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

(2) The approval mentioned in section 179,<sup>30</sup> as varied under subsection (1), has the effect mentioned in section 179.

### *Division 5—Special provisions about creating identity documents*

#### **186 Request for issue of document to conceal identity—general**

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

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

#### **187 Request for issue of document to conceal identity—CMC**

(1) This section applies if, for a controlled operation for which the CMC chairperson is the approving officer, the independent member recommends the use of a birth certificate created to help conceal the identity of a covert operative.

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

#### **188 Giving effect to authority under s 186 or 187**

On the production to the registrar-general, for inspection, of a written instrument signed by an entity's chief executive officer and stating that a

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30 Section 179 (Effect of approval)

named officer is authorised under section 186 or 187<sup>31</sup> to create a birth certificate for the purpose of concealing the identity of a covert operative—

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

### **189 Special provisions about concealing identities of covert operatives**

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

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

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

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

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

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

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

Maximum penalty—75 penalty units.

(7) In this section—

**“relevant document”** means a document that—

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

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

## **PART 3—CONTROLLED ACTIVITIES**

### **190 Authorised controlled activities**

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

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

(2) A police officer of at least the rank of inspector may, in accordance with any policy of the entity for whom the controlled activity is to be conducted, authorise another police officer to engage in a stated controlled activity.<sup>32</sup>

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

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

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

**191 Authorisation of controlled activities by CMC**

(1) This section applies if the CMC chairperson or a CMC assistant commissioner considers it is reasonably necessary for a police officer or a CMC officer to engage in conduct that—

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

(2) The CMC chairperson or CMC assistant commissioner may, in accordance with any policy of the CMC, authorise a police officer or CMC officer to engage in a stated controlled activity.

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

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

**PART 4—MISCELLANEOUS****192 Disclosure of information**

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

- (a) an application for—
  - (i) approval of a controlled operation; or
  - (ii) a variation of an approval given for a controlled operation;

- (b) a decision of the committee to recommend the approval of, or the variation of an approval for, a controlled operation, and the committee's recommendation;
  - (c) an approval of—
    - (i) a controlled operation; or
    - (ii) a variation of an approval given for a controlled operation;
  - (d) information about a controlled operation;
  - (e) documents issued under part 2, division 5;
  - (f) the actual identity of a covert operative.
- (2) The person must not disclose relevant information, other than—
- (a) for the purposes of this chapter; or
  - (b) with the approval of the relevant entity; or
  - (c) to the extent—
    - (i) the information has generally been made known; or
    - (ii) it is in the public interest to disclose the information.

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

### **193 Protection from liability**

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

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

(2) A relevant person does not incur civil liability for an act done, or omission made, under this chapter.

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

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

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

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

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

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

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

(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.<sup>33</sup>

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

### **194 Admissibility of evidence obtained through controlled operation and activities**

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

### **195 Cross-jurisdictional protection**

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

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

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

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

### **196 Evidentiary provision**

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

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



(d) on a stated day a stated person varied an approval for a stated controlled operation in a stated way.

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

### **197 Powers not to be delegated**

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

(2) Also, powers of the CMC chairperson or a CMC assistant commissioner under section 191<sup>34</sup> may not be delegated.

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

## **CHAPTER 6—ARREST AND CUSTODY POWERS**

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

#### *Division 1—Arrest without warrant*

### **198 Arrest without warrant**

(1) It is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—

- (a) to prevent the continuation or repetition of an offence or the commission of another offence;
- (b) to make inquiries to establish the person's identity;

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34 Section 191 (Authorisation of controlled activities by CMC)

- (c) to ensure the person's appearance before a court;
- (d) to obtain or preserve evidence relating to the offence;
- (e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;
- (f) to prevent the fabrication of evidence;
- (g) to preserve the safety or welfare of any person, including the person arrested;
- (h) to prevent a person fleeing from a police officer or the location of an offence;
- (i) because the offence is an offence against section 444 or 445;<sup>35</sup>
- (j) because the offence is an offence against the *Domestic Violence (Family Protection) Act 1989*, section 80;<sup>36</sup>
- (k) because of the nature and seriousness of the offence.

(2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 7.<sup>37</sup>

(3) Subsection (1) does not apply to a child,<sup>38</sup> but subject to the *Juvenile Justice Act 1992*, section 20,<sup>39</sup> it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.

### **199 Arrest of escapees etc.**

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

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35 Section 444 (Offence to assault or obstruct police officer) or 445 (Offence to contravene direction or requirement of police officer)

36 *Domestic Violence (Family Protection) Act 1989*, section 80 (Breach of order or conditions)

37 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

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

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

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

- (a) has been released on leave of absence or to serve a period of home detention and—
  - (i) is or is preparing to become unlawfully at large; or
  - (ii) is contravening or has contravened a condition of the instrument authorising the person's release; or
- (b) because of an error, has been released as if the prisoner were eligible to be discharged under the *Corrective Services Act 2000*.

## **200 Arrest of person granted bail**

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

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

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

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

- (a) the police officer reasonably suspects—
  - (i) the person is likely to contravene, is contravening, or has contravened, the condition for the person's appearance or another condition of the undertaking on which the person was granted bail; or
  - (ii) a surety for the person's appearance is dead; or
  - (iii) for any reason, the security for the person's appearance is no longer adequate; or
  - (iv) the person is likely to fail to appear before a court to answer a charge against the person for the offence; or
- (b) a surety has given to a police officer written notice stating the surety wishes to be relieved of the obligation of being a surety for

the person because the surety believes the person is likely to contravene the condition for the person's appearance; or

- (c) the police officer reasonably suspects the person is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been released on bail.

(4) In this section—

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

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

## **201 Arrest of person given notice to appear or summons**

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

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

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

### *Division 2—Arrest under warrant*

## **202 Arrest under warrant**

(1) It is lawful for a police officer acting under a warrant issued under any Act or law to arrest the person named in the warrant.

(2) In this section—

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

**203 Arrest warrant application**

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

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

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

*Example—*

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

**204 Issue of arrest warrant**

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

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

**205 What arrest warrant must state**

(1) An arrest warrant must state the following—

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

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

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

***Division 3—Other provisions about arrest*****206 Power of arrest for offences committed outside the State**

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

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

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

(3) The person may be detained in custody under chapter 7 and questioned in relation to the extradition offence by either of the following, as if the offence had been committed in Queensland—

- (a) a police officer;
- (b) a member of the police force or police service of the State where the offence happened.

(4) The *Justices Act 1886* and the *Bail Act 1980* apply to a person arrested for an extradition offence as if the offence were committed in Queensland, but only to allow a person to apply, within 7 days, for the extradition of the person to the State where the extradition offence is alleged to have been committed.

(5) If a proceeding for the person’s extradition is not started within 7 days—

- (a) the person, if remanded in custody, must be released from custody; and
- (b) any order for bail is discharged.

**207 Police officer to consider alternatives to proceeding against child**

(1) A police officer, before starting a proceeding against a child for an offence, other than by arrest, must first consider whether in all the circumstances it would be more appropriate—

- (a) to take no action; or
- (b) to administer a caution to the child under the *Juvenile Justice Act 1992*; or

(c) to refer the offence to a community conference under the *Juvenile Justice Act 1992*.

(2) The circumstances to which the police officer must have regard include—

- (a) the circumstances of the alleged offence; and
- (b) the child's previous history known to the police officer.

(3) If necessary, the police officer must delay starting a proceeding to consider the matters mentioned in subsection (2).

(4) This section does not prevent a police officer starting a proceeding against a child for an offence by way of—

- (a) complaint and summons under the *Justices Act 1886*; or
- (b) attendance notice under the *Juvenile Justice Act 1992*.

#### *Division 4—Discontinuing arrest*

### **208 When arrest may be discontinued—general rule**

(1) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was arrested.

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

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

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

**209 Additional case when arrest of adult may be discontinued**

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

(2) It is the duty of a police officer to release the person at the earliest reasonable opportunity if—

- (a) the reason for arresting the person no longer exists or is unlikely to happen again if the person is released; and
- (b) it is more appropriate to take the person before a court by notice to appear or summons and the notice to appear or summons has been served on the person.

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

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

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

- (a) the police officer reasonably considers it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and
- (b) the person and any victim of the offence agree to the person being dealt with in that way.

*Example for subsection (4)—*

1. A person arrested for a minor assault involving pushing a person during a heated argument with a neighbour may agree to attend alternative dispute resolution.
2. A person may be released under a scheme developed by the commissioner for cautioning elderly first offenders.

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

(1) This section applies if—

- (a) a person is arrested for being drunk in a public place; and
- (b) a police officer is satisfied it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment



*Police Powers and Responsibilities Act 2000*

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or care necessary to enable the person to recover safely from the effects of being drunk (a “**place of safety**”).

*Examples of a place of safety—*

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

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

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

*Example—*

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

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

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

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

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

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

**211 Additional case when arrest for minor drugs offence may be discontinued**

(1) This section applies if—

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

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

- 1. Burglary of a home to obtain money to buy the drugs.
- 2. The drugs are obtained as a result of the robbery of another person.

(c) the person—

- (i) has not previously been convicted of an offence involving violence against a person; or
- (ii) has been convicted of an offence involving violence against a person for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and

(d) during an electronically recorded interview, the person admits having committed the offence; and

(e) the person has not been offered the opportunity to attend a drug diversion assessment program.

(2) If the person is—

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

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

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

(4) If the person agrees—

- (a) the person must sign an agreement to attend a drug diversion assessment program; and

- (b) the police officer must—
- (i) give the person a written requirement to comply with the agreement; and
  - (ii) inform the person that failure to attend the program is an offence against section 445;<sup>40</sup> and
  - (iii) give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.

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

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

### **212 Additional case when arrest of child may be discontinued**

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

(2) It is the duty of a police officer to release the child at the earliest reasonable opportunity if—

- (a) the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; and
- (b) after considering the following, it is more appropriate to deal with the child in a way provided by subsection (3)—
  - (i) the circumstances of the alleged offence;
  - (ii) the child's previous history known to the police officer.

(3) For subsection (2)(b), the police officer may decide it is more appropriate—

- (a) to take no action; or
- (b) to administer a caution to the child under the *Juvenile Justice Act 1992*; or
- (c) to refer the offence to a community conference under the *Juvenile Justice Act 1992*; or

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

(d) to take the child before a court by attendance notice or summons.

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

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

(6) In deciding whether the police officer had the reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.

### **213 Limit on re-arrest**

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

## ***Division 5—Alternative to arrest***

### **214 Notice to appear may be issued for offence**

(1) The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against an adult that does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.<sup>41</sup>

(2) If a police officer reasonably suspects that an adult has committed or is committing an offence, the police officer may issue and serve a notice (“**notice to appear**”) on the person.<sup>42</sup>

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

### **215 Notice to appear form**

(1) A notice to appear must—

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

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

- (a) state the substance of the offence alleged to have been committed; and
- (b) state the name of the person alleged to have committed the offence; and
- (c) require the person to appear before a Magistrates Court in relation to the offence at a stated time and place; and
- (d) be signed by the police officer serving the notice to appear.

(2) The place stated in a notice to appear for the person's appearance must be a place where the court will be sitting at the time stated.

(3) The time stated in a notice to appear for the person's appearance must be a time at least 14 days or, with the person's written agreement, a stated shorter time after the notice is served.

### **216 Notice to appear must be filed in court without cost to person**

(1) Before the time a person is required by a notice to appear to appear before a Magistrates Court, the notice to appear must be filed with the clerk of the court at the place where the person is required to appear.

(2) A person must not be ordered to pay filing costs in the proceeding for the offence.

### **217 General particulars only are required on a notice to appear**

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

- (a) the type of offence; and
- (b) when and where it is alleged to have been committed.

(2) If 2 or more matters are properly joined in 1 notice to appear under the *Justices Act 1886*, section 43(1),<sup>43</sup> then, despite section 43(2) and (3) of that Act—

- (a) each matter need not be set out in a separate paragraph; and
- (b) objection can not be taken to the notice to appear because each matter is not set out in a separate paragraph.

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

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

(1) Section 217 does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

(2) When a person on whom a notice to appear has been served appears before the Magistrates Court in response to the notice, the court must ensure that the person is provided promptly with proper particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

**219 Notice to appear equivalent to a complaint and summons**

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

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

- (a) is taken to be a summons issued by a justice under the *Justices Act 1886*; but
- (b) is not a requirement to which section 445<sup>44</sup> applies.

(3) Subject to this division, the *Justices Act 1886* and any other Act applies to a notice to appear in the same way as it applies to a complaint and summons.

**220 Court may order immediate arrest of person who fails to appear**

(1) Subject to section 221, if a person fails to appear before a Magistrates Court as required by a notice to appear served on the person, the court may—

- (a) hear and decide the complaint in the absence of the person; or
- (b) order that a warrant issue for the arrest of the person to be brought before the court to be dealt with according to law.

(2) A document purporting to be a copy of the notice to appear signed on the day it is served by the police officer who served it, and stating when and where it was served, is evidence of the service of the notice.

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

(3) Any justice may issue the warrant.

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

### **221 Court must strike out notice to appear if service insufficient**

(1) If a person fails to appear before a Magistrates Court as required by a notice to appear and the court is not satisfied the person was served as required under this Act, the court must strike out the notice to appear.

(2) The striking out of a notice to appear under subsection (1) does not prevent another proceeding being started for the offence for which the notice to appear was purportedly served.

## *Division 6—Duties after arrest*

### **222 Information to be given to arrested person**

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

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

(3) Before the person is released from police custody, a police officer must give to the person, in writing, the name, rank and station of the arresting officer.

### **223 Parent and chief executive must be advised of arrest of child**

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

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

(2) In this section—

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

## **224 Duty of police officer after arrest etc. of person**

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

- (a) arrests a person, without warrant, for an offence;
- (b) arrests a person under a warrant for an offence, whether under this or another Act;
- (c) arrests a person under section 200 or 201;<sup>45</sup>
- (d) receives into custody a person who is arrested or detained by someone other than a police officer.

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

- (a) is released under division 4;<sup>46</sup> or
- (b) is being detained under chapter 7<sup>47</sup> for an indictable offence; or
- (c) is being detained under the Road Use Management Act, section 80;<sup>48</sup> or
- (d) is arrested under a warrant that requires the police officer to take the person before another body or to another place; or
- (e) is delivered into the custody of a watch-house manager or the officer-in-charge of a police establishment.

*Example for subsection (2)(d)—*

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

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45 Section 200 (Arrest of person granted bail) or 201 (Arrest of person given notice to appear or summons)

46 Division 4 (Discontinuing arrest)

47 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

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



- (3) Also, subsection (1) does not prevent a police officer—
- (a) if the person is a prisoner under the *Corrective Services Act 2000*—taking the person to a prison or to a watch-house until the person can be conveniently taken to a prison; or
  - (b) if the person escaped from lawful custody while a prisoner of a court—taking the person to a police station or watch-house until the person can be conveniently returned to the custody of the proper officer of the relevant court.

## **225 Duty of police officer receiving custody of person arrested for offence**

(1) This section applies if—

- (a) a person who has been arrested for an offence, whether or not under a warrant, is delivered into the custody of the officer-in-charge of a police establishment or a watch-house manager; and
- (b) the person is not being detained under chapter 7; and
- (c) it is not practicable to bring the person before a court promptly.

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

- (a) decide whether or not to grant bail under the *Bail Act 1980*; or
- (b) for a person arrested for—
  - (i) being drunk in a public place, decide whether to discontinue the arrest under section 210; or
  - (ii) a minor drugs offence, decide whether to discontinue the arrest under section 211;<sup>49</sup> or
- (c) take the person before a court to be dealt with according to law.

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

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<sup>49</sup> Section 210 (Additional case when arrest for being drunk in a public place may be discontinued) or 211 (Additional case when arrest for minor drugs offence may be discontinued)

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

(1) This section applies if—

- (a) under section 202,<sup>50</sup> a police officer arrests a person named in a warrant issued under another Act or law; or
- (b) someone else authorised under a warrant issued under another Act or law arrests a person named in the warrant;

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

*Examples for subsection (1)—*

1. A person is arrested under a warrant issued for non-payment of an amount of a fine.
2. A person is arrested under a warrant requiring a person to be brought before a commission of inquiry.
3. A correctional officer arrests a person who has escaped from custody.

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

(3) In this section—

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

## **CHAPTER 7—POWERS AND RESPONSIBILITIES RELATING TO INVESTIGATIONS AND QUESTIONING FOR INDICTABLE OFFENCES**

### **PART 1—PRELIMINARY**

#### *Division 1—Application of chapter*

#### **227 Chapter does not apply to covert operations**

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

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

#### **228 Right to remain silent not affected**

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

## **PART 2—INVESTIGATIONS AND QUESTIONING**

#### *Division 1—Application of part*

#### **229 Application of pt 2**

This part applies only to a person who—

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

*Example for paragraph (b)—*

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

### ***Division 2—Removal of persons from lawful custody***

#### **230 Application for removal of person from lawful custody**

**(1)** This section applies to a person who is suspected of having committed an indictable offence and is in custody under the *Corrective Services Act 2000* or the *Juvenile Justice Act 1992*—

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

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

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

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

**(4)** The application must be—

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

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

*Example—*

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

**231 Chief executive must be advised of application for removal order**

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

**232 When magistrate may make removal order**

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

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

**233 What removal order must state**

A removal order must state the following—

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

***Division 3—Detention for investigation or questioning*****234 Initial period of detention for investigation or questioning**

(1) A police officer may detain a person<sup>51</sup> for a reasonable time to investigate, or question the person about—

- (a) if the person is in custody following an arrest for an indictable offence—the offence for which the person was arrested; or
- (b) in any case—any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody.

(2) However, the person must not be detained under this part for more than 8 hours, unless the detention period is extended under this division.

(3) If this part applies to the person because of section 229(b) or (c), the person must be returned to the watch-house or other place of custody as soon as reasonably practicable after the detention period ends.

(4) In the 8 hours mentioned in subsection (2) (the “**detention period**”)—

- (a) the person may be questioned for not more than 4 hours; and
- (b) the time out may be more than 4 hours.

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

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

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

(1) The following must be taken into consideration when deciding what is a reasonable time to detain a person under section 234—

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51 For persons to whom this part applies, see section 229 (Application of pt 2).

*Police Powers and Responsibilities Act 2000*

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

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

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

*Examples for subsection (2)(b)—*

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

### **236 Application for extension of detention period**

(1) A police officer may apply for an order extending the detention period before the period ends.

(2) The application must be made to—

- (a) a magistrate; or
- (b) a justice of the peace (magistrates court); or
- (c) if there is no magistrate or justice of the peace (magistrates court) available—another justice of the peace other than a justice of the peace (commissioner for declarations).

(3) However, if the total questioning period since the detention began will, if extended, be more than 12 hours, the application must be made to a magistrate.

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

(5) The person or the person's lawyer may make submissions to the magistrate or justice about the application, but not submissions that unduly delay the consideration of the application.

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

### **237 When detention period may be extended**

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

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

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

(3) A justice who is not a magistrate does not have power to make an order authorising questioning or further questioning of a person for a



period that would extend the questioning period for the person to more than 12 hours.

*Example for subsection (3)—*

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

### **238 What order must state**

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

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

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

### **239 Use of time out during extended detention period**

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

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

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

### **240 Effect of unforeseen delays on detention**

(1) If, because of reasonably unforeseen time out, a delay happens in making an application for an extension of the initial period of detention of a person, the detention of the person continues to be lawful, but only for the time reasonably necessary to enable the application to be made and decided.

(2) If, because of reasonably unforeseen time out—

- (a) questioning of a person during an extended detention period is suspended or delayed; or
- (b) a delay happens in making an application for an extension of an extended detention period;

the detention of the person beyond the end of the extended detention period continues to be lawful and the time allowed for questioning is not affected.

*Example of unforeseen time out—*

A police car used to transport a suspect from Burketown to Mount Isa breaks down or can not get through because of impassable roads and the magistrate can not be contacted by phone or radio.

### **241 Effect of another arrest on questioning period**

If a person is detained for questioning under this part more than once in any period of 24 hours and questioned for a total of more than 4 hours in the 24 hours, a police officer must not continue to question the person, unless the detention period is extended under section 237.<sup>52</sup>

*Example—*

If a person who has been arrested for a stealing offence and questioned for 3 hours is again arrested within a 24 hour period for a break and enter offence, a police officer can only question the person for 1 hour before being required to apply for an extension of the detention period.

### **242 When does detention period start for offenders arrested outside Queensland**

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

- (a) has been arrested in another State for an indictable offence committed in Queensland; or
- (b) has appeared before a magistrate in another State for an indictable offence committed in Queensland.

(2) For this part, the detention period for the person starts—

- (a) if, under the law of the other State, a Queensland police officer may question the person in the other State—when the

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<sup>52</sup> Section 237 (When detention period may be extended)

Queensland police officer starts to question the person for the offence; or

- (b) when the person arrives in Queensland in the company of a Queensland police officer for the purpose of being questioned for the offence.

#### ***Division 4—Other provisions about investigations and questioning***

### **243 When person detained may be taken to a place other than a police establishment**

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

*Example—*

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

- (a) to the scene of the offence to identify it or re-enact the offence; or
- (b) to a doctor for medical treatment or examination.

### **244 Persons helping in covert investigations not under arrest**

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

(2) For this part, if the person in custody following an arrest agrees voluntarily to take part in the covert investigation, the person stops being under arrest for the offence.

(3) The agreement must, if reasonably practicable, be electronically recorded.

(4) However, the person may refuse to consent to the electronic recording of the agreement.

(5) If the agreement is not electronically recorded, a police officer must make a written record of the circumstances of the agreement.

(6) Subsection (2) does not prevent the person from being rearrested for the offence.

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

### *Division 1—Preliminary*

#### **245 Part applies only to indictable offences**

This part applies only to indictable offences.

#### **246 When does this part apply to a person**

(1) This part applies to a person (“**relevant person**”) if the person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence.

(2) However, this part does not apply to a person only if the police officer is exercising any of the following powers—

- (a) power conferred under any Act or law to detain the person for a search;
- (b) power conferred under any Act to require the person to give information or answer questions.

#### **247 Questioning generally**

A police officer who is questioning a relevant person must not obtain a confession by threat or promise.<sup>53</sup>

#### **248 Questioning of person after proceeding started**

(1) Nothing in this part prevents a relevant person from helping a police officer by making a statement or answering questions relating to the matter for which the person is charged after a proceeding for the offence has been started.

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<sup>53</sup> See also the *Criminal Law Amendment Act 1894*, section 10 (Confessions).

(2) Also, a police officer may question the person to clarify any ambiguity in relation to what was previously said by the person.

(3) If new evidence of the offence becomes available, a police officer may tell the person of the evidence and invite the person to make a statement.

*Example for subsection (3)—*

If a relevant person has been charged with the offence of rape, and a scientific comparison such as a DNA analysis connects the person with the offence, the police officer may tell the person of the result and invite the person to make a statement.

### ***Division 2—Other persons may be present during questioning***

#### **249 Right to communicate with friend, relative or lawyer**

(1) Before a police officer starts to question a relevant person for an indictable offence, the police officer must inform the person he or she may—

- (a) telephone or speak to a friend or relative to inform the person of his or her whereabouts and ask the person to be present during questioning; and
- (b) telephone or speak to a lawyer of the person's choice and arrange, or attempt to arrange, for the lawyer to be present during the questioning.

(2) The police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1).

(3) If the person arranges for someone to be present, the police officer must delay the questioning for a reasonable time to allow the other person to arrive.

(4) What is a reasonable time to delay questioning to allow a friend, relative or lawyer to arrive at the place of questioning will depend on the particular circumstances, including, for example—

- (a) how far the person has to travel to the place; and
- (b) when the person indicated he or she would arrive at the place.

(5) What is a reasonable time to delay questioning to allow the relevant person to speak to a friend, relative or lawyer will depend on the particular

circumstances, including, for example, the number and complexity of the matters under investigation.

(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

### **250 Speaking to and presence of friend, relative or lawyer**

(1) If the relevant person asks to speak to a friend, relative or lawyer, the investigating police officer must—

- (a) as soon as practicable, provide reasonable facilities to enable the person to speak to the other person; and
- (b) if the other person is a lawyer and it is reasonably practicable—allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(2) If the relevant person arranges for another person to be present during questioning, the investigating police officer must also allow the other person to be present and give advice to the relevant person during the questioning.

(3) If the police officer considers the other person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

(4) This section does not apply to a person who is an aborigine, a Torres Strait islander or a child.<sup>54</sup>

### ***Division 3—Special requirements for questioning particular persons***

### **251 Questioning of aboriginal people and Torres Strait islanders**

(1) This section applies if—

- (a) a police officer wants to question a relevant person; and
- (b) the police officer reasonably suspects the person is an adult aborigine or Torres Strait islander.

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<sup>54</sup> For Aboriginal people and Torres Strait Islanders, see section 251 and for children, see section 252.

(2) Unless the police officer is aware that the person has arranged for a lawyer to be present during questioning, the police officer must—

- (a) inform the person that a representative of a legal aid organisation will be notified that the person is in custody for the offence; and
- (b) as soon as reasonably practicable, notify or attempt to notify a representative of the organisation.

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

(4) The police officer must not question the person unless—

- (a) before questioning starts, the police officer has, if practicable, allowed the person to speak to the support person, if practicable, in circumstances in which the conversation will not be overheard; and
- (b) a support person is present while the person is being questioned.

(5) Subsection (4) does not apply if the person has, by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have a support person present.

(6) If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

## **252 Questioning of children**

(1) This section applies if—

- (a) a police officer wants to question a relevant person; and
- (b) the police officer reasonably suspects the person is a child.

(2) The officer must not question the child unless—

- (a) before questioning starts, the police officer has, if practicable, allowed the child to speak to a support person in circumstances in which the conversation will not be overheard; and
- (b) a support person is present while the child is being questioned.

(3) If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during the questioning.

### **253 Questioning of persons with impaired capacity**

(1) This section applies if—

- (a) a police officer wants to question a relevant person; and
- (b) the police officer reasonably suspects the person is a person with impaired capacity.

(2) A police officer must not question the person unless—

- (a) before questioning starts, the police officer has, if practicable, allowed the person to speak to a support person in circumstances in which the conversation will not be overheard; and
- (b) a support person is present while the person is being questioned.

(3) Also, the police officer must suspend questioning and comply with subsection (2) if, during questioning, it becomes apparent that the person being questioned is a person with impaired capacity.

### **254 Questioning of intoxicated persons**

(1) This section applies if a police officer wants to question or to continue to question a relevant person who is apparently under the influence of liquor or a drug.

(2) The police officer must delay the questioning until the police officer is reasonably satisfied the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions.

#### ***Division 4—Excluding persons unreasonably interfering with questioning***

### **255 What is “unreasonable interference” for divs 2–3**

(1) The following may be unreasonable interference for divisions 2 and 3—

- (a) conduct that prevents or unreasonably obstructs—



- (i) proper questions being put to a relevant person; or
- (ii) the person's response to a question being recorded;
- (b) answering questions on behalf of the relevant person;
- (c) providing written replies during the questioning for the relevant person to quote.

(2) However, it is not unreasonable interference to reasonably do any of the following—

- (a) to seek clarification of a question;
- (b) to challenge an improper question put to the relevant person;
- (c) to challenge the way in which a question is put;
- (d) for a lawyer—
  - (i) to advise the relevant person not to answer any question or any further question; or
  - (ii) to say he or she wishes to give the relevant person further legal advice.

### **256 Requirements before excluding persons unreasonably interfering with questioning**

(1) This section applies if a police officer considers a friend, relative, lawyer, support person present during the questioning of a relevant person is unreasonably interfering with the questioning.

(2) Before excluding the person from being present during questioning, the police officer must—

- (a) warn the person not to interfere with the questioning; and
- (b) give the person 1 further opportunity to stop unreasonably interfering with the questioning; and
- (c) tell the person that he or she may be excluded from being present during the questioning if he or she continues to interfere unreasonably with the questioning.

### **257 If police officer excludes person from questioning**

(1) If a police officer excludes a person from being present during questioning, the police officer must—

- (a) if the excluded person was a friend, relative or lawyer—advise the relevant person that he or she may telephone or speak to another friend, relative or lawyer, to ask the person to be present during the questioning; and
  - (b) if the relevant person arranges for another person to be present—delay the questioning for a reasonable time to allow the other person to be present during the questioning.
- (2) Also, the police officer must arrange for someone else to be present during the questioning if—
- (a) the police officer must not question the relevant person without a support person being present because of a requirement under this Act; and
  - (b) the relevant person has not arranged for another person to be present during the questioning.

### **258 Cautioning of persons**

(1) A police officer must, before a relevant person is questioned, caution the person in the way required under the responsibilities code.

(2) The caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person can not hear adequately.

(3) If the police officer reasonably suspects the person does not understand the caution, the officer may ask the person to explain the meaning of the caution in his or her own words.

(4) If necessary, the police officer must further explain the caution.

(5) This section does not apply if another Act requires the person to answer questions put by, or do things required by, the police officer.

### **259 Provision of information relating to a relevant person**

(1) This section applies if a relative, friend or lawyer of a relevant person asks for information about the person's whereabouts.

(2) A police officer must, if practicable, inform the relevant person of the request and, after doing so, give the information to the person who asked for it.

(3) The police officer is not required to disclose the person's whereabouts if—

- (a) the relevant person refuses to agree to giving the information and the refusal is in writing or electronically recorded; or
- (b) the whereabouts of the relevant person—
  - (i) are not in a register that the police officer may inspect; and
  - (ii) are otherwise not actually known to the police officer.

(4) Also, the police officer is not required to inform the relevant person of the request if the police officer reasonably suspects the person asking for the information is not a relative, friend or lawyer of the relevant person.

## **260 Right to interpreter**

(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.

(2) Before starting to question the person, the police officer must arrange for the presence of an interpreter and delay the questioning or investigation until the interpreter is present.

(3) In this section—

**“investigation”** means the process of using investigative methodologies, other than fingerprinting, searching or taking photos of the person, that involve interaction by a police officer with the person, for example, an examination or the taking of samples from the person.

## **261 Right of visiting foreign national to communicate with embassy etc.**

(1) This section applies to a relevant person who is not—

- (a) an Australian citizen; or
- (b) a foreign national with a right of residence in Australia.

(2) Before a police officer starts to question the person, the police officer must inform the person that he or she may telephone, or attempt to telephone, the embassy or consular office of the country of which the person is a citizen.

(3) If the person wishes to telephone the appropriate embassy or consular office, the police officer must—

- (a) as soon as practicable, make available to the person reasonable facilities for the purpose; and
- (b) delay the questioning for a reasonable time to allow the person to telephone, or attempt to telephone, the appropriate embassy or consular office.

### **262 Rights of a person to be electronically recorded**

A police officer who is required under this division to give to a relevant person information (including a caution) must, if practicable, electronically record the giving of the information to the person and the person's response.

#### *Division 5—Recording of questioning*

### **263 Recording of questioning etc.**

- (1) This section applies to the questioning of a relevant person.
- (2) The questioning must, if practicable, be electronically recorded.

*Examples for subsection (2)—*

1. It may be impracticable to electronically record a confession or admission of a murderer who telephones police about the murder and immediately confesses to it when a police officer arrives at the scene of the murder.
2. It may be impracticable to electronically record a confession or admission of someone who has committed an armed hold-up, is apprehended after pursuit, and makes a confession or admission immediately after being apprehended.
3. Electronically recording a confession or admission may be impracticable because the confession or admission is made to a police officer when it is not reasonably practicable to use recording facilities.

(3) If the person makes a confession or admission to a police officer during the questioning, the confession or admission is admissible in evidence against the person in a proceeding only if it is recorded as required by subsection (4) or section 264.

(4) If the confession or admission is electronically recorded, the confession or admission must be part of a recording of the questioning of

the person and anything said by the person during questioning of the person.

### **264 Requirements for written record of confession or admission**

(1) This section applies if a record of a confession or admission is written.

(2) The way the written record of the confession or admission is made must comply with subsections (3) to (7).

(3) While questioning the relevant person, or as soon as reasonably practicable afterwards, a police officer must make a written record in English of the things said by or to the person during questioning, whether or not through an interpreter.

(4) As soon as practicable after making the record—

- (a) it must be read to the person in English and, if the person used another language during questioning, the language the person used; and
- (b) the person must be given a copy of the record.

(5) Before reading the record to the person, an explanation, complying with the responsibilities code, must be given to the person of the procedure to be followed to comply with this section.

(6) The person must be given the opportunity, during and after the reading, to draw attention to any error in or omission from the record he or she claims were made in the written record.

(7) An electronic recording must be made of the reading mentioned in subsection (4) and everything said by or to the person during the reading, and anything else done to comply with this section.

### **265 Access to electronic recordings of questioning etc.**

(1) This section applies to the electronic record of the questioning, confession or admission, or confirmation of a confession or admission, of a relevant person that is made under section 263 or 264(7).

(2) A police officer must, without charge—

- (a) if the recording is—

- (i) an audio recording only—make a copy of the recording available to the person or the person’s lawyer within 7 days after making the recording; or
  - (ii) a video recording only—make a copy of the recording available to the person or the person’s lawyer within 14 days after making the recording; or
- (b) if both audio and video recordings were made—
- (i) make a copy of the audio recording available to the person or the person’s lawyer within 7 days after making the recording; and
  - (ii) notify the person or the person’s lawyer that, if the person asks, an opportunity will be provided to view the video recording; or
- (c) if a transcript of an audio recording is made—on request, give to the person or the person’s lawyer a copy of the transcript.
- (3) Subsection (2) applies subject to any other Act.

### **266 Admissibility of records of questioning etc.**

(1) Despite sections 263 and 264, the court may admit a record of questioning or a record of a confession or admission (the “**record**”) in evidence even though the court considers this division has not been complied with or there is not enough evidence of compliance.

(2) However, the court may admit the record only if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.

### *Division 6—General*

### **267 List of support persons and interpreters**

(1) The commissioner must keep a list of support persons and interpreters or, if an organisation provides interpreter services at a particular place, organisations providing interpreter services at the place.

(2) The commissioner must revise the list at the times the commissioner considers appropriate.

(3) The list must specify the languages that each person on the list is able to understand and speak.

### **268 When sections 249-253, 259 and 261 do not apply**

(1) Sections 249 to 253, 259 and 261<sup>55</sup> do not apply if a police officer reasonably suspects that compliance with the sections is likely to result in—

- (a) an accomplice or accessory of the relevant person taking steps to avoid apprehension; or
- (b) an accomplice or accessory being present during questioning; or
- (c) evidence being concealed, fabricated or destroyed; or
- (d) a witness being intimidated.

(2) Also, a police officer is not required to delay questioning if, having regard to the safety of other people, the police officer reasonably suspects questioning is so urgent that it should not be delayed.

(3) This section applies only for so long as the police officer has the reasonable suspicion.

## **CHAPTER 8—POWERS IN RELATION TO PERSONS IN CUSTODY**

### **PART 1—SEARCH OF PERSONS IN CUSTODY**

#### **269 Search of persons in custody**

(1) This section applies if a person—

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55 Sections 249 (Right to communicate with friend, relative or lawyer), 250 (Speaking to and presence of friend, relative or lawyer), 251 (Questioning of aboriginal people and Torres Strait islanders), 252 (Questioning of children), 253 (Questioning of persons with impaired capacity), 259 (Provision of information relating to a relevant person) and 261 (Right of visiting foreign national to communicate with embassy etc.)

*Police Powers and Responsibilities Act 2000*

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

*Examples for paragraph (b)—*

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

**(2)** A police officer may search and re-search a person to whom this section applies.

**(3)** A police officer may seize from the person anything found on the search that the police officer reasonably suspects may provide evidence of the commission of an offence.

**(4)** Also, the police officer may take and retain, while the person is in custody—

- (a) anything that may endanger anyone's safety, including the person's safety; or
- (b) anything that may be used for an escape; or
- (c) anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

**(5)** A police officer may give a thing taken from a person who is taken to a place of safety under section 210<sup>56</sup>—

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

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<sup>56</sup> Section 210 (Additional case when arrest for being drunk in a public place may be discontinued)



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

## **PART 2—GATHERING INFORMATION FOR IDENTIFYING SUSPECTS**

### *Division 1—Taking identifying particulars*

#### **270 Taking identifying particulars of person in custody**

(1) If a person is in custody for an identifying particulars offence that has not been decided, a police officer may take or photograph all or any of the person's identifying particulars.

(2) Also, if the person is to be released after arrest for the offence, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars.

(3) Further, if the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking or photographing all or any of the person's identifying particulars.

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

(1) This section applies if a police officer decides to start a proceeding against a person other than a child for an identifying particulars offence by notice to appear or complaint and summons.

(2) Before or immediately after serving the notice to appear or complaint and summons, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars and take or photograph those particulars.

**272 Identifying particulars notice may be given**

(1) This section applies if a police officer starts or continues a proceeding against a person other than a child for an identifying particulars offence by notice to appear or complaint and summons and decides it is not necessary to immediately take the particulars.

(2) A police officer may, by written notice (“**identifying particulars notice**”), require the person to report to a police officer at a stated police station between stated hours within 7 days after the issue of the notice to enable a police officer to take or photograph all or any of the person’s identifying particulars.

(3) An identifying particulars notice—

(a) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the particulars are taken, the person must produce satisfactory evidence of his or her identity; and

(b) must be given to the person with the notice to appear or complaint and summons; and

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

(4) The police officer giving the notice must warn the person it is an offence to contravene a requirement under subsection (2).<sup>57</sup>

(5) If a person attends at a police station as required under an identifying particulars notice, a police officer may take or photograph all or any of the person’s identifying particulars.

**273 Court may order taking of identifying particulars**

(1) This section applies if, in a proceeding for a charge of an identifying particulars offence against a person other than a child, a court is satisfied it is necessary to take or photograph the person’s identifying particulars to help—

(a) identify the person in relation to the offence or another offence the person is suspected to have committed; or

(b) confirm the person’s identity; or

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<sup>57</sup> For the offence, see section 445 (Offence to contravene direction or requirement of police officer).

(c) find out the person's criminal history; or

(d) keep criminal records.

(2) The court may order—

(a) that the person charged be held in custody for up to 1 hour to enable a police officer to take or photograph all or any of the person's identifying particulars; or

(b) that the person report to a police officer at a stated police station between stated hours within 7 days to enable a police officer to take or photograph all or any of the person's identifying particulars.

(3) Any police officer may take or photograph all or any of the person's identifying particulars.

### **274 Destruction of identifying particulars**

(1) If a person is found not guilty of an identifying particulars offence or is not further proceeded against, any identifying particulars taken in relation to the offence must be destroyed within a reasonable time in the presence of a justice, unless—

(a) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided; or

(b) the person has been found guilty of another identifying particulars offence; or

(c) the identifying particulars are required for the investigation of another identifying particulars offence the person is reasonably suspected of having committed; or

(d) the person is not proceeded against because he or she has been found incapable of standing trial because of mental illness.

(2) If a delay in the destruction of identifying particulars happens because of either of the following, the identifying particulars must be destroyed within a reasonable time—

(a) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided and the person is found not guilty of the offence; or

- (b) the person has been proceeded against on a charge of another identifying particulars offence that has not been decided and the charge of the offence is not proceeded with.

(3) However, the identifying particulars must not be destroyed under subsection (2) if subsection (1) continues to apply to the person.

### *Division 2—Identifying suspects*

#### **275 Identification of suspects**

(1) It is lawful for a police officer to use 1 or more of the following procedures to help gather evidence of the identity of a person suspected of having committed an offence—

- (a) an identification parade;
- (b) a photo board containing at least 12 photos of people of similar appearance, 1 of whom is the person suspected of having committed the offence;
- (c) videotape;
- (d) computer generated images.

(2) The police officer must comply with the procedures in the responsibilities code for identification procedures.

(3) The police officer may ask a person to take part in an identification parade.

(4) The person may refuse to take part in the parade.

(5) This section does not limit the procedures a police officer may use to help gather evidence of the identity of a person suspected of having committed an offence.

## **PART 3—MEDICAL AND DENTAL PROCEDURES**

### *Division 1—Preliminary*

#### **276 Application of pt 3**

This part applies to a person (“**relevant person**”) who is suspected of having committed an indictable offence, whether or not the person has been charged with the offence.

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

A police officer must not require a doctor or dentist to perform a medical or dental procedure on a relevant person under this part without the consent of the person on whom it is to be performed or a magistrate’s approval.

#### **278 Right to interpreter**

(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.

(2) Before taking any action under this part, other than applying for an approval under division 3, the police officer must arrange for the presence of an interpreter and delay taking the action until the interpreter is present.

#### **279 Person must be told of need for consent or approval**

(1) Before a police officer asks a doctor or dentist to perform a medical or dental procedure under this part, a police officer must tell the relevant person on whom it is to be performed—

- (a) the act can not be done without the person’s consent or a magistrate’s approval; and
- (b) that the person has the right to have 2 people of his or her choice present while it is being done; and
- (c) that he or she may—

*Police Powers and Responsibilities Act 2000*

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- (i) telephone or speak to a friend or relative to inform the person of his or her whereabouts and ask the person to be present during the performance of the procedure; and
- (ii) telephone or speak to a lawyer of the person's choice and arrange, or attempt to arrange, for the lawyer to be present during the performance of the procedure.

(2) The police officer must delay performing the procedure for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1)(c).

(3) The relevant person must pay the cost of the independent person's attendance.

(4) If the relevant person arranges for someone to be present, the police officer must delay the performing the procedure for a reasonable time to allow the other person to arrive.

(5) What is a reasonable time to delay the performance of the procedure to allow a friend, relative or lawyer to arrive at the place will depend on the particular circumstances, including, for example—

- (a) how far the person has to travel to the place; and
- (b) when the person indicated he or she would arrive at the place.

(6) What is a reasonable time to delay the performance of the procedure to allow the person to speak to a friend, relative or lawyer will depend on the particular circumstances, including, for example, the person's age and the nature of the proposed procedure.

(7) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

(8) Nothing in this section requires—

- (a) a person in whose custody another person is to deliver the person to the place where the procedure is to be performed; or
- (b) a police officer to allow a person who the police officer reasonably suspects is an accomplice or accessory to be present while the procedure is being performed.

### **280 Speaking to and presence of friend, relative or lawyer**

(1) If the relevant person asks to speak to a friend, relative or lawyer, the investigating police officer must—

- (a) as soon as practicable, provide reasonable facilities to enable the person to speak to the other person; and
- (b) if the other person is a lawyer and it is reasonably practicable—allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(2) If the relevant person arranges for another person to be present during performance of the procedure, the investigating police officer must also allow the other person to be present and give advice to the relevant person during the performance of the procedure.

(3) If the police officer considers the other person is unreasonably interfering with the performance of the procedure, the police officer may exclude the person from being present during performance of the procedure.

### **281 Special consent requirement for children and persons with impaired capacity**

(1) This section applies if the relevant person on whom a medical or dental procedure is proposed to be performed is a child or a person with impaired capacity.

(2) Consent to the performance of a medical or dental procedure on the person must be given in the presence of a support person.

### **282 Absence of independent person not to affect lawfulness of custody etc.**

The lawfulness of the detention in custody of a relevant person or of the performance of a medical or dental procedure is not affected by the absence, while the procedure is being performed, of an independent person the relevant person wishes to have present if—

- (a) after having indicated that he or she is willing and able to attend—the independent person fails to attend within a reasonable time; or
- (b) evidence is likely to be lost or destroyed if the medical or dental procedure is delayed to allow the independent person to attend.

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

(1) This section applies if a friend, relative, lawyer, or support person present while a medical or dental procedure is being performed on a relevant person unreasonably interferes with the performance of the procedure.

(2) Before excluding the person from being present while the procedure is being performed, the police officer must—

- (a) warn the person not to interfere with the performance of the procedure; and
- (b) give the person 1 further opportunity to stop unreasonably interfering; and
- (c) tell the person that he or she may be excluded from being present if he or she continues to interfere unreasonably with the performance of the procedure.

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

(1) If a police officer excludes a person from being present while a medical or dental procedure is being performed, the police officer must—

- (a) if the person excluded is a friend, relative or lawyer—advise the relevant person that he or she may telephone or speak to another friend, relative or lawyer, to ask the person to be present while the procedure is being performed; and
- (b) if the relevant person arranges for another person to be present—delay the performance of the procedure for a reasonable time to allow the other person to be present during the performance of the procedure.

(2) Also, the police officer must arrange for someone else to be present while the procedure is being performed if—

- (a) the relevant person is a child or a person with impaired capacity; and
- (b) the relevant person has not arranged for another person to be present while the procedure is being performed.



***Division 2—Performing medical or dental procedures with consent*****285 Consent to be recorded**

(1) This section applies if the relevant person consents to a medical or dental procedure being performed on the person under this section.

(2) The consent must be written or electronically recorded.

**286 Doctor's powers**

(1) A doctor may do any of the following that may provide evidence of the commission of the relevant offence—

- (a) examine the relevant person's body, including the orifices of the person's body;
- (b) take samples of the relevant person's blood, saliva or hair;
- (c) if a police officer requires the relevant person to provide a sample of the person's urine—ask the person to provide the sample;
- (d) collect from the relevant person's body, including the orifices of the person's body, any substance or thing.

(2) The doctor may, as part of anything done under subsection (1), photograph anything relevant to the examination.

(3) If help is needed to do anything mentioned in subsection (1), the doctor may ask other persons to give reasonably necessary help.

(4) However, the person helping the doctor must not do anything mentioned in subsection (1), unless the person is—

- (a) a person of the same sex as the relevant person; or
- (b) a doctor; or
- (c) if a person of the same sex as the relevant person or a doctor can not reasonably be called on to give the necessary help—anyone else who is asked to help and acts at the doctor's direction.

(5) It is lawful for a doctor and a person helping the doctor under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (1).

(6) The doctor and anyone helping the doctor must immediately stop performing a procedure if the relevant person withdraws consent.

(7) However, withdrawal of consent does not affect the admissibility in evidence of anything observed, taken or collected before the consent was withdrawn.

### **287 Dentist's powers**

(1) A dentist may do any of the following that may provide evidence of the commission of the offence—

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

(2) The dentist may, as part of anything done under subsection (1), photograph anything the dentist considers relevant for the purpose.

(3) If help is needed to do anything mentioned in subsection (1), the dentist may ask other persons to give reasonably necessary help.

(4) It is lawful for a dentist and a person helping the dentist under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (1).

(5) The dentist and anyone helping the dentist must immediately stop doing anything authorised by this section if the relevant person withdraws consent.

(6) However, withdrawal of consent does not affect the admissibility in evidence of anything observed, taken or collected before the consent was withdrawn.

### ***Division 3—Performing medical or dental procedures without consent***

### **288 Application of div 3**

This division applies if the relevant person is in custody for an indictable offence whether or not the person has been charged with the offence.

*Examples—*

1. A person arrested under section 198 for investigation of an indictable offence.
2. A person serving a period of imprisonment for an offence who is charged with another indictable offence.

**289 Application for order for performance of medical or dental procedure**

(1) A police officer may apply to a magistrate for an order authorising the performance of a medical or dental procedure on a relevant person in custody whether or not the person has consented to the procedure.

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

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

*Example—*

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

**290 Making of order**

(1) The magistrate may make an order authorising the performance of a medical or dental procedure on a relevant person only if satisfied there are reasonable grounds for believing performing the procedure may provide evidence of the commission of the offence.

(2) The order—

(a) must state—

(i) the name of the relevant person; and

(ii) whether the order authorises the performance of medical or dental procedures or both medical and dental procedures; and

(b) may state that the relevant person may be taken to a stated appropriate place for the performance of the procedure.

**291 Copy of order to be given to person**

If a medical or dental procedure is to be done under the magistrate's order, the police officer must give to the relevant person and the doctor or dentist a copy of the order.

**292 Performing medical procedures without consent**

(1) This section applies if—

- (a) a magistrate authorises the performance of medical procedures on a relevant person; and
- (b) a police officer asks a doctor to perform the procedures.

(2) A doctor acting in good faith may do any of the following that may provide evidence of the commission of the offence—

- (a) examine the person's body, including the orifices of the person's body;
- (b) take samples of the person's blood, saliva or hair;
- (c) require the person to provide a sample of the person's urine;
- (d) collect from the person's body, including the orifices of the person's body, any substance or thing if collecting it would be unlikely to cause grievous bodily harm to the person if the person cooperates with the doctor.

(3) The doctor may, as part of the examination of the person's body, photograph anything relevant to the examination.

(4) If help is needed to perform the relevant procedure, the doctor may ask other persons to give reasonably necessary help.

(5) However, the person helping the doctor must not perform a procedure under subsection (2), unless the person is—

- (a) a person of the same sex as the relevant person; or
- (b) a doctor; or
- (c) if a person mentioned in paragraph (a) or (b) can not reasonably be called on to give the necessary help—anyone else who is asked to help and acts at the doctor's direction.

(6) It is lawful for a doctor and a person helping a doctor under this section to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (2).

**293 Performing dental procedures without consent**

(1) This section applies if—

*Police Powers and Responsibilities Act 2000*

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- (a) a magistrate authorises the performance of dental procedures on a relevant person; and
- (b) a police officer asks a dentist to perform the procedures.

(2) A dentist acting in good faith may do any of the following that may provide evidence of the commission of the offence—

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

(3) The dentist may, as part of anything done under subsection (2), photograph anything the dentist considers relevant for the purpose.

(4) If help is needed to do anything mentioned in subsection (2), the dentist may ask other persons to give reasonably necessary help.

(5) It is lawful for a dentist and a person helping the dentist to use reasonably necessary force for the purpose of doing a thing mentioned in subsection (2).

*Division 4—Miscellaneous***294 Power to analyse samples**

(1) It is lawful for a person to analyse any sample, substance, thing, impression or photograph taken under this part.

(2) It is lawful for a police officer to keep the results of anything done under subsection (1) for use in a proceeding for an offence.

**295 Samples and test results to be given to person**

(1) A person who takes or collects a sample or other thing from another person must give to the other person, or someone nominated by that person for the purpose, a part of the sample or thing or an equivalent sample or thing for the other person's own purposes.

(2) However, subsection (1) does not apply if—

- (a) it is not practicable to give an equivalent sample to the person; or

*Police Powers and Responsibilities Act 2000*

- (b) an equivalent sample for the purpose may be taken from the person's body at any time.

*Example for paragraph (a)—*

The size of the sample taken is too small to effectively provide the person with an equivalent sample.

*Example for paragraph (b)—*

A sample of blood taken for a DNA analysis of that person.

(3) Also, if a doctor takes a sample or thing and the doctor considers complying with subsection (1) may be inappropriate because, for example, the sample or thing may be used to transmit a communicable disease, the doctor may instead send, at the person's expense, the sample or thing to a doctor nominated by the person or the person's lawyer for safe custody.

(4) If the person does not nominate a doctor, the doctor taking the sample or thing need not provide the sample or thing and the sample or thing intended to be given to the person may be destroyed.

(5) As soon as reasonably practicable after a police officer is given the results of any test conducted using a sample or other thing taken or collected under this part, the police officer must give to the person to whom the results relate, or someone nominated by the person, a copy of the results.

## PART 4—DNA PROCEDURES

### *Division 1—Application and purpose of pt 4*

#### **296 Primary purpose of pt 4**

The primary purposes of this part are—

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

- (ii) the recording in the database of information obtained by performing a DNA analysis of a DNA sample taken under this part; and
- (iii) the use of information in the database for investigations by declared law enforcement agencies.

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

#### **297 Who may take DNA samples**

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

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

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

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

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

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

#### **298 Where DNA samples may be taken**

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

- (a) a police establishment;
- (b) a hospital;

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

### **299 How DNA samples may be taken**

- (1) A DNA sampler may take a DNA sample from a person only—
  - (a) by requiring the person to use a mouth swab; or
  - (b) by collecting from the person hair, including roots of the hair.
- (2) However, a DNA sampler must not collect hair from—
  - (a) the genital or anal area of a person; or
  - (b) a person's buttocks; or
  - (c) the breasts of a female.

### *Division 3—Taking DNA samples with consent*

### **300 Informed consent needed for taking DNA sample**

- (1) A police officer may ask a person to consent to the taking of a DNA sample from the person for DNA analysis.
- (2) The police office must ensure the person is given a reasonable opportunity to give an informed consent to the taking of the DNA sample.
- (3) Before a DNA sampler takes the sample, a police officer must—
  - (a) be reasonably satisfied the person is not under the influence of liquor or a drug; and
  - (b) ensure the person has given an informed consent to the taking of the sample.

### **301 Special requirements for obtaining consent from persons with impaired capacity**

- (1) This section applies if—
  - (a) a police officer intends to ask a person, other than a child, to consent to the taking of a DNA sample from the person; and



- (b) the police officer reasonably suspects the person is a person with impaired capacity.

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

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

### **302 Special requirement for obtaining consent from children**

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

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

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

### **303 Explanation to be given before asking for consent**

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

- (a) why it is proposed to take a DNA sample from the person;
- (b) how the DNA sample may be taken and where it may be taken from;
- (c) that the person may refuse to consent to the taking of the DNA sample;
- (d) that, if the person consents, a DNA sampler will take the DNA sample;
- (e) that the person may withdraw consent at any time before the DNA sample is taken or while the sample is being taken;
- (f) that a DNA analysis may be performed using any DNA sample taken;

- (g) that, unless the person otherwise requires, the results of a DNA analysis of the DNA sample may—
  - (i) be recorded in the DNA database; and
  - (ii) be used in the way permitted under division 6;
- (h) that, if the person refuses to consent, the person may be required under division 4 to provide a DNA sample;
- (i) that the DNA analysis may provide evidence that may be used in a proceeding before a court.

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

### **304 Explanation and consent to be recorded**

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

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

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

### *Division 4—Taking DNA samples without consent*

#### **305 Purpose of div 4**

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

#### **306 Special requirement if person with impaired capacity**

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

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

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

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

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

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

(3) A police officer may, with the approval of a commissioned officer, detain the person for the time reasonably necessary to take a DNA sample from the person and, if necessary, take the person to a place mentioned in section 298(a), (b) or (d)<sup>58</sup> for the purpose.

(4) The commissioned officer must be—

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

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

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

### **308 DNA sample notice may be given**

(1) This section applies if a police officer starts or continues a proceeding for an indictable offence against an adult by arrest, notice to

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58 Section 298 (Where DNA samples may be taken)

appear or complaint and summons and decides it is not necessary to immediately take a DNA sample from the person.

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

(3) The commissioned officer must be—

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

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

(5) A DNA sample notice—

- (a) must state—
  - (i) it is an offence to fail to comply with the notice; and
  - (ii) that, before the DNA sample is taken, the person must produce to a police officer satisfactory evidence of his or her identity; and
- (b) must be given to the person with the notice to appear or complaint and summons; and
- (c) must be signed by the police officer serving the notice.

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

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

### **309 Taking DNA sample from adult before court**

(1) This section applies if, in a proceeding against an adult charged with an indictable offence, a court is satisfied it is reasonably necessary, having

regard to the rights and liberties of the person and the public interest, to take DNA a sample for DNA analysis from the person.

(2) The court may order—

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

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

### **310 Taking DNA sample after conviction of adult**

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

(2) The court may order—

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

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

### **311 Taking DNA sample from prisoner**

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

(2) A DNA sampler may, in accordance with an arrangement between the commissioner and the person in charge of the corrective services facility—

- (a) enter the facility where the person is held; and

- (b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample for DNA analysis from the prisoner; and
- (c) take the DNA sample from the prisoner.

(3) A corrective services officer under the *Corrective Services Act 2000* may be present when the DNA sample is taken.

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

### **312 Taking DNA sample from child**

(1) This section applies if a police officer—

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

(2) The police officer must apply to the Childrens Court for an order authorising the taking of a sample from the child for DNA analysis.

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

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

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

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

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

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

### *Division 5—General requirements about taking DNA samples*

#### **313 Protecting the dignity of persons while taking DNA samples**

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

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

- (a) must not require the person to remove more clothing than is necessary for the DNA sample to be taken; and
- (b) if reasonably practicable, must not take the DNA sample—
  - (i) in the presence of someone whose presence is not required while the sample is being taken; or
  - (ii) where someone not involved in taking the sample can see the sample being taken.

#### **314 Help with DNA sampling**

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

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

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

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

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

***Division 6—General*****315 Power to analyse etc. DNA samples**

(1) It is lawful for a police officer or a person acting under an arrangement between the commissioner and the chief executive (health)—

- (a) to perform a DNA analysis of a DNA sample taken under this part; and
- (b) to perform any further analysis of the DNA sample that may be reasonably necessary for ensuring the accuracy of an earlier analysis; and
- (c) to keep the DNA sample until it is required under this part to be destroyed; and
- (d) to take the steps reasonably necessary to ensure the results of the analysis are included in a DNA database; and
- (e) to compare the results of the DNA analysis with other results of DNA analyses to which the person has access.

(2) It is lawful—

- (a) for a police officer to keep the results of any DNA analysis of a DNA sample taken under this part; and
- (b) for a police officer to use the results of any DNA analysis for any investigation being conducted by a police officer for the police service or a declared law enforcement agency.

(3) A DNA sample mentioned in subsection (1)(c) must be kept in a secure place.

**316 When DNA samples and results must be destroyed**

(1) The commissioner must ensure any DNA sample and the results of a DNA analysis of the sample are destroyed within a reasonable time if—

- (a) the arrest of the person for an indictable offence to which the sample relates is discontinued under section 208(1) or 211(1);<sup>59</sup>  
or

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59 Section 208 (When arrest may be discontinued—general rule) or 211 (Additional case when arrest for minor drugs offence may be discontinued)



*Police Powers and Responsibilities Act 2000*

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- (b) a charge of an indictable offence to which the sample relates is discontinued before a court; or
  - (c) the person is not found guilty of the indictable offence, including on appeal; or
  - (d) within 1 year after the sample is taken, the person is not charged with an indictable offence.
- (2) Subsection (1) does not apply if—
- (a) the person has been proceeded against on a charge of another indictable offence that has not been decided; or
  - (b) the person has been found guilty of another indictable offence, whether before or after the commencement of this section; or
  - (c) the DNA sample and the results of the DNA analysis of the sample are required for the investigation of another indictable offence the person is reasonably suspected of having committed; or
  - (d) the person is not proceeded against because he or she has been found unfit for trial because of mental illness.

(3) For subsection (1), the commissioner may destroy the results of a DNA analysis by ensuring that any information in the DNA database that identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample is deleted.

(4) This section does not apply to a DNA sample taken from a prisoner under section 311,<sup>60</sup> other than to the extent subsection (1)(b) applies to the offence for which the person was imprisoned.

**317 DNA database**

(1) The commissioner must ensure information obtained by a DNA analysis of a DNA sample taken under this part is recorded in a DNA database approved by the commissioner.

- (2) A DNA database approved under subsection (1)—
- (a) may include a database established by agreement between the Commonwealth and the States for keeping information,

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60 Section 311 (Taking DNA sample from prisoner)

including DNA information, obtained by Commonwealth and State law enforcement agencies; and

- (b) is for use only for investigations being conducted by those agencies.

(3) The commissioner may arrange for information obtained by a DNA analysis of either of the following, held by the commissioner, to be included in the database—

- (a) a sample, including blood, taken before or after the commencement of this section;
- (b) a thing a police officer reasonably suspects is evidence of the commission of an offence.

(4) It is lawful for the commissioner to use the DNA database for any investigation being conducted by a police officer for the police service or a declared law enforcement agency.

### **318 Restricted use of DNA samples**

A police officer must not use a DNA sample, or the results of the analysis of DNA a sample, for any purpose other than performing a function of the police service.

## **PART 5—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES**

### *Division 1—Preliminary*

#### **319 Purpose of pt 5**

The purpose of this part is to help ensure victims of particular sexual offences and serious assault offences, and certain other persons receive appropriate medical, physical and psychological treatment by authorising—

- (a) the taking of blood and urine samples from a person a police officer reasonably suspects has committed the relevant offence; and
- (b) the analysis of the samples to find out whether the person may have transmitted a relevant disease to the victim.

### **320 Application of pt 5**

(1) This part applies in relation to the following offences against the Criminal Code (“**relevant offences**”), but only if semen, blood, saliva or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin of a victim of the offence—

- (a) rape;
- (b) a sexual assault involving penetration of a penis into the victim’s mouth;
- (c) incest committed against a child under 12;
- (d) sodomy of a child under 12;
- (e) carnal knowledge of a girl under 12;
- (f) abuse of an intellectually impaired person involving penetration of a penis into the victim’s mouth;
- (g) a serious assault if—
  - (i) blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim’s skin; or
  - (ii) blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane of the victim.<sup>61</sup>

(2) This part also applies to a person other than the victim if semen, blood, saliva or another bodily fluid may have been transmitted to the person during or soon after the commission of a relevant offence.

(3) However, this part does not apply to an assault that involves—

- (a) the penetration of the anus or vagina by an object other than a penis; or

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<sup>61</sup> For the offences, see the Criminal Code, sections 208 (Unlawful sodomy), 215 (Carnal knowledge with or of children under 16), 216 (Abuse of intellectually impaired persons), 222 (Incest), 340 (Serious assaults) and 349 (Rape).

- (b) the transfer of blood or another bodily fluid in a way that does not penetrate the anus, vagina, a mucous membrane or the skin of a victim; or
- (c) spitting saliva onto intact skin.

### **321 Certain Acts do not apply to this part**

The Public Records Act and the *Freedom of Information Act 1992* do not apply to activities or records under this part to the extent those Acts would otherwise enable the identity of a person in relation to whom a disease test order is made or the victim of the relevant offence to be disclosed.

### *Division 2—Taking blood and urine samples*

### **322 Application for order for blood and urine testing of person**

(1) This section applies if a police officer arrests a person (“**relevant person**”) the police officer reasonably suspects has committed a relevant offence.

(2) A police officer may apply to a magistrate or, if the relevant person is a child, the Childrens Court for an order (“**disease test order**”) authorising the taking of a sample of blood and urine from the relevant person.

(3) The application must be written and state the grounds on which it is made.

(4) Before the application is made, the police officer must give the relevant person a copy of the application and inform the person that he or she has the right to be represented by a lawyer at the hearing of the application.

(5) The magistrate may refuse to consider the application unless the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

### **323 Notice to be given of application for disease test order for child**

(1) This section applies if a police officer applies under section 322 for a disease test order for a child.

(2) The police officer must give notice of the application to—

- (a) the child; and
- (b) a parent of the child, unless a parent can not be found after reasonable inquiry; and
- (c) the chief executive (family services) or a person, nominated by that chief executive for the purpose, who holds an office within the department.

### **324 Disease test order**

(1) This section applies to the consideration of an application for a disease test order.

(2) The magistrate or Childrens Court—

- (a) must hear and decide the application with as little delay as possible and in the absence of the public; and
- (b) may, in extraordinary circumstances, adjourn the application for no more than 24 hours to allow further evidence to be put before the magistrate or Childrens Court; and
- (c) must not hear the application unless satisfied the relevant person has been informed of the right to be represented by a lawyer at the hearing.

(3) Also, the victim of the relevant offence can not be compelled to give evidence at the hearing.

(4) If the relevant person, or the relevant person's lawyer, is present when the application is being heard, the relevant person or the lawyer may make submissions to the magistrate or Childrens Court, but not submissions that will unduly delay the consideration of the application.

(5) If the magistrate or Childrens Court is satisfied there are reasonable grounds for suspecting a relevant offence has been committed and, in the circumstances of the offence, a blood and urine sample should be taken from the relevant person, the magistrate or Childrens Court may make a disease test order in relation to the relevant person.

### **325 What disease test order must state**

A disease test order must state the following—

- (a) the name of the relevant person;

- (b) that the relevant person may be held in custody for the time reasonably necessary to enable a sample of the person's blood and a sample of the person's urine to be taken;
- (c) that a police officer may take the relevant person to a place the police officer considers has appropriate facilities for taking the sample;
- (d) that a doctor or a prescribed nurse may take a blood sample and a urine sample from the relevant person.

### **326 Appeal against disease test order**

(1) A relevant person may appeal against a disease test order to the District Court.

(2) The appeal—

- (a) must be filed without delay; and
- (b) does not stay the operation of the disease test order, unless the court otherwise orders.

(3) The court may not order a stay of a disease test order of more than 48 hours from the time the order appealed against is made.

(4) The court must hear and decide the appeal—

- (a) within 48 hours after the order appealed against is made; and
- (b) in the absence of the public; and
- (c) without adjourning the appeal.

(5) If the relevant person, or the relevant person's lawyer, is present when the appeal is being heard, the relevant person or the lawyer may make submissions to the court, but not submissions that will unduly delay the consideration of the appeal.

(6) The court may allow or refuse to allow the appeal.

### **327 Taking blood and urine samples**

(1) A police officer may ask a doctor or prescribed nurse to take a blood sample and a urine sample from a relevant person under a disease test order.

(2) When asking the doctor or nurse to take the sample, the police officer must produce for the doctor's or nurse's inspection a copy of the disease test order for the relevant person.

(3) It is lawful for the doctor or nurse to take a blood sample from the relevant person or ask the person to provide a urine sample.

(4) If help is needed for taking the sample, the doctor or nurse may ask other persons to give reasonably necessary help.

(5) It is lawful for the doctor or nurse and a person helping the doctor or nurse to use reasonably necessary force for taking the sample.

(6) The doctor or nurse must immediately send the sample to a unit of the health department with appropriate facilities for testing the sample for relevant diseases.

### *Division 3—General*

#### **328 Analysis of blood and urine samples**

(1) It is lawful for an officer of the health department to analyse, or arrange for someone else to analyse, a blood sample or urine sample sent to a unit of the health department under section 327.

(2) Also, it is lawful for an officer of the health department to destroy blood or urine from a sample if it is not used for the analysis or a further analysis and the sample or any part of the sample used for the analysis.

#### **329 Restriction on disclosure of results of analysis**

(1) A person who conducts an analysis of a blood sample or urine sample under this part must not disclose the results of the analysis to any person other than the following—

- (a) the victim of the relevant offence;
- (b) the relevant person;
- (c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person;
- (d) a person providing counselling for the victim of the offence or the relevant person;

- (e) a person, nominated by the chief executive (health), who, as part of the person's duties, requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) A person to whom information is disclosed under subsection (1) must not disclose information obtained under this part to a person other than—

- (a) the victim of the relevant offence; or
- (b) the relevant person; or
- (c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person; or
- (d) a person providing counselling for the victim of the offence or the relevant person; or
- (e) a person, nominated by the chief executive (health), who, as part of the person's duties requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

(3) Subsection (2) does not apply to the victim of the relevant offence or the relevant person, unless the disclosure is—

- (a) a public disclosure through the mass media by the victim of the results of the analysis and the identity of the relevant person; or
- (b) a public disclosure through the mass media by the relevant person of the results of the analysis and the identity of the victim.

### **330 Certain evidence inadmissible**

In a proceeding, the making of an application for a disease test order or the results of an analysis of a blood or urine sample under this part are not admissible in evidence.



## **CHAPTER 9—OTHER POWERS**

### **PART 1—DIRECTIONS IN STATE BUILDINGS**

#### *Division 1—Screening of entrants to state buildings*

#### **331 Power to require reasons for entry to state building**

A police officer may require an entrant to a state building to state the entrant's reason for being in, or about to enter, the building.

#### **332 Use of electronic screening devices in state buildings**

(1) This section applies if the system for the security of a state building involves the use of 1 or more of the following electronic screening devices—

- (a) a walk-through detector;
- (b) an X-ray machine;
- (c) a hand held scanner.

(2) A police officer may ask the entrant to do 1 or more of the following—

- (a) to walk through a walk-through detector;
- (b) to pass the entrant's belongings through an X-ray machine;
- (c) to allow the police officer to pass a hand held scanner in close proximity to the entrant;
- (d) to allow the police officer to pass a hand held scanner in close proximity to the entrant's belongings.

#### **333 Police officer may ask entrant to remove outer garment etc.**

(1) This section applies if—

- (a) a police officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the entrant or belongings have been subjected to electronic screening; and

- (b) the police officer tells the entrant the reasons for making the request.

(2) The police officer may ask the person to do 1 or more of the following—

- (a) allow the police officer to inspect the entrant's belongings;
- (b) remove 1 or more outer garments worn by the entrant as specified by the police officer and allow the police officer to inspect the garments;
- (c) remove all articles from the entrant's clothing and allow the police officer to inspect them;
- (d) open an article for inspection and allow the police officer to inspect it;
- (e) open a vehicle or a part of it for inspection and allow the police officer to inspect it;
- (f) remove an article from the vehicle as specified by the police officer and allow the police officer to inspect it.

(3) A police officer may touch a garment the entrant is wearing only if the police officer is the same sex as the entrant.

(4) In this section—

“**inspect**”, an article, includes handle the article, open it and examine its contents.

### **334 Direction by police officer to leave building**

A police officer may direct an entrant to leave a state building immediately, and to take the entrant's belongings out of the building, if the entrant fails—

- (a) to state the person's reasons for being in or about to enter the building; or
- (b) to allow a police officer to exercise a power under section 332 or 333.

### **335 Power to search person or vehicle without warrant not affected**

This division does not affect the powers a police officer has under this Act to search a person or vehicle without a warrant.

*Division 2—Miscellaneous powers for div 1***336 Seizure of proscribed things**

A police officer may seize a proscribed thing found in the possession of a person in a state building, unless the person is lawfully in possession of it in the course of the person's trade, business or calling.

**337 Refusal of entry to and removal from building**

If a person fails to comply with a request made or a direction given under division 1 or fails to satisfy a police officer that the person has a good and lawful reason to be in a particular state building then, unless the person is arrested for a contravention of section 445<sup>62</sup>—

- (a) if the person is in the state building—the police officer may remove the person from the state building; or
- (b) if the person is about to enter the state building—the police officer may prevent the person from entering the state building.

**PART 2—PRESERVING SAFETY FOR SPECIAL EVENTS***Division 1—Preliminary***338 Application of pt 2**

This part applies only to special events.

**339 Purpose of pt 2**

The purpose of this part is to state special provisions necessary for preserving public order and safety for individuals involved in special events and the safety of other individuals at special event sites.

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62 Section 445 (Offence to contravene direction or requirement of police officer)

*Division 2—Declaration of special events***340 Declaration of special event**

- (1) A regulation may declare an event to be a special event for this part.
- (2) The regulation must—
  - (a) describe the event and the special event site; and
  - (b) state the period for which the special event declaration is in force; and
  - (c) state the places, if any, at which an authorised person may exercise specified powers under division 5; and
  - (d) state anything a person is prohibited from bringing onto the special event site (“**prohibited item**”); and
  - (e) state any restrictions that apply to access to a part of the special event site; and
  - (f) state any conditions, decided by the Minister, that apply to entry to the special event site or any part of it.

**341 Requirements for declaring special events**

Before an event is declared to be a special event, the Minister must be satisfied—

- (a) the declaration is necessary for preserving public order and the safety of individuals involved in the event and other individuals because of—
  - (i) the nature of the event; or
  - (ii) the status in the international community of persons involved in the event; or
  - (iii) the State’s obligations for holding the event; and
- (b) either—
  - (i) there is a reasonable likelihood that the event may be disrupted if the powers in division 5 are not exercised; or
  - (ii) the exercise of the powers is necessary because of the need to protect persons involved in or at the event; or

- (iii) the exercise of the powers is required as a condition of holding the event in Queensland.

### **342 Notice of declaration to be given**

(1) As soon as practicable, but no later than 7 days after a site is declared to be a special event site, the Minister must give notice of the making of declaration and the effect of the declaration in a newspaper circulating generally in the State.

(2) Failure to comply with subsection (1) does not invalidate the declaration.

### *Division 3—Statutory conditions relating to entry to special event sites*

### **343 Statutory conditions of entry**

It is a condition of entry to a special event site that an entrant to the site—

- (a) must, if asked, permit a search to be made of his or her personal property; and
- (b) must, if asked, permit a frisk search to be made of his or her person; and
- (c) must not take into or possess on the site a prohibited item.

### **344 Statutory condition about restricted areas**

The organiser of the special event must ensure reasonable steps are taken to inform the public of the limits of a restricted area at the site, whether by signs or otherwise.

### *Division 4—Appointment of authorised persons*

### **345 Appointment of authorised persons**

(1) The commissioner may appoint a person to be an authorised person for this part.

(2) The commissioner may appoint a person to be an authorised person only if—

- (a) the commissioner believes the person has the necessary expertise or experience to be an authorised person for this part; or
- (b) the person has satisfactorily completed a course of training approved by the commissioner.

(3) The appointment—

- (a) must state the powers the authorised person may exercise under this part and when and where they may be exercised; and
- (b) may limit the powers of the authorised person by stating conditions in the instrument of appointment.

*Example for subsection (3)(b)—*

The commissioner may impose a condition requiring the authorised person to comply with any reasonable direction of a police officer.

### **346 Identity card**

(1) The commissioner must give each authorised person an identity card.

(2) However, if the event is organised by someone other than the State, the commissioner may require the event organiser to issue the identity card.

(3) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the person; and
- (c) identify the person as an authorised person for this part; and
- (d) include an expiry date; and
- (e) state a unique number.

(4) A person who ceases to be an authorised person must return the person's identity card to the commissioner or, if the identity card is issued by an event organiser, the event organiser, as soon as practicable (but within 21 days) after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—10 penalty units.

**347 Production or display of authorised person's identity card**

(1) An authorised person may exercise a power in relation to someone else only if—

- (a) the authorised person first produces his or her identity card for the person's inspection; or
- (b) the authorised person has the officer's identity card displayed so it is clearly visible to the other person.

(2) However, if for any reason it is not practicable to comply with subsection (1) before exercising the power, the authorised person must produce the identity card for inspection by the person as soon as it is practicable.

*Division 5—Powers for special event sites***348 Power to require reasons for entry to special event site**

(1) A police officer or an authorised person may ask an entrant to a special event site to state the person's reason for being in, or about to enter, the site.

(2) If the person fails to comply with the request, the police officer or authorised person must warn the entrant the entrant may be prevented from entering the site or removed from the site, unless the entrant has a reasonable excuse.

(3) This section applies to an authorised person only if a condition of the person's appointment states this section applies to the person.

**349 Use of electronic screening devices at special event site**

(1) This section applies if the security system for a special event site involves the use of 1 or more of the following electronic screening devices—

- (a) a walk-through detector;
- (b) an X-ray machine;
- (c) a hand held scanner.

(2) A police officer or an authorised person may ask an entrant to the site to do 1 or more of the following—

- (a) to walk through a walk-through detector;
- (b) to pass the entrant's belongings through an X-ray machine;
- (c) to allow the police officer or authorised person to pass a hand held scanner in close proximity to the entrant;
- (d) to allow the police officer or authorised person to pass a hand held scanner in close proximity to the entrant's belongings.

**350 Police officer or authorised person may ask entrant to remove outer garment etc.**

(1) This section applies if—

- (a) a police officer or authorised person (“**security official**”) reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the entrant or belongings have been subjected to electronic screening; and
- (b) the security official tells the entrant the reason for making the request.

(2) The security official may ask the person to do 1 or more of the following—

- (a) allow the official person to inspect the entrant's belongings;
- (b) remove 1 or more outer garments worn by the entrant as specified by the official and allow the official to inspect the garments;
- (c) remove all articles from the entrant's clothing and allow the official to inspect them;
- (d) open an article for inspection and allow the official to inspect it;
- (e) open a vehicle or a part of it for inspection and allow the official to inspect it;
- (f) remove an article from the vehicle as specified by the official and allow the official to inspect it.

(3) An official may touch a garment the entrant is wearing only if the official is the same sex as the entrant.

(4) This section applies to an authorised person only if a condition of the person's appointment states this section applies to the person.

(5) In this section—



“inspect”, an article, includes handle the article, open it and examine its contents.

### **351 Frisk search of persons**

A police officer may ask an entrant to a special event site to permit a frisk search to be made of his or her person.<sup>63</sup>

### **352 Refusal of entry to and removal from site**

(1) This section applies if—

- (a) an entrant fails to comply with a request made under this division; or
- (b) an entrant fails to satisfy a police officer or an authorised person that the entrant has a good and lawful reason to be at the special event site or a particular part of it; or
- (c) a police officer or an authorised person reasonably suspects an entrant has contravened a provision of division 6.

(2) Unless the entrant is arrested for a contravention of division 6 or section 445<sup>64</sup>—

- (a) if the entrant has entered the special event site—a police officer or an authorised person may remove the entrant from the site; or
- (b) if the person is about to enter the special event site—a police officer or an authorised person may prevent the person from entering the site.

## ***Division 6—Offences***

### **353 Unauthorised entry to a special event site**

A person must not enter or remain in a special event site unless the person—

- (a) has paid any entry fee; or

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<sup>63</sup> See section 382 (General provision about searches of persons).

<sup>64</sup> Section 445 (Offence to contravene direction or requirement of police officer)

- (b) has the consent of the event organiser; or
- (c) is otherwise authorised to enter or remain at the site.

Maximum penalty—10 penalty units.

### **354 Unauthorised entry to a restricted area**

A person must not enter or remain in a restricted area at a special event site, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **355 Interference with a special event**

A person must not, at a special event site—

- (a) disrupt, interfere with, delay or obstruct the conduct of the special event or an activity associated with the special event; or
- (b) interfere with the reasonable enjoyment of the special event or an activity associated with the special event.

Maximum penalty—40 penalty units.

### **356 Prohibited items**

A person must not take a prohibited item onto, or possess a prohibited item on, a special event site, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **357 Assault etc. of authorised person**

(1) A person must not assault or obstruct an authorised person exercising a power under this part.

Maximum penalty—40 penalty units.

(2) In this section—

“**assault**” has the meaning given by the Criminal Code, section 245.

“**obstruct**” includes hinder, resist and attempt to obstruct.

## **PART 3—POWERS RELATING TO NOISE**

### **358 Application of pt 3**

(1) This part applies to the abatement of environmental nuisance caused by excessive noise that—

- (a) is emitted from a place by—
  - (i) a musical instrument; or
  - (ii) an appliance for electrically producing or amplifying music or other sounds; or
  - (iii) a motor vehicle, other than a motor vehicle on a road; or
  - (iv) a gathering of people for a meeting, party, celebration or similar occasion; and
- (b) is audible in any residential or commercial premises.

(2) However, this part does not apply to the abatement of excessive noise emitted from a place—

- (a) while being used for an open-air concert or commercial entertainment; or
- (b) by a public meeting under a permit under any Act or law authorising the amplification or reproduction of sound by—
  - (i) any electrical or mechanical appliance, apparatus or device; or
  - (ii) another way.

### **359 Complaint about noise**

(1) If a person reasonably believes noise emitted from a place is excessive noise, the person may make a complaint to a police officer about the noise.

(2) As soon as practicable after the complaint is made, a police officer must investigate the complaint, or cause the complaint to be investigated, unless the officer believes the complaint is frivolous or vexatious.

**360 Powers of police officers on investigation of complaint**

(1) This section applies if a police officer is reasonably satisfied—

- (a) the noise complained of is clearly audible at or near the complainant’s residential or commercial premises; and
- (b) the noise is excessive noise in the circumstances.

(2) In deciding whether noise is excessive noise in the circumstances, a police officer may have regard to—

- (a) the degree of interference the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the neighbourhood of the place from which the noise is being emitted; and
- (b) the nature of the lawful uses permitted for premises in the neighbourhood of the place from which the noise is being emitted.

(3) A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) direct the occupier of the place, and the other persons who appear to the officer to be responsible for causing the noise or permitting the noise to be caused, to immediately abate the excessive noise from the place (a “**noise abatement direction**”).

(4) A noise abatement direction may be given orally or by written notice.

**361 Compliance with noise abatement direction**

(1) A person to whom a noise abatement direction is given must—

- (a) immediately comply with the direction; and
- (b) refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(2) A person who knows a noise abatement direction has been given must refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates for a period of 12 hours from the giving of the direction.

Maximum penalty—10 penalty units.

(3) For applying subsection (1) or (2), it does not matter that noise emitted from a place in contravention of the subsection is not of the same level or nature of the excessive noise for which the noise abatement direction was given.

### **362 Additional powers of police officers on later investigation**

(1) This section applies if—

- (a) a noise abatement direction has been given about a place; and
- (b) within 12 hours after the direction is given, a police officer is satisfied on further investigation the police officer is entitled to exercise the powers mentioned in section 361 about the same place.

(2) A police officer may—

- (a) without a warrant, enter the place from which the noise is being emitted; and
- (b) in relation to the property that is or was being used to produce or contribute to the production of the noise—
  - (i) lock, seal or otherwise deal with it in a way to prevent its further use; or
  - (ii) seize and remove it from the place; or
  - (iii) make it inoperable by removing any part or parts and seize and remove the part or parts from the place.

(3) However, in exercising or attempting to exercise the powers, the police officer must take all reasonable steps to ensure the officer does as little damage as is practicable in the circumstances.

### **363 Offence to interfere with locked etc. property**

(1) This section applies if a police officer locks, seals or otherwise deals with property under section 362(2)(b)(i).

(2) A person must not unlock, unseal or use the property within 24 hours after the noise abatement direction was given about the place where the property is found.

Maximum penalty for subsection (2)—100 penalty units.

**364 Recovery of seized property**

(1) Property seized by a police officer may be claimed by—

- (a) the owner of the property or a person acting for the owner; or
- (b) the person from whose possession the property was seized or someone acting for the person.

(2) The claim may be made only during stated hours on a business day not earlier than 24 hours after the seizure of the property.

(3) A police officer must not give seized property to a person claiming it unless the police officer is satisfied the claimant is—

- (a) the owner of the property or the person from whose possession the property was seized; or
- (b) a person acting for a person mentioned in paragraph (a).

(4) Nothing in this section prevents a police officer retaining seized property if the police officer reasonably suspects the property is evidence of the commission of an offence.

**365 Recovery of costs of seizure etc.**

The State may recover as a debt owing to it the reasonable costs incurred by a police officer exercising powers under section 362.

**366 General powers and role of certain police officers**

An Aboriginal or Island police officer may exercise powers under this part only in the aboriginal or Torres Strait islander local government area for which the officer is appointed.

**367 Power to require answers to questions**

(1) This section applies if a police officer reasonably suspects that—

- (a) an offence against this part has been committed; and
- (b) a person may be able to give information about the offence.

(2) The police officer may require the person to answer a question about the offence.

## **PART 4—POWERS RELATING TO NUISANCE IN MOVEABLE DWELLING PARKS**

### **368 Behaviour in moveable dwelling park causing serious nuisance**

A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.

*Example of serious nuisance—*

1. A person assaults a resident or someone else.
2. A person uses threatening or abusive language towards a resident or someone else.
3. A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.
4. A person causes substantial, unreasonable annoyance to a resident or someone else.
5. A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.
6. A person wilfully damages property of a resident or someone else.

### **369 Power to enter moveable dwellings**

A police officer may, without a warrant, enter a moveable dwelling in a moveable dwelling park if the officer reasonably suspects there is a person in the dwelling—

- (a) causing a serious nuisance in the park; or
- (b) who has just caused a serious nuisance in the park.

### **370 Initial direction about serious nuisance**

(1) This section applies if a police officer—

- (a) finds a person causing a serious nuisance in a moveable dwelling park; or
- (b) reasonably suspects a person has just caused a serious nuisance in a moveable dwelling park.

(2) The police officer may—

- (a) if subsection (1)(a) applies—direct the person to immediately stop causing the nuisance and also direct the person not to cause another serious nuisance in the park; or
- (b) if subsection (1)(b) applies—direct the person not to cause another serious nuisance.

(3) The direction under subsection (2) (“**initial nuisance direction**”) may be given orally or by written notice.

### **371 Direction to leave park**

(1) This section applies if—

- (a) an initial nuisance direction is given to a person; and
- (b) a police officer suspects on reasonable grounds—
  - (i) for an initial nuisance direction not to cause another serious nuisance—the person contravened the direction within 24 hours after the direction was given; or
  - (ii) in other cases—the person has contravened the direction.

(2) The police officer may direct the person to leave the moveable dwelling park and not re-enter it for a stated period, not longer than 24 hours.

(3) A direction under subsection (2) (a “**final nuisances direction**”) may be given orally or by written notice.

## **PART 5—MISCELLANEOUS POWERS**

### **371A Power to seize potentially harmful things**

(1) This section applies if a police officer finds a person in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person is inhaling, or is about to inhale, the thing.

(2) The police officer may ask the person to explain why the person is in possession of the potentially harmful thing.

(3) If the person does not give a reasonable explanation, the police officer may seize the potentially harmful thing.



(4) On the seizure of the potentially harmful thing, the thing is forfeited to the State.

(5) In this section—

**“potentially harmful thing”** means a thing—

- (a) that a person may lawfully possess; and
- (b) that is or contains a substance that may be harmful to a person if inhaled.

*Examples—*

- 1. Glue.
- 2. Paint.
- 3. A solvent.

### **372 Entry of place to prevent offence, injury or domestic violence**

(1) This section applies if a police officer reasonably suspects—

- (a) there is an imminent risk of either of the following happening at a place—
  - (i) injury to a person;
  - (ii) an offence involving damaging property; or
- (b) domestic violence is occurring, or has occurred before the officer’s arrival, at a place.

(2) It is lawful for the police officer to enter the place and stay on it for the time reasonably necessary—

- (a) to establish whether the reason for the entry exists; and
- (b) to ensure that, in the officer’s opinion, an imminent risk of injury, damage or domestic violence does not exist at the place; and
- (c) to give or arrange for reasonable help to any person at the place.

(3) The police officer may detain anyone at the place for the time reasonably necessary to establish whether the reason for the entry exists.

(4) If the police officer is reasonably satisfied a reason for the entry exists, the police officer may do any of the following—

- (a) detain a person for a search or to prevent acts of violence or damage to property;

*Police Powers and Responsibilities Act 2000*

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- (b) search anyone detained for anything that may be, or has been used to cause the injury or damage or for an act of domestic violence;
- (c) search the place—
  - (i) for anyone who may be at risk of being injured or subject to an act of domestic violence or associated domestic violence; and
  - (ii) for anything that may be, or has been, used to cause the injury or damage or for an act of domestic violence or associated domestic violence;
- (d) seize anything found at the place or on a person at the place that may be, or has been used to cause the injury or damage or for the act of domestic violence or associated domestic violence.

*Example for subsection (4)(c)(ii)—*

The police officer may be satisfied the thing may be used for an act of domestic violence or associated domestic violence because of apparently reliable information.

**(5)** Before searching a place under this section, the police officer must inform the occupier of the place, if present, that the occupier may accompany the police officer while the place is being searched.

**(6)** For this section, a place that is a building, includes a vehicle at the place.

### **373 Police officer may use assistance in exercising certain powers**

**(1)** It is lawful for a police officer exercising a power under this Act or any other Act—

- (a) to seek the assistance of another person (an “**assistant**”) the officer reasonably requires for performing a function of the police service; or
- (b) to take onto a place any assistant, equipment, vehicle, animal or material the officer reasonably requires for exercising the power.

*Examples—*

1. A police officer may seek the help of an electrician to install a listening device under a surveillance warrant.
2. A police officer making an arrest may seek the help of a member of the public to help the police officer subdue the person.

*Police Powers and Responsibilities Act 2000*

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3. A police officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device.

(2) The police officer may authorise the assistant—

- (a) to take stated action at the place; and
- (b) to exercise stated powers the police officer is authorised to exercise.

(3) However, the police officer can not authorise the assistant to arrest a person or demand a person's name and address.

(4) The police officer must, if practicable, tell the assistant—

- (a) of the action the assistant is authorised to take; and
- (b) of the assistant's powers under this section.

(5) Subsection (1) applies, in relation to animals, despite any other Act or law.

**374 Protection for assistants from liability**

(1) An assistant does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an assistant.

(2) If subsection (1) prevents a liability attaching to an assistant, liability attaches instead to the State.

**375 Power to use force—exercise of certain powers**

(1) It is lawful for a police officer, and anyone helping the police officer, to use reasonably necessary force when exercising or attempting to exercise a power under—

- (a) this Act, including, for example, surveillance powers under a surveillance warrant or covert search powers under a covert search warrant; or
- (b) another Act.

*Examples—*

1. Forced entry may be necessary to execute a search warrant and seize items.
2. Forced entry may be needed for covert entry to a place to install a surveillance device.

3. Force may be used to stop vehicles.

(2) This section does not apply to the use of force against an individual.<sup>65</sup>

### **376 Power to use force against individuals**

(1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

*Example—*

A police officer may use reasonable force to prevent a person evading arrest.

(2) Also, it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.

(3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

### **377 Power to use force against individuals in critical situations**

(1) This section applies if a police officer reasonably suspects a person—

- (a) has committed, is committing, or is about to commit an offence punishable by life imprisonment; or
- (b) has committed an offence punishable by life imprisonment and is attempting to escape arrest or has escaped from arrest or custody.

(2) This section also applies if—

- (a) a police officer reasonably suspects a person is doing, or is about to do, something likely to cause grievous bodily harm to, or the death of, another person; and
- (b) the police officer reasonably suspects he or she can not prevent the grievous bodily harm or death other than in the way authorised under this section.

(3) It is lawful for the police officer to use the force reasonably necessary—

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<sup>65</sup> See section 376 (Power to use force against individuals).

- (a) to prevent the continuation or repetition of the offence or the commission of another offence punishable by life imprisonment; or
- (b) to apprehend the person; or
- (c) to prevent the escape of a person from arrest or custody; or
- (d) to prevent the commission of an act mentioned in subsection (2).

(4) The force a police officer may use under this section includes force likely to cause grievous bodily harm to a person or the person's death.

(5) If the police officer reasonably believes it is necessary to use force likely to cause grievous bodily harm to a person or the person's death, the police officer must, if practicable, first call on the person to stop doing the act.

## **CHAPTER 10—OTHER STANDARD SAFEGUARDS**

### **PART 1—PRELIMINARY**

#### **378 Chapter does not apply to covert operations**

This chapter does not apply to functions of a police officer performed in a covert way, including, for example, anything done under a covert search warrant.

### **PART 2—SAFEGUARDS FOR THINGS SEIZED**

#### *Division 1—Application of pt 2*

#### **379 Application of pt 2**

This part does not apply to a thing seized by a police officer if, under another Act, the thing must be taken before a stated person.

*Example—*

The *Commissions of Inquiry Act 1950*, section 19A(1) requires property seized under a warrant issued by a commission of inquiry to be taken before the commission.

### ***Division 2—General safeguards***

#### **380 Receipt for seized property**

(1) If a police officer seizes anything under this Act or a warrant, the police officer must, as soon as is reasonably practicable after seizing the thing—

- (a) if the person from whom it is seized is present—give or cause to be given to the person a receipt for the thing; or
- (b) if the occupier of the premises is not present—leave a receipt for the thing in a conspicuous place.

(2) The receipt must describe the thing seized and include any other information required under the responsibilities code.

(3) However, if the police officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (1), but only for so long as—

- (a) the police officer continues to have the reasonable suspicion; and
- (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep it under observation.

(4) Also, this section does not apply if the police officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

#### **381 Right to inspect seized documents**

Unless a justice otherwise orders, a police officer who seizes a document must allow a person who would be entitled to the document—

- (a) to inspect it at any reasonable time and from time to time; and
- (b) to take extracts from or make copies of it.

(2) If a police officer seizes a document under a production order, the officer, if asked by the person to whom the order was addressed, must give the person a copy of the document certified by the officer in writing to be a true copy of the document.

(3) The police officer may refuse to comply with subsection (1) or (2) if the officer reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the documents are evidence or commit another offence.

## **PART 3—OTHER SAFEGUARDS**

### *Division 1—General provisions about searches of persons and vehicles*

#### **382 General provision about searches of persons**

(1) A police officer searching a person must—

- (a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and
- (b) take reasonable care to protect the dignity of the person; and
- (c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and
- (d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

*Example for subsection (1)(c)—*

A more thorough search may be immediately necessary because a police officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.

(2) Unless an immediate search is necessary, the person conducting the search must be either—

- (a) a police officer of the same sex as the person to be searched; or

- (b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched; or
- (c) a doctor acting at the direction of a police officer.

*Example—*

An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to his or her body or has a concealed firearm.

### **383 Taking a person to another place for search**

(1) If it is impracticable to search for a thing that may be concealed on a person where the person is, the police officer may take the person to a place with adequate facilities for conducting the search.

*Example—*

To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino.

(2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the police officer must consider the following—

- (a) whether the thing sought may be concealed on the person;
- (b) whether, for an effective search, the search should be conducted somewhere else;
- (c) the need to protect the dignity of the person.

### **384 Limitation on period of detention for search**

A police officer who detains a person or vehicle for a search must not detain the person or vehicle any longer than is reasonably necessary for the purpose.

### **385 General provision about searches of vehicles**

(1) This section deals with the searching of vehicles under this Act.

(2) Before deciding to take a vehicle to a place with appropriate facilities for searching it, a police officer must consider whether searching the vehicle somewhere else would be more effective because of the nature and size of a thing sought that may be concealed in the vehicle.



(3) If a police officer decides to take a vehicle to a place with appropriate facilities for searching it, the police officer must, if the person apparently in possession of the vehicle is known and present—

- (a) tell the person where the vehicle is to be taken; and
- (b) ask the person if he or she wants to be present during the search.

(4) If a police officer searches an unattended vehicle or anything in it, the police officer must leave a notice in a conspicuous place in or on the vehicle stating—

- (a) that the vehicle or a stated thing in or on it has been searched; and
- (b) the police officer's name, rank and station; and
- (c) that a record of the search may be obtained from any police station.

(5) After searching an unattended vehicle or anything in it, the police officer must ensure, as far as reasonably practicable, the vehicle is left secured at least to the same extent as it was before the search.

### **386 Dealing with persons who obstruct search of person or vehicle**

(1) If a person (the “**obstructing person**”) obstructs a police officer conducting a lawful search of the person, another person or a vehicle, a police officer must, if reasonably practicable—

- (a) warn the obstructing person it is an offence to obstruct a police officer in the performance of the police officer's duties; and
- (b) give the obstructing person a reasonable opportunity to stop obstructing the search.

(2) It may not be reasonably practicable for a police officer to comply with subsection (1) if, for example—

- (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or
- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or
- (c) an immediate search is necessary to protect the safety of any person.

***Division 2—Searches involving removal of clothing*****387 Removal of clothing for search**

(1) A police officer conducting a lawful search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from—

- (a) if the person is a female—the upper or lower part of the body; or
- (b) if the person is a male—the lower part of the body.

(2) Subsection (1) does not apply to a frisk search under section 351.

**388 Protecting the dignity of persons during search**

(1) If reasonably practicable—

- (a) the police officer must, before conducting the search—
  - (i) tell the person he or she will be required to remove clothing during the search; and
  - (ii) tell the person why it is necessary to remove the clothing; and
  - (iii) ask for the person's cooperation; and
- (b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.

(2) The search must be conducted in a way providing reasonable privacy for the person.

*Example for subsection (2)—*

Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex and by anyone who does not need to be present.

(3) Also, the search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.

(4) The police officer conducting the search must not make physical contact with the genital and anal areas of the person searched, but may

require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made.

(5) If the police officer seizes clothing because of the search, the police officer must ensure the person is left with or given reasonably appropriate clothing.

*Example for subsection (5)—*

The clothing may be evidence of the commission of an offence.

### **389 Special requirements for searching children and persons with impaired capacity**

(1) If a person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of a support person.

(2) However, the police officer may search the person in the absence of a support person if the police officer reasonably suspects—

- (a) delaying the search is likely to result in evidence being concealed or destroyed; or
- (b) an immediate search is necessary to protect the safety of a person.

### **390 If video cameras monitor place where person is searched**

(1) If a video camera monitors the area where the person is searched, the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched—

- (a) ensure the camera is turned off; or
- (b) conduct the search out of view of the camera.

(2) If the video camera is not turned off, a recording of the search must not be shown to anyone other than—

- (a) the person searched or his or her lawyer; or
- (b) a doctor treating the person searched; or
- (c) a person deciding if a proceeding is to be started against the person for an offence; or
- (d) a police officer investigating an offence involving the person; or

- (e) a police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or
- (f) a court.

### *Division 3—Other provisions*

#### **391 Safeguards for directions or requirements**

(1) This section applies if a police officer gives someone a direction or makes a requirement under this Act.

(2) If the person fails to comply with the direction or requirement, a police officer must, if practicable, warn the person—

- (a) it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse; and
- (b) the person may be arrested for the offence.

(3) The police officer must give the person a reasonable opportunity to comply with the direction or requirement.

#### **392 Use of force likely to cause damage to enter places**

(1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.

(2) Before the police officer uses force that may cause damage to a place to gain entry to the place, the police officer must, if reasonably practicable—

- (a) ask the occupier of the place to allow the police officer to enter the place; and
- (b) give the occupier a reasonable opportunity to allow the entry.

(3) It may not be reasonably practicable for a police officer to comply with subsection (2) if, for example—

- (a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or
- (b) there is a reasonable expectation that, if warned, the person may immediately dispose of or destroy evidence; or

- (c) an immediate search is necessary to protect the safety of any person.

### **393 Police officer to give notice of damage**

(1) This section applies if—

- (a) a police officer damages something when exercising a power under this or another Act; or
- (b) an assistant damages something.

(2) The police officer must promptly give written notice to the person who appears to be the owner of the thing—

- (a) stating the nature of the damage; and
- (b) if the police officer believes the damage was caused by a latent defect in the thing or circumstances beyond the police officer's or assistant's control—stating the police officer's belief.

(3) However, if the police officer reasonably suspects giving the notice may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay giving the notice, but only for so long as—

- (a) the police officer continues to have the reasonable suspicion; and
- (b) that police officer or another police officer involved in the investigation remains in the vicinity of the place.

(4) If the owner is not present, the notice must be left in a conspicuous place.

(5) This section does not apply—

- (a) to damage the police officer reasonably believes is trivial; or
- (b) if the police officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

(6) In this section—

“owner”, of a thing, includes the person in possession of the thing.

### **394 Supplying police officer's details**

(1) This section applies if a police officer—

- (a) searches or arrests a person; or

*Police Powers and Responsibilities Act 2000*

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- (b) searches a vehicle; or
- (c) searches a place, other than a public place; or
- (d) seizes any property; or
- (e) stops or detains a person or vehicle; or
- (f) requires a person to state his or her name and address; or
- (g) gives to a person a direction under section 39 or 94;<sup>66</sup> or
- (h) enters a place to make an inquiry or investigation or to serve a document; or
- (i) exercises a power as a public official.

(2) The police officer must, as soon as reasonably practicable, inform the person the subject of the power of the following—

- (a) if the police officer is not in uniform—
  - (i) that he or she is a police officer; and
  - (ii) his or her name, rank and station; or
- (b) if the police officer is in uniform—his or her name, rank and station.

(3) If the police officer is not in uniform, the police officer must also produce for inspection his or her identity card.

(4) If the police officer is searching a person, vehicle or place, other than under a search warrant,<sup>67</sup> the police officer must state the purpose of the search and the reason for seizing any property.

(5) If 2 or more police officers are searching the vehicle or place, only the senior police officer present is required to comply with subsections (2) to (4).

(6) However, if a person asks another police officer for the information mentioned in subsection (2) or to produce an identity card, the police officer must give to the person the information requested or produce the identity card.

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<sup>66</sup> Section 39 (Direction may be given to person) or 94 (Powers of direction etc. at crime scene)

<sup>67</sup> A search warrant must state the offence to which it relates and a copy of the warrant must be given to the occupier. See section 75.

**395 Record of execution of warrant or order**

A police officer who executes a warrant or order must, if reasonably practicable, write the following on the back of the original warrant or order, or the written form of warrant or order and sign the document—

- (a) the day and time of execution;
- (b) the name of the person on whom it was executed;
- (c) if supplied—the name of the occupier of the place;
- (d) the name, rank, registered number, if any, and station of the police officer.

**CHAPTER 11—ADMINISTRATION****PART 1—WATCH-HOUSES****396 Control of persons in watch-houses**

A watch-house manager may give or cause to be given to a person in custody in the watch-house any reasonably necessary directions, or take or cause to be taken any reasonably necessary steps, for ensuring the good management and control of the watch-house.

*Examples—*

1. The manager may direct a person in custody to move from 1 cell to another because the person is causing disruption to others or for the safety of others.
2. The manager may physically remove a person from 1 cell to another if the person fails to comply with a direction.

**397 Transfer of persons in watch-houses**

A watch-house manager may transfer a person in custody in a watch-house from the watch-house—

- (a) to another watch-house; or
- (b) to a holding cell at a police station; or

- (c) to another place at which the person may receive treatment necessary for the person's welfare; or
- (d) to a corrective services facility; or
- (e) into the custody of a police officer for the purposes of chapter 7.

*Examples—*

1. A person may be transferred from the watch-house at Holland Park to the Brisbane City watch-house because there are not enough cells or staff available at Holland Park to provide proper security at the watch-house or care for persons in custody.
2. A person held in custody at a watch-house may be transferred to a hospital to receive necessary medical treatment.

## **PART 2—REGISTERS**

### *Division 1—Application and purpose*

#### **398 Application of pt 2**

(1) This part applies to covert acts and enforcement acts done by a police officer for the CMC, the NCA or the police service.

(2) Also, this part applies to covert acts and enforcement acts done by a police officer at the request of a declared law enforcement agency other than the CMC.

(3) However, divisions 2 and 3 do not apply to covert acts and enforcement acts done by a police officer performing a function for the NCA.

#### **399 Purpose and explanation of pt 2**

(1) The purpose of this part is—

- (a) to establish who is responsible for keeping registers under this Act and recording information in them; and
- (b) to ensure, as far as possible, police officers record information about covert acts and enforcement acts in the correct register; and
- (c) to state who may inspect each register.



(2) Police officers sometimes do covert acts and enforcement acts for declared law enforcement agencies but do not stop being police officers only because the act is not done for the police service.

(3) In some cases, these acts are done as part of a joint operation involving 2 or more declared law enforcement agencies.

(4) If this part applies to a declared law enforcement agency, the agency must ensure information about the acts is recorded in a register as required under this part.

(5) This part also provides a mechanism for ensuring information incorrectly recorded in a particular register is removed from the register and recorded in the relevant register.

### *Division 2—Register of surveillance and covert search warrants*

#### **400 Application of div 2**

(1) This division applies to covert acts.

(2) In this section—

“**covert act**” includes an enforcement act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

#### **401 Particular Acts do not apply to this division**

The Public Records Act *and the Freedom of Information Act 1992* do not apply to information kept in a register under this division.

#### **402 Register of covert acts**

(1) The CMC and the police service must keep a register of covert acts.

(2) The register may form part of another register whether kept under this or another Act.

(3) Each entity—

(a) may keep its register in the way the entity’s chief executive officer considers appropriate; and

(b) must ensure its register is kept in a secure place.

*Example for subsection (3)(a)—*

The register may be kept on a computer or partly on a computer and partly written.

### **403 Information to be recorded in register**

(1) The following information about an application for a covert search warrant must be recorded in the register—

- (a) when and where the application for the warrant was made;
- (b) the name of the person in relation to whom the warrant was sought and the description of the place mentioned in the application;
- (c) the type of indictable offence mentioned in the application;
- (d) whether or not the warrant was issued;
- (e) if a warrant was issued—how long the warrant was in force.

(2) The following information about covert search warrants must be recorded in the register—

- (a) if and when powers were exercised under the warrant;
- (b) when the initial search under the warrant was completed or, if the place was not searched, why it was not searched;
- (c) whether anything was seized, inspected or photographed under the warrant;
- (d) the benefits derived from the warrant, including, for example—
  - (i) any proceeding started; and
  - (ii) anything seized during a search;
- (e) information about the return, destruction or disposal of anything seized.

(3) The information specified in the responsibilities code about other covert acts must be recorded in the register.

### **404 Who must record information in register**

(1) The police officer who makes the application for the covert search warrant or exercises a power or does a covert act under the warrant (the

“**relevant act**”) must ensure the information required under section 403 to be recorded in the register of covert acts is recorded.

(2) However, if 2 or more police officers do the relevant act, the senior police officer involved in doing the act must ensure the information is recorded.

(3) The information must be recorded as soon as reasonably practicable after the relevant act is done or the information becomes available.

#### **405 Which register to be used**

(1) Information that must be recorded in a register under this division must be recorded in the relevant register.

(2) For subsection, the relevant register for the relevant act is—

(a) for an act done by a police officer performing functions for CMC—CMC’s register; or

(b) if paragraph (a) does not apply—the police service register.

(3) However, if a police officer does a covert act as part of a joint operation involving 2 or more entities, it is enough for subsection (2) if the information is recorded in a register kept by at least 1 of the entities participating in the operation.

#### **406 Who may inspect police service register**

(1) The register of covert acts kept by the police service is not open to inspection by anyone other than—

(a) the commissioner; or

(b) a monitor; or

(c) the CMC chairperson.

(2) However, the CMC chairperson must give the commissioner reasonable notice of intention to inspect the register.

#### **408 Who may inspect CMC’s register**

The register of covert acts kept by the CMC is not open to inspection by anyone other than—

(a) CMC; or

- (b) a monitor; or
- (c) the parliamentary commissioner.

#### **409 Other authorised inspections**

(1) If the chief executive officer of an entity that must keep a register of covert acts under this division considers it appropriate, the chief executive officer may, in writing, authorise a person who may not otherwise inspect the entity's register to inspect the register on the conditions the chief executive officer considers appropriate.

(2) However, the chief executive officer may authorise the person to inspect the register only if the officer is satisfied the inspection is necessary—

- (a) for an investigation into a serious indictable offence, official misconduct, misconduct or a major offence. in which information in the register may be relevant; or
- (b) for maintaining the register; or
- (c) for preparing a chapter 4 application; or
- (d) for monitoring compliance with this Act.

(3) The person authorised to inspect the register may inspect it only to the extent necessary for the purpose for which the authority is given.<sup>68</sup>

#### **410 General restrictions on inspections by monitor**

The monitor may inspect a register under this division only to the extent necessary for performing the monitor's functions under this Act.

### *Division 3—Enforcement registers*

#### **411 Application of div 3**

- (1) This division only applies to enforcement acts.

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<sup>68</sup> Failure of a police officer to comply with subsection (3) may lead to disciplinary action against the officer. Also, improper disclosure of anything learnt when inspecting the register may be an offence.

(2) In this section—

“**enforcement act**” does not include an act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

#### **412 Register of enforcement acts**

(1) The CMC and the police service must keep a register of enforcement acts.

(2) The register may form part of another register whether kept under this or another Act.

(3) Each entity—

- (a) may keep its register in the way the entity’s chief executive officer considers appropriate; and
- (b) must ensure its register is kept in a way that enables police officers to comply with this Act; and
- (c) may keep its register in a way the entity’s chief executive officer considers—
  - (i) prevents a police officer not performing a function for the entity inspecting all or part of the register; or
  - (ii) restricts access to all or part of the register to only specified police officers performing functions for the entity.

*Example for subsection (3)(a)—*

The register may be kept on a computer or partly on a computer and partly written.

*Example for subsection (3)(c)(ii)—*

The CMC chairperson may keep the register in a way that prevents police officers, other than those seconded to the CMC, inspecting the register.

#### **413 Who must record information in register**

(1) The police officer who does an enforcement act must ensure the information required under the responsibilities code to be recorded in the register of enforcement acts is recorded.

(2) However, if 2 or more police officers do the enforcement act, the senior police officer involved in doing the act must ensure the information is recorded.

(3) The information must be recorded as soon as reasonably practicable after the act is done or the information becomes available.

#### **414 Which register to be used**

(1) Information about an enforcement act must be recorded in the relevant register.

(2) For subsection (1), the relevant register for an enforcement act is—

- (a) for an act done by a police officer performing functions for CMC—CMC’s register; or
- (b) if paragraph (a) does not apply—the police service register.

(3) However, if a police officer does an enforcement act as part of an operation involving 2 or more entities, it is enough for subsection (2) if the information is recorded in the register kept by at least 1 of the entities participating in the operation.

(4) Further, if an entity does an enforcement act for a declared law enforcement agency, other than the NCA or another entity, information about the act must be recorded in the register kept by the entity that did the enforcement act.

#### **415 Persons to be given copy of information in register**

(1) This section applies to information about a particular enforcement act recorded in a register of enforcement acts kept by the CMC or the police service.

(2) At any time within 3 years after the enforcement act is done, the person to whom the act was done may ask any police officer who is entitled to inspect the register to give the person a copy or print-out of the information recorded in the register about the act.

*Example for subsection (2)—*

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

(3) The police officer must comply with the request as soon as reasonably practicable.

**416 Restriction on disclosure of certain information**

(1) This section applies if the chief executive officer of an entity is reasonably satisfied that making information in the entity's register about a particular enforcement act available to anyone entitled to inspect it may not be in the public interest because—

- (a) it may prejudice or otherwise hinder an investigation to which the information may be relevant; or
- (b) it may cause embarrassment to, or otherwise adversely affect, a person to whom the information relates or someone else associated with the person including, for example, a family member.

(2) Despite section 415, the chief executive officer may direct that the information be recorded in the entity's register in a way that restricts inspection of the information until the chief executive officer is satisfied it is no longer necessary to restrict its inspection.

(3) The chief executive officer must keep a written record of the reasons for the direction.

(4) Despite subsection (1), if, within 3 years after the enforcement act was done, the person to whom the act was done asks the chief executive officer for information restricted under subsection (2), the chief executive officer must give the person a copy or print-out of the information as soon as reasonably practicable.

*Example for subsection (4)—*

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

***Division 4—Provisions about covert acts and enforcement acts done for the NCA*****417 Application of div 4**

This division applies only to covert acts and enforcement acts done by a police officer performing a function for the NCA.

**418 Information to be given to NCA**

(1) A police officer who does a covert act or an enforcement act for the NCA must give information about the covert act or enforcement act to the NCA as soon as reasonably practicable after the act is done.

(2) The information must be the same information as the police officer would cause to be recorded under section 403 or 413.

(3) However, if the NCA requires the police officer to record the information in another entity's register under this part, the police officer must ensure the information is recorded in the register the NCA specifies.

***Division 5—General provisions*****419 Correcting registers**

(1) The failure of a police officer to ensure information under section 403 or 413 is recorded in the appropriate register or give information to the NCA under section 418 does not affect anything done in relation to the act concerned, whether before or after the failure.

(2) However, as soon as possible after the police officer or someone else entitled to inspect the register becomes aware that the information is not recorded in the appropriate register, the person must take the steps reasonably necessary to ensure the information is—

- (a) removed from the register in which it is recorded; and
- (b) recorded in the appropriate register or given to the NCA.



## **PART 3—DEALING WITH THINGS IN THE POSSESSION OF POLICE SERVICE**

### *Division 1—Preliminary*

#### **420 Application of pt 3**

(1) This part applies to a thing that is lawfully in the possession of the police service (“**relevant thing**”), whether before or after the commencement of this section, because—

- (a) it was seized by a police officer; or
- (b) it was found by someone other than a police officer who gave it to a police officer as apparently lost property; or
- (c) it otherwise came into the possession of a police officer in the course of performing the officer’s functions.

(2) However, this part does not apply to—

- (a) a vehicle or animal that is seized under section 60;<sup>69</sup> or
- (b) a sample of a person’s blood, urine or saliva or another substance taken or collected from a person’s body under chapter 8, part 3; or
- (c) a hair sample or mouth swab taken from a person under chapter 8, part 4 for DNA analysis; or
- (d) a blood or urine sample taken from a person under chapter 8, part 5; or
- (e) a specimen of blood or urine taken from or provided by a person under the Road Use Management Act, section 80.<sup>70</sup>

#### **421 Object of pt 3**

The object of this part is to ensure, as far as practicable, a relevant thing—

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69 Section 60 (Removal of vehicles and animals from roads and other places)

70 Road Use Management Act, section 80 (Provisions with respect to breath tests and laboratory tests)

- (a) is retained by the police service only for as long as is reasonably necessary; and
- (b) is handled in an efficient, safe and accountable way.

#### **422 Responsibilities of police officer taking possession of relevant thing**

(1) A police officer who seizes or otherwise comes into possession of a relevant thing must ensure the thing is given to an appropriate property officer or delivered to a property point that is appropriate in the circumstances, as soon as reasonably practicable, unless—

- (a) the thing is earlier returned, destroyed or disposed of under this part; or
- (b) it is necessary to keep the thing for use during questioning or for an investigative procedure involving the thing.

(2) If the police officer keeps a thing under subsection (1)(b), the police officer must deliver the thing to an appropriate property officer or property point as soon as reasonably practicable after the reason for keeping it ends.

(3) Until the thing is delivered to the property officer or property point, the police officer is responsible for the safe keeping of the thing.

(4) The commissioner must—

- (a) ensure reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and
- (b) facilitate its lawful disposal or its return to its owner or the person who had lawful possession of it before it came into the possession of the police service.

(5) What are reasonable inquiries and efforts, must be decided having regard to the nature, condition and value of the relevant thing.

(6) Subsection (4) does not apply to the thing if the commissioner is satisfied it is inappropriate to return it to its owner or the person who had lawful possession of it before it came into the possession of the police service.

*Example for subsection (6)—*

The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

***Division 2—Return of seized things*****423 Return of seized things**

(1) Unless a justice otherwise orders, a police officer must return a seized thing to the owner of the thing or the person who had lawful possession of the thing before it was seized if the officer is satisfied—

- (a) it is not required to be retained; and
- (b) it is lawful for the person to have possession of the thing.

(2) If appropriate, the police officer must take the steps reasonably necessary to minimise the need to retain the thing as evidence by, as soon as reasonably practicable—

- (a) photographing the thing or arranging for it to be photographed; or
- (b) arranging for any necessary test or examination of the thing; or
- (c) gathering any other available secondary evidence in relation to the thing seized.

(3) Despite subsection (1), a police officer may retain the thing for a reasonable time after it is seized if retention of the thing is necessary—

- (a) to prevent a person using the thing to cause harm to himself, herself or someone else; or
- (b) to prevent an offence or a breach of the peace happening; or
- (c) to prevent the thing being used for an act of domestic violence or associated domestic violence.

(4) This section does not apply to a thing that the commissioner is satisfied is inappropriate to return to its owner or the person who had lawful possession of it before it was seized because of the nature or value of the thing or the circumstances of the offence to which it relates.

*Examples for subsection (4)—*

1. The commissioner may be satisfied it is not appropriate to return fibres taken from a carpet at a crime scene because the fibres have little or no value.
2. The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

**424 Application by owner etc. for return of relevant things**

(1) This section applies to a relevant thing—

- (a) that has been in the possession of the police service for at least 30 days; or
- (b) that is described in a notice given under section 439(4).<sup>71</sup>

(2) A person who claims to have a legal or equitable interest in the thing may apply to a magistrate for an order that the thing be delivered to the person.

(3) The person must give each of the following a copy of the application and notice of the day, time and place fixed for hearing the application—

- (a) the commissioner;
- (b) anyone else the person reasonably believes has a legal or equitable interest in the thing.

(4) The magistrate may order that the relevant thing be delivered to a person on the conditions, if any, the magistrate considers appropriate if satisfied—

- (a) the person may lawfully possess the thing; and
- (b) it is appropriate that the relevant thing be delivered to the person.

(5) However, the magistrate must not order the delivery of a relevant thing to the person if the magistrate is reasonably satisfied the thing—

- (a) may be evidence in a proceeding started in relation to the thing; or
- (b) is a thing used in or for manufacturing a dangerous drug; or
- (c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.

(6) This section does not apply to a relevant thing that is forfeited to the State under this or any other Act.

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71 Section 439 (Order for forfeiture of relevant things connected with offences)

**425 Application by police officer for order if ownership dispute**

(1) This section applies if there is a dispute about the ownership of a relevant thing.

(2) A police officer may apply to a magistrate for an order declaring who is the owner of the thing.

(3) The police officer must give anyone the police officer reasonably believes has a legal or equitable interest in the thing a copy of the application and notice of the day, time and place fixed for hearing the application.

(4) The magistrate may make the order the magistrate considers appropriate.

(5) If the magistrate can not decide who owns the thing, the magistrate may make the orders the magistrate considers appropriate for the disposal of the thing.

**426 Application for order in relation to seized things**

(1) This section applies to a thing seized—

- (a) as evidence of the commission of an offence; or
- (b) to prevent a person using the thing to cause harm to himself, herself or someone else; or
- (c) to prevent an offence or a breach of the peace happening.

(2) Within 30 days after a police officer seizes the thing, the police officer must apply to a justice of the peace (magistrates court) or a magistrate (the “**issuer**”) for an order under section 427 in relation to the thing, unless—

- (a) a proceeding has been started in which the thing may be relevant; or
- (b) consent to the continued keeping of the thing has been given by its owner or the person who had lawful possession of the thing before it was seized; or
- (c) it has no intrinsic value; or

*Example for subsection (2)(c)—*

Samples of hair or blood taken from a crime scene that may be forensic evidence.

- (d) it is perishable and will perish before it can be returned to its owner or the person who had lawful possession of the thing before it was seized; or
- (e) it is a dangerous drug or a thing used in or for manufacturing a dangerous drug; or
- (f) it is a weapon the person from whom it was seized may not lawfully possess; or
- (g) it is given to a law enforcement agency of another State under section 442 or another agency under an arrangement under section 443;<sup>72</sup> or
- (h) it is returned under section 423 or 424.<sup>73</sup>

(3) An application for an order under section 427 must also be made within 30 days after either of the following happens—

- (a) a proceeding started in relation to the thing seized is discontinued without any order being made in relation to the thing;
- (b) the consent of the owner of the thing or the person who had lawful possession of the thing before it was seized is withdrawn.

(4) The application must be accompanied by any warrant under which the thing was seized.

(5) However, if no application is to be made because subsection (2)(a), (b), (c), (d), (e) or (f) applies to the thing, a police officer must deal with the thing in the way specified in the responsibilities code, unless this Act otherwise provides.

#### **427 Orders issuer may make in relation to seized thing**

(1) After considering the application, the issuer may, in relation to the seized thing, order—

- (a) that it be kept in the possession of a police officer until the end of—

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72 Section 442 (Ministerial arrangements for transmission and return of seized things), section 443 (Commissioner may make arrangements)

73 Section 423 (Return of seized things) or 424 (Application by owner etc. for return of relevant things)

*Police Powers and Responsibilities Act 2000*

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- (i) any investigation in relation to which the thing may be relevant; or
- (ii) any proceeding in which the thing may be relevant; or
- (iii) any appeal against a decision in a proceeding in which the thing is relevant; or
- (b) that it be photographed and returned to its owner or the person who had lawful possession of it before it was seized on condition that the owner or person undertakes to produce it before a court in any later proceeding involving the thing; or
- (c) that it be returned to the person who the issuer believes is lawfully entitled to possess it; or
- (d) if the person entitled to possess the thing is unknown, that the thing be disposed of; or
- (e) for a thing seized for a reason mentioned in section 426(1)(b) or (c), that it be dealt with in the way decided by the commissioner; or
- (f) that it be disposed of or destroyed; or
- (g) that it be dealt with by way of a proceeding under section 424 or 425<sup>74</sup> or a forfeiture proceeding.

(2) The issuer may, in the order, impose any conditions the issuer considers appropriate, including, for subsection (1)(a), a condition limiting the time for which a police officer may keep possession of documents seized as evidence.

**428 Disposal of seized things at end of proceeding**

(1) At the end of a proceeding, a court, in relation to a seized thing, may make any of the following orders—

- (a) an order for the return, forfeiture, destruction or disposal of the thing;
- (b) an order that the thing be dealt with by way of a proceeding under section 424 or 425 or a forfeiture proceeding;

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<sup>74</sup> Section 424 (Application by owner etc. for return of relevant things) or 425 (Application by police officer for order if ownership dispute)

- (c) an order that the police service retain the thing until it is dealt with according to law.

(2) A thing that is forfeited under an order under this Act becomes the property of the State.

### **429 Commissioner to decide way of destruction or disposal**

(1) This section applies if an order is made for the disposal or destruction of a thing under section 425, 427 or 428.

(2) Subject to any direction in the order, the commissioner must decide how the thing is to be disposed of or destroyed.

(3) However, if the value of the thing is more than the amount prescribed under a regulation for this section, the commissioner must first obtain the Minister's approval to the proposed disposal or destruction.

*Examples—*

1. The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.
2. The commissioner may give stolen clothes to a charitable organisation whose charter is to assist the poor.

### ***Division 3—Dealing with dangerous drugs etc.***

### **430 Application of div 3**

This division applies if a police officer seizes a thing the police officer reasonably suspects is any of the following (“**drug evidence**”)—

- (a) a dangerous drug;
- (b) a thing intended for use, or that was used, in the commission of an offence against the *Drugs Misuse Act 1986*, part 2.<sup>75</sup>

### **431 Destruction of drug evidence soon after seizure**

(1) A police officer may destroy drug evidence where it is found or move drug evidence, or arrange for it to be removed, to another place where it can safely be destroyed if—

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<sup>75</sup> *Drugs Misuse Act 1986*, part 2 (Drug trafficking)



*Police Powers and Responsibilities Act 2000*

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- (a) a police officer is satisfied it is not reasonably practicable to—
  - (i) to take it to a property point; or
  - (ii) to keep it at a police station; and
- (b) the police officer reasonably believes that unless it is destroyed there is a risk it may be used in the commission of an offence.

*Example for paragraph (a)(i)—*

It may be necessary to destroy a large plantation of cannabis sativa plants after taking samples of the plants because it is impracticable to transport them to a property point for storage and leaving them where they are may lead to them being used in the commission of an offence.

(2) Also, a police officer may destroy drug evidence where it is found or move drug evidence, or arrange for it to be removed, to another place where it can safely be destroyed if it may be dangerous to take it, or any part of it, to a property point or to keep it at a police station.

(3) However, before destroying drug evidence under subsection (1) or (2), a police officer must—

- (a) photograph the drug evidence where it is found; and
- (b) for a dangerous drug, if practicable—
  - (i) weigh it, or for plants, count the number of plants; and
  - (ii) retain a representative sample of the dangerous drug.

(4) Subsections (1) and (2) apply even though—

- (a) a proceeding for an offence of which the drug evidence may be relevant has not been started or decided; and
- (b) notice of the proposed destruction of the drug evidence has not been given under section 432.

### **432 Destruction of dangerous drug after notice**

(1) This section applies to a dangerous drug—

- (a) that is not destroyed under section 431 or forfeited under an order of a court under the *Drugs Misuse Act 1986*, section 32;<sup>76</sup> and

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<sup>76</sup> *Drugs Misuse Act 1986*, section 32 (Forfeiture of dangerous drugs)

(b) for which an analyst's certificate has been given under the *Drugs Misuse Act 1986*.

(2) A police officer may give the person from whom a dangerous drug was seized—

(a) a written notice in the approved form (“**destruction notice**”) stating—

- (i) within 30 days after the notice is given, the person may give the commissioner a written notice requiring the commissioner to make a representative sample of the dangerous drug available to a stated appropriately qualified person (“**independent analyst**”) for analysis; and
- (ii) the person must pay the costs of the independent analysis; and
- (iii) if the person does not give the commissioner written notice within the 30 days, the commissioner may destroy the drug evidence; and

(b) a copy of the analyst's certificate.

(3) If the person requires the commissioner to make a sample available to an independent analyst, the person must advise the commissioner in writing of that fact and the name and address of the analyst.

(4) The commissioner may make a sample of the drug evidence available to the independent analyst for analysis within 7 days at a place decided by the commissioner and on the conditions the commissioner considers appropriate.

(5) If the commissioner is not satisfied the independent analyst has the qualifications necessary to analyse the dangerous drug, the commissioner may require the person given the destruction notice to nominate another person to be an independent analyst within 30 days.

(6) If the person does not give the commissioner a written notice nominating an independent analyst within the time allowed under subsection (2) or (5), the commissioner may destroy the dangerous drug in the way the commissioner considers appropriate.

(7) If the commissioner makes a sample of the dangerous drug available to the independent analyst, the commissioner may destroy the dangerous drug at least 7 days after the sample is made available to the independent analyst, unless the person gives to the commissioner written notice

disputing the analysis in the analyst's certificate given to the person under subsection (2)(b).

### **433 Destruction of things used in the administration of a dangerous drug**

(1) If the commissioner is reasonably satisfied a thing seized—

- (a) has been used in the administration, consumption or smoking of a dangerous drug; and
- (b) is no longer required as evidence in a proceeding;

the commissioner may destroy the thing in a way that prevents the thing being used in the commission of an offence.

(2) If the commissioner disposes of a thing that is a hypodermic syringe or needle in a way required under the *Drugs Misuse Regulation 1987*, the thing is taken to have been destroyed.<sup>77</sup>

### *Division 4—Dealing with weapons*

### **434 Disposal of weapons**

(1) At any time after the appointed day, a police officer may deliver a relevant thing that is a weapon that has not been forfeited to the State—

- (a) if a police officer is satisfied a person is the owner of the weapon, or would be lawfully entitled to possess it if that person complies with the *Weapons Act 1990*—
  - (i) to the owner or person lawfully entitled to possess it; or
  - (ii) if the owner or person lawfully entitled to possess it nominates another person to possess it, to that person; or
- (b) if a court order is made for the delivery of the weapon to a person under section 427 or 428<sup>78</sup>—to that person.

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<sup>77</sup> *Drugs Misuse Regulation 1987*, section 9 (Prescribed procedures for the disposal of hypodermic syringes and needles)

<sup>78</sup> Section 427 (Orders issuer may make in relation to seized thing) or 428 (Disposal of seized things at end of proceeding)

(2) However, a weapon may be delivered to a person mentioned in subsection (1) only if that person satisfies the police officer who holds or has custody of the weapon that the person may lawfully possess the weapon.

(3) If the weapon has not been delivered to any person under subsection (1) within 3 months after the appointed day or the longer period the commissioner decides in a particular case, the weapon is forfeited to the State.

### **435 What is the appointed day for disposal of weapons under s 434**

The “**appointed day**” for disposal of weapons is—

- (a) for a weapon seized because of a contravention or suspected contravention of the *Weapons Act 1990*, the later of the following—
  - (i) the day all proceedings relating to the offence or suspected offence are finally decided;
  - (ii) the day 6 months after the day the weapon was seized; or
- (b) otherwise, the day the weapon was seized.

### *Division 5—Dealing with other things*

### **436 Perishable things**

(1) This section applies to a relevant thing that is perishable if—

- (a) the thing can not be returned to its owner or the person who had lawful possession of it before it came into the possession of the police service; or
- (b) its owner or the person who had lawful possession of the thing before it came into the possession of the police service can not be contacted to obtain directions about how to deal with the thing.

(2) The commissioner may dispose of the thing in a way that—

- (a) does not cause an actual or apparent conflict of interest in the commissioner or someone in a position to influence how the thing may be disposed of; and

*Police Powers and Responsibilities Act 2000*

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*Example for subsection (2)(a)—*

A conflict of interest may be apparent if a friend, relative or business associate of a person in a position to influence how a thing may be disposed of may benefit from the disposal of the thing.

- (b) benefits the community generally or a community group.

*Example for subsection (2)(b)—*

Vegetables that are suspected of being stolen may be given to a community organisation running a kitchen to feed the homeless.

(3) If the commissioner reasonably suspects the relevant thing is unfit for human consumption or it is impracticable to dispose of the thing in a way that satisfies subsection (2), the commissioner must dispose of it in a way that does not cause danger to anyone or the community generally.

### ***Division 6—Forfeiture***

#### **437 Application of div 6**

This division applies to a relevant thing that has not been forfeited to the State.

#### **438 Order for forfeiture of particular relevant things**

(1) The commissioner may order the forfeiture to the State of a relevant thing that has been in the possession of the police service for at least 60 days.

(2) The commissioner may order the forfeiture of the relevant thing only if—

- (a) the commissioner is satisfied—
- (i) the owner of the thing can not be found after reasonable inquiries; or
  - (ii) having regard to the nature, condition and value of the thing, it is not reasonable to make inquiries about its owner; or

*Examples for paragraph (a)—*

1. The owner of the thing has migrated to another country.
2. The thing is a small amount of liquor that does not have a high value.

- (b) the commissioner is unable, after making reasonable efforts, to return the thing to its owner.

*Example for paragraph (b)—*

The owner of the thing refuses to take possession of the thing.

(3) At least 30 days before the order for forfeiture may be made, the commissioner must give notice to the owner in writing or, if the owner is not known, by advertisement in a newspaper circulating generally throughout the State that, unless the relevant thing is claimed, an order for its forfeiture to the State will be made under this section.

(4) Subsection (3) does not apply if the cost of giving the notice is more than the value of the relevant thing.

(5) This section does not apply to a relevant thing mentioned in section 439.

### **439 Order for forfeiture of relevant things connected with offences**

(1) This section applies to a relevant thing if the commissioner is satisfied—

- (a) the thing has been used in the commission of an offence; or
- (b) it is necessary to retain the thing to prevent it being used in the commission of an offence; or
- (c) possession of the thing is an offence unless authorised, justified or excused by law.

(2) The commissioner may order the forfeiture to the State of the relevant thing.

(3) However, the commissioner may order the forfeiture of the relevant thing only if the commissioner is satisfied reasonable steps have been taken to give, a notice under subsection (4).

(4) The notice—

- (a) must be given to—
  - (i) the owner in writing, or if the owner is not known, by advertisement in a newspaper circulating generally throughout the State; or
  - (ii) the person who appeared to have possession of it before it was seized; and

- (b) must describe the relevant thing and state—
- (i) that the thing may be forfeited to the State; and
  - (ii) that an application may be made to a magistrate under section 424<sup>79</sup> for an order for the return of the thing; and
  - (iii) that, if an application is not made to a magistrate within 28 days after the notice is given, the commissioner may order that the thing be forfeited to the State.

(5) Subsection (3) does not apply if the cost of giving the notice is more than the value of the relevant thing.

(6) If the person applies under section 424 to a magistrate, the commissioner may not order the forfeiture of the relevant thing, unless the magistrate refuses to order the delivery of the thing to the applicant or the application is withdrawn, whichever happens first.

### *Division 7—Dealing with forfeited things*

#### **440 Application of div 7**

(1) This division applies to a thing in the possession of the police service that is forfeited, or ordered to be forfeited, to the State under this or any other Act.

(2) However, this part applies to a forfeited thing only after all proceedings relating to the offence or suspected offence for which the thing was forfeited are finally decided.

#### **441 Dealing with forfeited things**

(1) On the forfeiture of a thing to the State, the thing becomes the property of the State and may, subject to any direction given under the *Police Service Administration Act 1990*, section 4.6,<sup>80</sup> be dealt with by the commissioner as the commissioner considers appropriate.

(2) Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

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<sup>79</sup> Section 424 (Application by owner etc. for return of relevant things)

<sup>80</sup> *Police Service Administration Act 1990*, section 4.6 (Communications between Minister and commissioner)

(3) If the thing is sold, it must be sold by auction and the proceeds of the sale are to be paid—

- (a) first, in meeting the expenses of the sale; and
- (b) second, in meeting the expenses of the seizure and storage of the thing; and
- (c) third, to the consolidated fund or, if the proceeds relate to a thing forfeited under section 438, the unclaimed moneys fund kept under the *Public Trustee Act 1978*.

(4) However, if the value of the thing is more than the amount prescribed under a regulation for this section, the commissioner must first obtain the Minister's approval to the proposed destruction or disposal.

*Examples—*

1. The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.
2. The commissioner may give stolen clothes to a charitable organisation whose charter is to assist the poor.

### ***Division 8—Arrangements about relevant things***

#### **442 Ministerial arrangements for transmission and return of seized things**

(1) The Minister may enter into arrangements with a Minister of State for another State responsible for the administration of a law declared by regulation to be a corresponding law for this section under which—

- (a) a thing seized under this Act that may be relevant to the investigation of an offence, or a proceeding for an offence, against the law of the State in which the corresponding law is in force—
  - (i) is to be given to a law enforcement agency in that State for the investigation of or a proceeding for the offence; and
  - (ii) when no longer required for the investigation or proceeding, is to be returned to the law enforcement agency who seized it, unless disposed of by order or direction of a court; and
- (b) a thing seized under the corresponding law that may be relevant to the investigation of an offence, or a proceeding for an offence, against the law of Queensland—



- (i) is to be given to the commissioner; and
- (ii) when no longer required for the investigation of an offence or a proceeding for an offence, is to be returned to the relevant law enforcement agency in the State in which it was seized, unless disposed of by order or direction of a court.

(2) A thing returned to a law enforcement agency under an arrangement under subsection (1), unless it can lawfully be returned to its owner, is a thing for which an application may be made under section 426.<sup>81</sup>

### **443 Commissioner may make arrangements**

The commissioner may, under an arrangement between the commissioner and the chief executive of a department or the chief executive officer of another agency, transfer the possession of a relevant thing to the chief executive or chief executive officer if, in the circumstances, it would be appropriate for the thing to be dealt with under another Act.

*Example—*

It may be appropriate for the commissioner to transfer the possession of explosives to the chief executive of the department responsible for the administration of the *Explosives Act 1999* for safe keeping or destruction of the explosives.

## **CHAPTER 12—GENERAL**

### **PART 1—OFFENCES**

#### **444 Offence to assault or obstruct police officer**

(1) A person must not assault or obstruct a police officer in the performance of the officer's duties.

Maximum penalty—40 penalty units or 6 months imprisonment.

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81 Section 426 (Application for order in relation to seized things)

(2) For subsection (1), a person who obstructs a police dog or police horse under the control of a police officer in the performance of the police officer's duties is taken to obstruct the police officer.

(3) In this section—

“**assault**” has the meaning given by the Criminal Code, section 245.

“**obstruct**” includes hinder, resist and attempt to obstruct.

#### **445 Offence to contravene direction or requirement of police officer**

(1) This section applies if a person is given a requirement or direction under this Act and no other penalty is expressly provided for a contravention of the requirement or direction.

(2) A person must not contravene a requirement or direction given by a police officer under this Act, unless the person has a reasonable excuse.

Maximum penalty—

- (a) for contravening a requirement or direction relating to a relevant law for which the penalty for a contravention of a similar requirement or direction made by a public official under the relevant law is more than 40 penalty units—the maximum penalty under the relevant law for the offence;
- (b) otherwise—40 penalty units.

(3) However, for a contravention of a requirement made by a police officer under section 15 or 16,<sup>82</sup> the person may be prosecuted for a contravention of the relevant authorising law or subsection (2), but not both.

(4) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to give information if giving the information would tend to incriminate the person.

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82 Section 15 (Steps police officer may take for failure to give name and address etc. to public official) or 16 (Steps police officer may take for obstruction of public official)

## PART 2—OTHER GENERAL PROVISIONS

### 446 Performance of duty

A police officer performing a function of the police service is performing a duty of a police officer even if the function could be performed by someone other than a police officer.

### 447 Assistance at fire or chemical incidents

(1) It is the duty of a police officer present at a fire or a chemical incident to give a fire authority officer who is discharging functions and exercising powers under the *Fire and Rescue Authority Act 1990* reasonably necessary help.

(2) In this section—

“**chemical incident**” has the meaning given by the *Fire and Rescue Authority Act 1990*, section 6.

“**fire authority officer**” has the meaning given by the *Fire and Rescue Authority Act 1990*, section 6.

### 448 Assistance to courts, etc

(1) This section applies if, under another Act or law, a tribunal has power—

- (a) to lawfully order the apprehension or detention of a person, including under a warrant; or
- (b) to order the exclusion or removal of a person from the place where the tribunal is sitting; or
- (c) to give any other order or direction for which the help of a police officer may be reasonably necessary.

(2) It is the duty of a police officer to comply with any lawful direction, request, or order of the tribunal and any reasonable request the judge or other presiding officer may lawfully make.

(3) In this section—

“**tribunal**” means a court, inquest, inquiry, tribunal or other deliberative entity.

**449 Service and enforcement of process**

A police officer may serve or enforce a warrant, summons, order or command of any court, judge, magistrate or justice—

- (a) even though the warrant, summons, order or command is not addressed to the police officer; and
- (b) despite the requirements of any other Act or law, or rule having the force of law, about who may enforce the warrant, summons, order or command.

**450 Provisions restricting starting of proceeding**

(1) This section applies if a provision of another Act prescribed under a regulation for this section restricts or prevents a police officer starting a proceeding against a person for an offence against that Act.

(2) Despite the other Act, a police officer may start a proceeding against the person for the offence.

(3) However, as soon as reasonably practicable after starting the proceeding, a police officer must inform the chief executive of the department within which the Act is administered of the starting of the proceeding.

**451 Obtaining warrants, orders and authorities, etc., by telephone or similar facility**

(1) This section applies if under this Act, a police officer may obtain a warrant, approval, production notice, production order or another authority (a “**prescribed authority**”).

(2) A police officer may apply for a prescribed authority by phone, fax, radio or another similar facility if the police officer considers it necessary because of—

- (a) urgent circumstances; or
- (b) other special circumstances, including, for example, the police officer’s remote location.

(3) Before applying for the prescribed authority, the police officer must prepare an application stating the grounds on which the prescribed authority is sought.

(4) The police officer may apply for the prescribed authority before the application is sworn.

#### **452 Steps after issue of prescribed authority**

(1) After issuing the prescribed authority, the issuer must immediately fax a copy to the police officer if it is reasonably practicable to fax the copy.

(2) If it is not reasonably practicable to fax a copy to the police officer—

(a) the issuer must tell the police officer—

(i) what the terms of the prescribed authority are; and

(ii) the day and time the prescribed authority was issued; and

(b) the police officer must complete a form of prescribed authority (a “**prescribed authority form**”) and write on it—

(i) the issuer’s name; and

(ii) the day and time the issuer issued the prescribed authority;  
and

(iii) the terms of the prescribed authority.

(3) The facsimile prescribed authority, or the prescribed authority form properly completed by the police officer, authorises the entry and the exercise of the other powers stated in the prescribed authority issued by the issuer.

(4) The police officer must, at the first reasonable opportunity, send to the issuer—

(a) the sworn application; and

(b) if the police officer completed it—the completed prescribed authority form.

(5) On receiving the documents, the issuer must attach them to the prescribed authority.

#### **453 Presumption about exercise of powers under prescribed authority**

A court must find the exercise of a power by a police officer was not authorised by a prescribed authority if—

- (a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a prescribed authority; and
- (b) the authority is not produced in evidence; and
- (c) it is not proved by the police officer relying on the lawfulness of the entry that a police officer obtained the prescribed authority.

#### **454 Protection of methodologies**

(1) In a proceeding, a police officer can not be required to disclose information mentioned in subsection (2), unless the court is satisfied disclosure of the information is necessary—

- (a) for the fair trial of the defendant; or
- (b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or
- (c) in the public interest.

(2) The information is information that could, if disclosed, reasonably be expected—

- (a) to prejudice the investigation of a contravention or possible contravention of the law; or
- (b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
- (c) to endanger a person's life or physical safety; or
- (d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
- (e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
- (f) to facilitate a person's escape from lawful custody.

(3) Subsection (1) does not affect a provision of another Act under which a police officer can not be compelled to disclose information or make statements in relation to the information.

*Example for subsection (3)—*

*Drugs Misuse Act 1986, section 47.*

(4) In this section—

“**police officer**” includes a police officer of another State or the Australian Federal Police.

“**proceeding**” does not include—

- (a) a hearing under the *Crime and Misconduct Act 2001*; or
- (b) another proceeding of the CMC in which a police officer is being examined; or
- (c) a commission of inquiry under the *Commissions of Inquiry Act 1950*; or
- (d) a hearing of the NCA for a special investigation under the *National Crime Authority (State Provisions) Act 1985*, section 16.

#### **455 Compensation**

(1) This section applies if a person suffers loss because a police officer exercises powers under this Act.

(2) Compensation is payable by the State to the person whose property is damaged.

(3) However, compensation is not payable to a person if the person is found guilty of the commission of an indictable offence because of the exercise of the powers.

(4) Also, compensation is not payable for the lawful seizure of a thing under this Act.

(5) The Minister is to decide the amount of the compensation.

(6) A person who is dissatisfied with the Minister’s decision under subsection (5) may apply to a court, within 28 days, for compensation under this section.

(7) If the person applies under subsection (6), the court may decide the amount of the compensation.

#### **456 Availability of Act**

The commissioner must ensure this Act is available for inspection at any police station by anyone who asks to inspect it.

**457 Approved forms**

The commissioner may approve forms for use under this Act.

**458 Review of Act**

(1) The Minister must ensure the operation of this Act is regularly reviewed.

(2) The first review must start no sooner than 6 months after the commencement of this section and be completed within 3 years.

**459 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may make provision with respect to the responsibilities of police officers under this Act.

(3) A regulation made for subsection (2) may include operational guidelines for police officers.

(4) However, operational guidelines are not part of the regulation.

## **CHAPTER 13—REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENTS**

### **PART 1—ACTS REPEALED AND AMENDED**

**460 Acts repealed**

(1) Each of the following Acts is repealed—

- (a) the *Criminal Investigation (Extraterritorial Offences) Act 1985*;
- (b) the *Police Powers and Responsibilities Act 1997*.

(2) The *Gaming Act 1850* (NSW) as it applies in Queensland ceases to have effect.



## PART 2—TRANSITIONAL PROVISIONS

### *Division 2—Transitional provisions commencing at a later date*

#### **466 Definitions for div 2**

In this part—

“**amended Act**” means an Act amended by this Act.

“**repealed Act**” means the following—

- (a) an Act repealed by this Act;
- (b) *Gaming Act 1850* (NSW).

#### **468 Transitional provision about warrants, orders and notices**

(1) This section applies if a warrant, notice or order under a provision of an amended Act or under a repealed Act is in force immediately before the amendment or repeal of the relevant Act.

(2) The warrant, notice or order continues to have effect until it ends according to its terms.

(3) This Act applies to anything done under the warrant, notice or order after the commencement of this section, with necessary changes.

#### **469 Transitional provision about noise abatement**

(1) A complaint made under the *Environment Protection Act 1994*, section 149 that is not investigated before the commencement of this section or that is being investigated on the commencement of this section is taken to be a complaint made under section 359 of this Act.

(2) A noise abatement direction made under the *Environmental Protection Act 1994*, section 150 before the commencement of this section may be enforced after the commencement of this section as if it were a noise abatement direction under this Act.

**470 Transitional provision about nuisance in moveable dwelling parks**

(1) This section applies if a police officer gives a person an initial nuisance direction under the *Residential Tenancies Act 1994* before the commencement of this section.

(2) For section 371 of this Act, the direction is taken to be an initial nuisance direction given under this Act.

**471 Transitional provisions about registers of covert and enforcement acts**

(1) A register of covert acts kept under the repealed Act is taken to be a register of covert acts for this Act.

(2) A register of enforcement acts kept under the repealed Act is taken to be a register of enforcement acts for this Act.

(3) This section applies to a register kept under the repealed Act by the commissioner, the CJC or QCC.

**472 Transitional provision about entries in registers**

A failure, before the commencement of this section, to keep or record information in the way required by this Act before the commencement does not and never did affect anything done in relation to the act concerned before or after the failure.

**473 Transitional provision about public interest monitor**

(1) This section applies to a person who, immediately before the commencement of this section—

- (a) held office under the old Act as—
  - (i) the public interest monitor; or
  - (ii) a deputy public interest monitor; or
- (b) was appointed under section 79A of the old Act to act as—
  - (i) the public interest monitor; or
  - (ii) a deputy public interest monitor.

(2) On the commencement of this section—

*Police Powers and Responsibilities Act 2000*

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- (a) the public interest monitor under the old Act is taken to have been appointed as the public interest monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and
- (b) a deputy public interest monitor under the old Act is taken to have been appointed as a deputy public interest monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and
- (c) a person appointed to act as the public interest monitor or a deputy public interest monitor is taken to have been appointed to act as the public interest monitor or a deputy public interest monitor under this Act on the conditions decided under the old Act.

(3) In this section—

**“old Act”** means the *Police Powers and Responsibilities Act 1997*.

**SCHEDULE 1****ACTS NOT AFFECTED BY THIS ACT**

section 8

*Bail Act 1980**Child Protection Act 1999**Corrective Services Act 2000**Crime and Misconduct Act 2001**Domestic Violence (Family Protection) Act 1989**Fuel Subsidy Act 1997*, section 129(2) and (3)*Juvenile Justice Act 1992*, other than to the extent to which section 198 and chapter 7 of this Act apply to children*Liquid Fuel Supply Act 1984*, section 41*Mental Health Act 2000**Parliament of Queensland Act 2001*, section 44*Prisoners International Transfer (Queensland) Act 1997**Prisoners (Interstate Transfer) Act 1982**Public Safety Preservation Act 1986**Rural Lands Protection Act 1985**State Counter-Disaster Organisation Act 1975**Transport Operations (Road Use Management) Act 1995*, section 80*Young Offenders (Interstate Transfer) Act 1989*.

**SCHEDULE 4****DICTIONARY**

section 3

**“abate”**, for noise, includes prevent, reduce, eliminate and control the noise.

**“aboriginal police officer”** means a person who is an aboriginal police officer under the *Community Service (Aborigines) Act 1984*.

**“adult”** means a person who is not a child.

**“Animal Care and Protection Act”** means the *Animal Care and Protection Act 2001*.

**“animal welfare direction”** see section 65B(1).

**“animal welfare offence”**—

1. An **“animal welfare offence”** means an offence against—
  - (a) the Animal Care and Protection Act, other than chapter 6, part 2, divisions 2, 3, 4 and 7 and chapter 8, part 1; or
  - (b) the Criminal Code, section 468.<sup>83</sup>
2. However, an offence by an executive officer of a corporation against the Animal Care and Protection Act, section 209(2) is only an animal welfare offence if the relevant offence by the corporation is an animal welfare offence.

**“antique firearm”** means an antique firearm under the *Weapons Act 1990*.

**“approving officer”** see section 173(2).

**“arrest warrant”** see section 203.<sup>84</sup>

**“assistant”** see section 373.<sup>85</sup>

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83 The Criminal Code, section 468 (Injuring animals)

84 Section 203 (Arrest warrant application)

85 Section 373 (Police officer may use assistance in exercising certain powers)

## SCHEDULE 4 (continued)

**“associated domestic violence”** means associated domestic violence within the meaning of the *Domestic Violence (Family Protection) Act 1989*.

**“at”** a place, includes in or on the place.

**“authorised assistant”** means an assistant authorised under the responsibilities code for this Act.

**“authorised person”**, for chapter 9, part 2, means a person appointed as an authorised person under section 345.<sup>86</sup>

**“belongings”** means belongings under the *State Buildings Protective Security Act 1983*.

**“boat”** includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a rowing boat, hovercraft and a submersible vessel.

**“breath test”** see Road Use Management Act, section 80.

**“cash dealer”** means a cash dealer under the *Financial Transactions Reports Act 1988* (Cwlth).

**“chapter 4 application”** means an application under chapter 4 for a monitoring order, surveillance warrant or a covert search warrant or an extension of a surveillance warrant or a covert search warrant.

**“chapter 5 criminal activity”** see section 165.

**“chief executive (family services)”** means the chief executive of the department within which the *Family Services Act 1987* is administered.

**“chief executive (health)”** means the chief executive of the health department.

**“chief executive officer”** means—

- (a) for the CMC—the CMC chairperson; or
- (b) for the police service—the commissioner.

**“child”** means a child within the meaning of the *Juvenile Justice Act 1992*.

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<sup>86</sup> Section 345 (Appointment of authorised persons)

## SCHEDULE 4 (continued)

**“class A surveillance device”** means—

- (a) a surveillance device installed—
  - (i) in a private place, or on a person’s clothing, without the person’s consent; or
  - (ii) if the device is a listening device, in a public place; or
- (b) a surveillance device that is a combination of a listening device and a tracking device.

**“class B surveillance device”** means a tracking device installed in or on a vehicle or other moveable object without covert entry to a building by the person installing it.

**“CMC”** means the Crime and Misconduct Commission.

**“CMC assistant commissioner”** means an assistant commissioner under the *Crime and Misconduct Act 2001*.

**“CMC officer”** means—

- (a) a commission officer under the *Crime and Misconduct Act 2001*; or
- (b) an officer or employee of a declared law enforcement agency.

**“commissioned officer”**, for chapter 8, part 4, see section 307.

**“commissioner”** means the commissioner of the police service.

**“committee”**, for chapter 5, means the controlled operations committee.

**“Confiscation Act”** means the *Crimes (Confiscation) Act 1989*.

**“controlled activity”** see sections 190 and 191.

**“controlled operation”** see section 173.

**“controlled operations committee”** means the controlled operations committee established under section 167.

**“corrective services facility”** see the *Corrective Services Act 2000*, schedule 3.

**“court”** includes anyone conducting a committal proceeding.

**“corresponding law”** means a law of another State, or of a Territory, declared under a regulation to be a law corresponding with this Act or a stated part of this Act.

## SCHEDULE 4 (continued)

**“covert act”** means any of the following acts—

- (a) the making of a chapter 4 application;
- (b) the exercise of powers under this Act under a monitoring order, a surveillance warrant or a covert search warrant;
- (c) the disclosure of information under section 146(2)(f)(ii) or (g).<sup>87</sup>

**“covert operative”** means a police officer or another person named in an approval under section 178 as a covert operative.

**“covert search powers”** see means powers a police officer may exercise under section 155.<sup>88</sup>

**“covert search warrant”** see section 148.<sup>89</sup>

**“crime scene”** means a primary or secondary crime scene.

**“crime scene powers”** means powers a police officer may exercise under a crime scene warrant or in a public place.<sup>90</sup>

**“crime scene warrant”** see section 87.<sup>91</sup>

**“dangerous drug”** see the *Drugs Misuse Act 1986*, section 4.

**“dangerous goods”** see the Road Use Management Act, schedule 4.

**“declared law enforcement agency”** means an entity declared under a regulation to be a law enforcement agency for this Act.

**“detention centre”** see the *Juvenile Justice Act 1992*, section 5.

**“detention order”** see the *Juvenile Justice Act 1992*, section 5.

**“detention period”** has the meaning given under section 234(4) and includes any period for which detention is extended under section 237.<sup>92</sup>

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87 Section 146 (Disclosure of information obtained using surveillance warrant)

88 Section 155 (Powers under covert search warrant)

89 Section 148 (Covert search warrant applications)

90 See section 93 (Powers at crime scene) and 94 (Powers of direction etc. at crime scene)

91 Section 87 (Application for crime scene warrant)

92 Section 234 (Initial period of detention for investigation or questioning), section 237 (When detention period may be extended)



## SCHEDULE 4 (continued)

**“disease test order”** see section 322.

**“DNA database”** means an approved database in which the results of a DNA analysis under a law of the Commonwealth or a State is stored for use only for investigations being conducted by law enforcement agencies.

**“DNA sample”** see section 296.

**“DNA sample notice”** see section 308.

**“DNA sampler”**, for chapter 8, part 4, see section 297.

**“domestic violence”** see the *Domestic Violence (Family Protection) Act 1989*, section 11(1).

**“driver”** includes rider.

**“drug diversion assessment program”** means a drug diversion assessment program provided by, or conducted with the approval of, the chief executive (health).

**“dwelling”**—

1. A “dwelling” includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the **“owner”**) as a residence for the owner, a member of the owner’s family or an employee of the owner.
2. In deciding whether a building or other structure is a dwelling, it is immaterial that the building or other structure is from time to time uninhabited.
3. A building or other structure adjacent to, and occupied with, a dwelling is part of the dwelling if it is connected to the dwelling, whether directly or by a covered and enclosed passage leading from the one to the other, but not otherwise.
4. A “dwelling” also includes a boat (other than an external deck of the boat) used or kept as a residence for the owner, a member of the owner’s family or an employee of the owner.

**“electronically recorded”** means audio recorded or video recorded.

## SCHEDULE 4 (continued)

**“electronic screening”**, of a person or a person’s belongings, means, for section 332 or 349,<sup>93</sup> using an electronic screening device, in relation to the person or belongings.

**“enforcement act”** means any of the following acts—

- (a) the search of a person, other than under chapter 9, part 2;<sup>94</sup>
- (b) the search of a vehicle, other than at a roadblock;
- (c) the search of premises, other than a vehicle or a public place;
- (d) the taking or seizing of a thing, other than under section 269(4);<sup>95</sup>
- (e) the arrest of a person;
- (f) the detention of a person for investigations or questioning under chapter 7;<sup>96</sup>
- (g) the questioning of a person to whom chapter 7, part 3 applies;<sup>97</sup>
- (h) the exercise of powers under this Act relating to a search warrant, production order or production notice;
- (i) the giving of a direction under section 39;<sup>98</sup>
- (j) the discontinuance of an arrest for a minor drugs offence under section 211;
- (k) the entry of a place to find out whether domestic violence is occurring, or has occurred, at the place.

**“enter”** a place, includes re-enter the place.

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93 Section 332 (Use of electronic screening devices in state buildings) or 349 (Use of electronic screening devices at special event site)

94 Chapter 9 (Other powers), part 2 (Preserving safety for special events)

95 Section 269 (Search of persons in custody)

96 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

97 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences), part 3 (Safeguards ensuring rights of and fairness to persons questioned for indictable offences)

98 Section 39 (Direction may be given to person)

## SCHEDULE 4 (continued)

**“entity”**, in chapter 5 and in chapter 11, part 2,<sup>99</sup> means CMC or the police service.

**“entrant”**, to a state building or a special event site, means a person who is about to enter or is at the building or site.

**“environmental nuisance”** see the *Environment Protection Act, 1994*, section 15.

**“evidence of the commission of an offence”** includes—

- (a) a thing or activity that may provide evidence of an offence or suspected offence; and
- (b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of an offence or suspected offence; and
- (c) a thing that is to be used for committing an offence or suspected offence; and
- (d) a thing that may be liable to forfeiture or is forfeited; and
- (e) a thing that may be used in evidence for a forfeiture proceeding; and
- (f) a property tracking document.

**“exercise a power”**, under this or another Act, includes exercise a power under a warrant, order or another authority issued under this or another Act.

**“explosive”** see the *Explosives Act 1999*, schedule 2.<sup>100</sup>

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99 Chapter 11 (Administration), part 2 (Registers)

100 *Explosives Act 1999*, schedule 2—

**“explosive”** includes—

- (a) a substance or a thing containing a substance, manufactured or used with a view to produce—
  - (i) a practical effect by explosion; or
  - (ii) a pyrotechnic effect; and
- (b) a substance or thing declared under a regulation to be an explosive.

*Examples of explosives—*

Ammunition, detonators, gunpowder, nitroglycerine, pyrotechnics (including fireworks).

## SCHEDULE 4 (continued)

**“final nuisance direction”** see section 371.<sup>101</sup>

**“financial institution”** includes cash dealer.

**“forfeiture proceeding”** means a proceeding for an order forfeiting or restraining the use of property under the *Crimes (Confiscation) Act 1989* or another Act.

**“frisk search”** means—

- (a) a search of a person conducted by quickly running the hands over the person’s outer garments; and
- (b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

**“government entity”** means a government entity under the *Public Service Act 1996*, section 21, other than subsection (1)(d), (e) and (f).

**“hand held scanner”** means a device that may be passed over or around a person or the person’s belongings to detects metal or other substances.

**“health department”** means the department within which the *Health Act 1937* is administered.

**“heavy vehicle”** see the Road Use Management Act, schedule 4.

**“identifying particulars”**, of a person, means any of the following—

- (a) palm prints;
- (b) fingerprints;
- (c) handwriting;
- (d) voiceprints;
- (e) footprints;
- (f) a photograph of the person’s identifying features.

*Examples for paragraph (f)—*

1. Photographs of scars or tattoos.
2. Photographs of the person.

**“identifying particulars notice”** see section 272.

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101 Section 371 (Direction to leave park)

## SCHEDULE 4 (continued)

**“identifying particulars offence”** means—

- (a) an offence for which the maximum penalty is at least 1 year’s imprisonment; or
- (b) an offence against this Act or any of the following Acts—
  - *Explosives Act 1999*
  - *Pawnbrokers Act 1984*
  - *Second-hand Dealers and Collectors Act 1984*
  - *Police Service Administration Act 1990*, section 10.19 or 10.20
  - *Regulatory Offences Act 1985*
  - *State Buildings Protective Security Act 1983*
  - *Vagrants, Gaming and Other Offences Act 1931*
  - *Weapons Act 1990*.

**“independent member”**, of the controlled operations committee, means the member who is a retired District Court or Supreme Court judge.

**“initial nuisance direction”** see section 370.<sup>102</sup>

**“island police officer”** means a person who is an island police officer under the *Community Services (Torres Strait) Act 1984*.

**“knife”** means a thing with a sharpened point or blade that is reasonably capable of—

- (a) being held in 1 or both hands; and
- (b) being used to wound or threaten someone when held in 1 or both hands.

**“legal aid organisation”** means an organisation declared under a regulation to be an organisation that provides legal assistance to aboriginal people and Torres Strait islanders.

**“licence”**, for chapter 2, part 1, includes accreditation, approval, authorisation, authority, exemption and permit.

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<sup>102</sup> Section 370 (Initial direction about serious nuisance)

## SCHEDULE 4 (continued)

**“licence holder”**, for chapter 2, part 1, means a person who holds a licence granted or issued under a relevant law.

**“licensed brothel”** means a licensed brothel under the *Prostitution Act 1999*.

**“liquor”** see the Road Use Management Act, schedule 4.

**“listening device”** means any instrument, apparatus, equipment or device (other than a hearing aid for persons with an auditory impairment) capable of being used to overhear, record, monitor or listen to a private conversation simultaneously with its taking place.

**“list of support persons and interpreters”** means the list of support persons and interpreters kept by the commissioner under section 267.<sup>103</sup>

**“major crime”** see the *Crime and Misconduct Act 2001*, schedule 2.

**“make an inquiry”** includes find out whether someone is in a place.

**“mall”** means any of the following—

- (a) a mall established under the *Local Government Act 1993*;
- (b) the Chinatown Mall within the meaning of the *Local Government (Chinatown and Valley Malls) Act 1994*;
- (c) the Queen Street Mall within the meaning of the *Local Government (Queen Street Mall) Act 1991*;
- (d) the Valley Mall within the meaning of the *Local Government (Chinatown and Valley Malls) Act 1994*.

**“minor drugs offence”**—

- (a) means an offence against the *Drugs Misuse Act 1986*, section 9, 10(1) or 10(2)(a) involving—
  - (i) possessing not more than 50 grams of cannabis sativa; or
  - (ii) possessing a thing for use, or that has been used, for smoking cannabis sativa; but
- (b) does not include an offence mentioned in paragraph (a) if the possession is an element of an offence against the *Drugs Misuse*

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<sup>103</sup> Section 267 (List of support persons and interpreters)

## SCHEDULE 4 (continued)

*Act 1986* involving production or supply of cannabis sativa or trafficking in cannabis sativa.

**“misconduct offence”** means alleged or suspected criminal conduct that may be—

- (a) official misconduct under the *Crime and Misconduct Act 2001*; or
- (b) misconduct under the *Police Service Administration Act 1990*.

**“monitor”**, when used as a noun, means—

- (a) the public interest monitor appointed under section 157; or
- (b) a deputy public interest monitor.<sup>104</sup>

**“monitoring order”** see section 116.<sup>105</sup>

**“motor vehicle”** see the Road Use Management Act, schedule 4.

**“moveable dwelling park”**, see the *Residential Tenancies Act 1994*, schedule 3.

**“NCA”** means the national crime authority established under the *National Crime Authority Act 1984* (Cwlth).

**“noise abatement direction”** see section 360.<sup>106</sup>

**“notice to appear”** see section 214(2).<sup>107</sup>

**“noxious or offensive substance”** see *State Buildings Protective Security Act 1983*, section 3.

**“nurse”** means a person who is registered under the *Nursing Act 1992* as a registered nurse.

**“offensive weapon”** see *State Buildings Protective Security Act 1983*, section 3.

**“organised crime”** means an ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation.

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104 Section 157 (Public interest monitor)

105 Section 116 (Monitoring order applications)

106 Section 360 (Powers of police officers on investigation of complaint)

107 Section 214 (Notice to appear may be issued for offence)

## SCHEDULE 4 (continued)

**“otherwise unlawful activity”** means an unlawful act or omission of a person for which—

- (a) apart from chapter 5, it would be unlawful for the person to do or omit; and
- (b) because of chapter 5, it would be lawful for the person to do or omit.

**“outer garment”** includes cloak, coat, shirt and garment.

**“pain”**, for an animal, includes distress and mental or physical suffering.

**“parliamentary commissioner”** means the parliamentary commissioner under the *Crime and Misconduct Act 2001*.

**“pedestrian”** see Road Use Management Act, schedule 4.

**“personal property”**, in relation to a person at or about to enter a special event site—

- (a) means things carried by the person or things apparently in the immediate control of the person; but
- (b) does not include clothing being worn by the person.

**“person in charge”**, of an animal, see section 65B(2)(d).

**“person in control”**, of a vehicle, see Road Use Management Act, schedule 4.

**“person with impaired capacity”** means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following—

- (a) an obvious loss or partial loss of the person’s mental functions;
- (b) an obvious disorder, illness or disease that affects a person’s thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

**“photograph”** includes photocopy, videotape, and record an image.

**“photo licence”** means a licence for a weapon issued under the *Weapons Act 1990* that shows the following—

- (a) the photograph of the licensee or, if the licensee is an incorporated or unincorporated body, the licensee’s representative;



## SCHEDULE 4 (continued)

- (b) the licence number;
- (c) numbers and letters indicating licence conditions;
- (d) letters indicating the categories of weapons the licensee may possess.

**“place”** includes—

- (a) premises; and
- (b) vacant land; and
- (c) a vehicle; and
- (d) a place in Queensland waters; and
- (e) a place held under 2 or more titles or owners.

**“place of safety”** see section 210.

**“police dog”** means a dog kept by the commissioner for helping police officers perform the duties of police officers.

**“police establishment”** means a police establishment under the *Police Service Administration Act 1990*.

**“police horse”** means a horse kept by the commissioner for use by police officers when performing the duties of police officers.

**“police officer”** includes—

- (a) for chapter 9, part 3—
  - (i) an aboriginal police officer; and
  - (ii) an island police officer; and
- (b) for chapter 5, part 2, a police officer of a police force or service of another State or the Commonwealth; and
- (c) other than for chapter 5, part 2, a police officer of any State or the Commonwealth who is, for the time being, performing duties for another police service.

**“police service”** means the Queensland Police Service.

**“possession”** includes—

- (a) custody; and
- (b) control.

## SCHEDULE 4 (continued)

**“premises”** includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures, is situated; and
- (d) a vehicle and a caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

**“prescribed authority”** see section 451.<sup>108</sup>

**“prescribed nurse”** means a nurse who is employed in the health department.

**“prescribed place”**—

- (a) for chapter 2, part 4,<sup>109</sup> in relation to soliciting for prostitution, means any public place to which the public has access, whether on payment of a fee or otherwise, but does not include any area in a licensed brothel that can not be viewed from outside the brothel; and
- (b) for chapter 2, part 4, in relation to other matters, means—
  - (i) a shop; or
  - (ii) a child-care centre; or
  - (iii) a pre-school centre; or
  - (iv) a primary, secondary or special school; or
  - (v) premises licensed under the *Liquor Act 1992*; or
  - (vi) a railway station and any railway land around it; or
  - (vii) a mall; or

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108 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

109 Chapter 2 (General enforcement powers), part 4 (Directions to move-on)

## SCHEDULE 4 (continued)

- (viii) the part of the corporation area under the *South Bank Corporation Act 1989* declared to be the site under that Act; or
- (ix) a racing venue within the meaning of the *Racing and Betting Act 1980*; or
- (x) an automatic teller machine; or
- (xi) a war memorial; or
- (xii) a place declared under section 40<sup>110</sup> to be a notified area.

**“primary crime scene”** means a place—

- (a) where a seven year imprisonment offence or an offence involving deprivation of liberty has happened; and
- (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence.

**“prison”** see *Corrective Services Act 2000*, schedule 3.

**“prisoner”** see *Corrective Services Act 2000*, schedule 3.

**“private conversation”** means any words spoken by 1 person to another person in circumstances that indicate—

- (a) that those persons desire the words to be heard or listened to only by themselves; or
- (b) that indicate that either of those persons desires the words to be heard or listened to only by themselves and by some other person;

but does not include words spoken by 1 person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

**“private vehicle”** see Road Use Management Act, schedule 4.

**“produce”**, a document, includes make the document available.

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110 Section 40 (Proposal for notified area)

## SCHEDULE 4 (continued)

**“production notice”** see section 97.<sup>111</sup>

**“production order”** see section 106.<sup>112</sup>

**“prohibited item”**, in relation to a special event, means a thing stated to be a prohibited item in the declaration of the event as a special event.

**“proscribed thing”** means proscribed matter under the *State Buildings Protective Security Act 1983*.

**“property officer”** means—

- (a) a member of the police service appointed by the commissioner as a property officer; or
- (b) an officer of a government entity appointed as a property officer under an arrangement between the commissioner and the chief executive officer of the entity.

**“property point”** means a place lawfully used by the police service as a place for the storage of relevant things.

**“property tracking document”** means a property tracking-document under the *Crimes (Confiscation) Act 1989*.

**“prostitution”** see the Criminal Code, section 229E.

**“public official”** means a person—

- (a) who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for a government entity; or
- (b) who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for an entity other than a government entity and is declared under a regulation to be a public official for this Act; or
- (c) declared by another Act to be a public official for this Act.

**“public place”** means—

- (a) a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to

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111 Section 97 (Production notices)

112 Section 106 (Production order applications)

## SCHEDULE 4 (continued)

the place may be restricted at particular times or for particular purposes; or

- (b) a place declared under another Act to be a public place for any law conferring powers or imposing functions on police officers; or
- (c) a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public; or
- (d) a place that is a public place under another Act.<sup>113</sup>

*Examples for paragraph (a)—*

- 1. A road.
- 2. A park.
- 3. A beach.
- 4. A road that is closed to general use by vehicles for a public procession or a parade.

*Example for paragraph (b)—*

Under the *Sanctuary Cove Resort Act 1985*, section 54A primary and secondary thoroughfares are public places for the purposes of any law conferring powers or imposing functions on a police officer.

*Examples for paragraph (c)—*

- 1. A cinema complex.
- 2. A shop.
- 3. A restaurant.
- 4. A racecourse.

**“public prosecutor”** means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

**“Public Records Act”** means—

- (a) until the commencement of the *Public Records Act 2000*, section 14<sup>114</sup>—the *Libraries and Archives Act 1988*; or

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113 See, for example, the *Vagrants, Gaming and Other Offences Act 1931*, section 2, definition “public place”.

114 *Public Records Act 2000*, section 14 (Public authority must ensure particular records remain accessible)

## SCHEDULE 4 (continued)

(b) from the commencement of the *Public Records Act 2000*, section 14—the *Public Records Act 2000*.

**“question”**, for chapter 7,<sup>115</sup> means question a person as a suspect about his or her involvement in an indictable offence.

**“questioning period”** means the time for which a person may be questioned under this Act in relation to an offence.

**“reasonably believe”** means believe on grounds that are reasonable in the circumstances.

**“reasonably suspects”** means suspects on grounds that are reasonable in the circumstances.

**“register of covert acts”** means the register of covert acts kept under section 402.

**“register of enforcement acts”** means the register of enforcement acts kept under section 412.

**“registrar-general”** means the registrar-general under the *Registration of Births, Deaths and Marriages Act 1962*.

**“relevant act”** means conduct of a kind mentioned in section 37 or 38.<sup>116</sup>

**“relevant disease”** means a communicable disease prescribed under a regulation.

**“relevant law”**, means an Act under which a person or place must be licensed, and prescribed under a regulation for chapter 2, part 1.<sup>117</sup>

**“relevant person”**—

(a) in relation to an application to a judge for a surveillance warrant—see section 125; and

(b) in relation to an application to a magistrate for a surveillance warrant—see section 139; and

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115 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

116 Section 37 (When power applies to behaviour) or 38 (When power applies to a person’s presence)

117 Chapter 2 (General enforcement powers), part 1 (Entry, inquiries and inspection)

## SCHEDULE 4 (continued)

- (c) in relation to an application to a judge for a covert search warrant—see section 149; and
- (d) in relation to a removal order—see section 233; and
- (e) for chapter 7, part 3—see section 246; and
- (f) for chapter 8, part 3—see section 276.

**“relevant thing”**, for chapter 11, part 3, see section 420.

**“relevant vehicle incident”** means—

- (a) an incident involving a vehicle on a road in which—
  - (i) death or injury was caused to a person; or
  - (ii) damage was caused to a vehicle, tram, or train, or any other real or personal property; or
  - (iii) death or injury was caused to an animal; or
- (b) an incident involving a boat in which—
  - (i) death or injury was caused to a person; or
  - (ii) damage was caused to a boat or any other real or personal property.

**“removal order”** see section 230.<sup>118</sup>

**“responsibilities code”** means the code of responsibilities of police officers prescribed under a regulation.

**“responsible chief executive officer”**, for a surveillance warrant, means the chief executive officer of the entity responsible for keeping the register of covert acts in which information about the warrant is recorded.

**“responsible officer”** see section 82.<sup>119</sup>

**“restricted area”**, for a special event, means a part of the special event site designated by the event organiser as an area to which entry is restricted to persons who have the consent or other authorisation of the organiser.

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118 Section 230 (Application for removal of person from lawful custody)

119 Section 82 (Initial establishment of crime scene)

## SCHEDULE 4 (continued)

“**restricted item**” means an item prescribed as a restricted item under the *Weapons (Categories) Regulation 1997*.

“**riot**” see the Criminal Code, section 61(4).<sup>120</sup>

“**road**” see Road Use Management Act.

“**Road Use Management Act**” means the *Transport Operations (Road Use Management) Act 1995*.

“**search**”, a person, includes frisk search the person.

“**search warrant**” see section 68.<sup>121</sup>

“**search warrant powers**” see section 74.<sup>122</sup>

“**secondary crime scene**” means a place—

- (a) where there may be evidence, of significant probative value, of the commission of a serious violent offence that happened somewhere else; and
- (b) it is necessary to protect for the time reasonably necessary to search for and gather evidence of the commission of the offence.

“**seize**” includes retain.

“**serious indictable offence**” means an indictable offence involving any of the following—

- (a) serious risk to, or actual loss of, a person’s life;
- (b) serious risk of, or actual, serious injury to a person;
- (c) serious damage to property in circumstances endangering the safety of any person;
- (d) serious fraud;
- (e) serious loss of revenue to the State;
- (f) official corruption;

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120 Criminal Code, section 61(4)—

(4) When an unlawful assembly has begun to act in so tumultuous a manner as to disturb the peace, the assembly is called a “**riot**”, and the persons assembled are said to be “**riotously assembled**”.

121 Section 68 (Search warrant application)

122 Section 74 (Power under search warrants)



## SCHEDULE 4 (continued)

- (g) serious theft;
- (h) money laundering;
- (i) conduct related to prostitution or SP bookmaking;
- (j) child abuse, including child pornography;
- (k) an offence against the *Drugs Misuse Act 1986* punishable by at least 20 years imprisonment.

**“serious offence”**, for chapter 4, part 1,<sup>123</sup> means a serious offence under the *Crimes (Confiscation) Act 1989*, section 4 or an interstate serious offence under that Act.

**“serious violent offence”** means—

- (a) an offence involving deprivation of liberty; or
- (b) a 7 year imprisonment offence involving violence or a threat of violence to a person.

**“seven year imprisonment offence”** means an indictable offence for which the maximum penalty is at least 7 years imprisonment.

**“solicit”** includes the following—

- (a) offer to provide prostitution;
- (b) accept an offer to provide prostitution.

**“special event”** means an event declared under chapter 9, part 2 to be a special event.<sup>124</sup>

**“special event site”** means a site described in a declaration of a special event as a special event site.

**“state building”** see *State Buildings Protective Security Act 1983*, section 4.

**“stop”**, of a vehicle or animal, includes requiring it to remain stationary for the time reasonably necessary to enable a function or power under this or another Act to be exercised.

**“support person”** means—

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123 Chapter 4 (Covert evidence gathering powers), part 1 (Monitoring orders)

124 Chapter 9 (Other powers), part 2 (Preserving safety for special events)

## SCHEDULE 4 (continued)

- (a) for an aborigine or Torres Strait islander who is at least 17—
  - (i) an adult relative or another adult chosen by the person; or
  - (ii) a lawyer acting for the person; or
  - (iii) a representative of a legal aid organisation; or
  - (iv) a person whose name is included in a list of support persons and interpreters; or
- (b) for a child—
  - (i) a parent or guardian of the child; or
  - (ii) a lawyer acting for the child; or
  - (iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or
  - (iv) if no-one mentioned in subparagraphs (i) to (iii) is available—an adult relative or friend of the child who is acceptable to the child; or
  - (v) if the child is an aborigine or a Torres Strait islander and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of support persons and interpreters; or
  - (vi) if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace, other than a justice of the peace who is a member of the Queensland Police Service or a justice of the peace (commissioner for declarations); or
- (c) for a person with impaired capacity—a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person’s interests.

**“surveillance device”** includes—

- (a) a listening device; and
- (b) a visual surveillance device; and
- (c) a tracking device; and
- (d) a device containing any combination of the devices mentioned in paragraphs (a), (b) and (c).

## SCHEDULE 4 (continued)

**“surveillance powers”** means powers a police officer may exercise under a surveillance warrant.<sup>125</sup>

**“surveillance warrant”** see sections 124 and 138.<sup>126</sup>

**“tainted property”** see *Crimes (Confiscation) Act 1989*, section 13.<sup>127</sup>

**“take”**, for chapter 8, part 4 or 5, includes “collect”.

**“term of imprisonment”** see *Penalties and Sentences Act 1992*.

**“time out”** includes any time reasonably required—

- (a) to take a person from the place where the person is arrested to the nearest place where the investigating officer has access to facilities for complying with chapter 7, part 3; and
- (b) to allow the person, or someone else on the person’s behalf, to telephone or speak to a lawyer, friend, relative, parent, guardian, interpreter or other person; and
- (c) to allow a lawyer, friend, relative, parent, guardian, interpreter or other person to arrive at the place where the person is to be questioned; and
- (d) to allow the person to receive medical attention; and
- (e) to allow the person to recover from the effects of intoxication; and
- (f) to allow the person to rest; and
- (g) to allow for the questioning of co-offenders; and
- (h) to prepare and dispose of an application under this Act for approval of the examination of the person by a doctor or dentist; and
- (i) to convey the person to a suitable place for medical or dental examination or treatment; and
- (j) to allow for an identification parade to be arranged and held; and

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125 Section 131 (Power under surveillance warrants)

126 Sections 124 (Surveillance warrant applications) and 138 (Surveillance warrant applications)

127 *Crimes (Confiscation) Act 1989*, section 13 (Meaning of “tainted property”)

## SCHEDULE 4 (continued)

- (k) to allow for—
  - (i) an examination of the person under this Act by a doctor or dentist; or
  - (ii) the taking of a DNA sample by a DNA sampler; or
  - (iii) the taking of a blood or urine sample under chapter 8, part 5, by a doctor or nurse.
- (l) to allow for witnesses to be interviewed; and
- (m) to allow for investigating police to arrive; and
- (n) to allow for the person to be taken to another place for the investigation or as part of the investigation; and
- (o) to allow for the search of any place, including a crime scene examination; and
- (p) to decide the appropriate nature and content of a charge against the person and to charge the person and decide whether to release the person on bail or serve on the person a notice to appear or complaint and summons.

**“train”** includes tram.

**“tram”** see Road Use Management Act, schedule 4.

**“transport Act”** see Road Use Management Act, schedule 4.

**“transport vehicle”** means—

- (a) an aircraft; or
- (b) a boat; or
- (c) a bus; or
- (d) a train.

**“vehicle”** means a vehicle under the Road Use Management Act, an aircraft or a boat.

**“veterinary surgeon”** means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

**“walk-through detector”**, for chapter 9, means a device through which a person walks, that detects metal or other substances.

## SCHEDULE 4 (continued)

**“watch-house manager”** means a police officer for the time being in charge of a watch-house.

**“weapon”**—

- (a) for chapter 11, part 3—includes antique firearm and restricted item; and
- (b) otherwise—see *Weapons Act 1990*, section 5.<sup>128</sup>

**“welfare”**, of an animal, means issues about the health, safety or wellbeing of the animal.

**“X-ray machine”**, for chapter 9, means a device through which a person’s belongings are passed and X-rayed.

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128 *Weapons Act 1990*, section 5—

**“weapon”** means—

- (a) a firearm; or
  - (b) another thing prescribed under a regulation; or
  - (c) a thing that would be a weapon mentioned in paragraph (a) or (b), if it were not temporarily inoperable or incomplete;
- but does not include an antique firearm.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	300
3 Key . . . . .	301
4 Table of reprints . . . . .	301
5 Tables in earlier reprints . . . . .	301
6 List of legislation . . . . .	301
7 List of annotations . . . . .	304
8 List of forms . . . . .	328
9 Provisions that have not commenced and are not incorporated into reprint . . . .	332

**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 20 June 2002. Future amendments of the Police Powers and Responsibilities Act 2000 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	prev	= previous
amd	= amended	(prev)	= previously
amdt	= amendment	proc	= proclamation
ch	= chapter	prov	= provision
def	= definition	pt	= part
div	= division	pubd	= published
exp	= expires/expired	R[X]	= Reprint No.[X]
gaz	= gazette	RA	= Reprints Act 1992
hdg	= heading	reloc	= relocated
ins	= inserted	renum	= renumbered
lap	= lapsed	rep	= repealed
notfd	= notified	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 1992
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

### 5 Tables in earlier reprints

#### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	2

### 6 List of legislation

#### Police Powers and Responsibilities Act 2000 No. 5

date of assent 23 March 2000

ss 1–2, 373–377, sch 2 commenced on date of assent (see s 2(2))

s 211 commenced 24 June 2001 (automatic commencement under AIA s 15DA(2))

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No.174)

amending legislation—

**Mental Health Act 2000 No. 16 s 590 sch 1 pt 2 (this Act is amended, see amending legislation below)**

date of assent 8 June 2000

ss 1–2, 590 commenced on date of assent (see s 2(1))

remaining provisions commenced 28 February 2002 (2002 SL No. 27) (provisions were to commence 8 June 2002 (automatic commencement under AIA s 15DA(2) (2001 SL No. 46 s 2)))

amending legislation—

**Health Legislation Amendment Act 2001 No. 78 s 102 sch 2 (amends 2000 No. 16 above)**

date of assent 15 November 2001

commenced on date of assent

**Racing and Betting Amendment Act 2000 No. 21 pts 1, 3 (this Act is amended, see amending legislation below)**

date of assent 23 June 2000

commenced on date of assent (see s 2(2))

amending legislation—

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 2(2), pt 18 (amends 2000 No. 21 above)**

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 23 June 2000 (see s 2(2))

**Police Powers and Responsibilities and Other Acts Amendment Act 2000 No. 22 s 1 pt 2 sch**

date of assent 23 June 2000

commenced on date of assent

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Property Agents and Motor Dealers Act 2000 No. 62 ss 1–2, 601 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 54)

**Corrective Services Act 2000 No. 63 ss 1, 2(2), 276 sch 2**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 88) (remaining provisions were to commence 2 April 2001 but the commencing proclamation (2000 SL No. 335) was repealed (2001 SL No. 23))

**Tobacco and Other Smoking Products (Prevention of Supply to Children) Amendment Act 2001 No. 20 ss 1, 2(2) pt 4**

date of assent 11 May 2001

ss 1–2, 52, 53(2), 54(2) commenced on date of assent

remaining provisions commenced 31 May 2002 (see s 2(2))



**Police Powers and Responsibilities and Another Act Amendment Act 2001 No. 22 pts 1–2**

date of assent 17 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 immediately after the commencement of the provisions of the Police Powers and Responsibilities Act 2000 that commenced on that day (see s 2)

**Animal Care and Protection Act 2001 No. 64 ss 1–2, 225–229**

date of assent 25 October 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 33)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Parliament of Queensland Act 2001 No. 81 ss 1–2, ch 9 pt 12**

date of assent 3 December 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 6 June 2002 (see s 2)

**Domestic Violence Legislation Amendment Act 2002 No. 6 pts 1, 3**

date of assent 13 March 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

**Land Protection (Pest and Stock Route Management) Act 2002 No. 12 ss 1–2, 329 sch 2**

date of assent 24 April 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

**Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 ss 1, 2(3), 124 sch**

date of assent 24 April 2002

ss 1–2, 124 commenced on date of assent

remaining provisions commenced 7 June 2002 (2002 SL No. 133)

**Residential Services (Accommodation) Act 2002 No. 19 pts 1, 14 div 1**

date of assent 17 May 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

**Criminal Law Amendment Act 2002 No. 23 ss 1, 2(3), pt 10**

date of assent 23 May 2002

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2(3))

## **7 List of annotations**

### **Commencement**

**s 2** amd 2000 No. 22 s 4

### **Compliance with Act by police officers**

**s 5** amd 2001 No. 69 s 378 sch 1

### **Relationship to other Acts**

**s 10** amd 2000 No. 16 s 590 sch 1 pt 2 (amd 2001 No. 78 s 102 sch 2)

### **Prescribed circumstances for searching persons without warrant**

**s 28** amd 2000 No. 63 s 276 sch 2; 2002 No. 6 s 38

### **Searching vehicles without warrant**

**s 29** amd 2000 No. 22 s 3 sch; 2000 No. 63 s 276 sch 2

### **Prescribed circumstances for searching vehicle without warrant**

**s 30** amd 2000 No. 63 s 276 sch 2; 2002 No. 6 s 39

### **Person may be required to state name and address**

**s 32** amd 2000 No. 22 s 3 sch; 2001 No. 20 s 53

### **Prescribed circumstances for requiring name and address**

**s 33** amd 2000 No. 22 s 5

### **Unlawful supply of smoking products to children**

**s 35** amd 2001 No. 20 s 54

### **Power to prohibit use of vehicles**

**s 57** amd 2000 No. 62 s 601 sch 2

### **Division 2A—Animal welfare directions**

**div 2A (ss 65A–65D)** ins 2001 No. 64 s 226

### **Power in relation to offences involving animals**

**s 66** amd 2001 No. 64 s 227

### **Powers to provide relief to animal**

**s 66A** ins 2001 No. 64 s 228

### **Power to destroy animal**

**s 66B** ins 2001 No. 64 s 228

### **Making of post-search approval order**

**s 79** amd 2000 No. 22 s 3 sch

### **Appeal**

**s 80** amd 2000 No. 22 s 3 sch

### **Certain Acts do not apply to this part**

**s 122** amd 2000 No. 22 s 6

### **Powers under surveillance warrants**

**s 144** amd 2001 No. 22 s 4

### **Disclosure of information obtained using surveillance warrant**

**s 146** amd 2001 No. 69 s 378 sch 1

**What covert search warrant must state**

s 152      amd 2001 No. 22 s 5

**Public interest monitor**

s 157      amd 2001 No. 69 s 378 sch 1

**CHAPTER 5—CONTROLLED OPERATIONS AND CONTROLLED ACTIVITIES**

ch hdg    ins 2000 No. 22 s 8

**PART 1—PRELIMINARY**

pt hdg    ins 2000 No. 22 s 8

**Object of ch 5**s 163      ins 2000 No. 22 s 8  
            amd 2001 No. 69 s 378 sch 1**Investigation of minor matters not affected**

s 164      ins 2000 No. 22 s 8

**Lawfulness of particular actions**s 165      ins 2000 No. 22 s 8  
            amd 2001 No. 69 s 378 sch 1**Controlled operations and activities generally**

s 166      ins 2000 No. 22 s 8

**PART 2—CONTROLLED OPERATIONS**

pt hdg    ins 2000 No. 22 s 8

**Division 1—Controlled operations committee**

div hdg    ins 2000 No. 22 s 8

**Establishment of controlled operations committee**

s 167      ins 2000 No. 22 s 8

**Independent member**

s 168      ins 2000 No. 22 s 8

**Acting independent member**

s 169      ins 2000 No. 22 s 8

**Division 2—Committee's functions and business**

div hdg    ins 2000 No. 22 s 8

**Committee's functions**

s 170      ins 2000 No. 22 s 8

**Committee business**

s 171      ins 2000 No. 22 s 8

**Committee's recommendations**

s 172      ins 2000 No. 22 s 8

**Committee's annual report**

s 172A     ins 2000 No. 22 s 8

**Division 3—Approval of controlled operations****div hdg** ins 2000 No. 22 s 8**Application for approval****s 173** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Application must be referred to committee****s 174** ins 2000 No. 22 s 8**Certain CMC controlled operations****prov hdg** amd 2001 No. 69 s 378 sch 1**s 175** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Procedure in urgent circumstances other than if s 175 applies****s 176** ins 2000 No. 22 s 8**Consideration and approval of application****s 177** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**What approval must state****s 178** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Effect of approval****s 179** ins 2000 No. 22 s 8**Division 4—Variation of approval for controlled operation****div hdg** ins 2000 No. 22 s 8**Application to vary approval****s 180** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Application must be referred to committee****s 181** ins 2000 No. 22 s 8**Certain CMC controlled operations****prov hdg** amd 2001 No. 69 s 378 sch 1**s 182** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Procedure in urgent circumstances other than if s 182 applies****s 183** ins 2000 No. 22 s 8**When approval may be given****s 184** ins 2000 No. 22 s 8**How approval may be varied****s 185** ins 2000 No. 22 s 8**Division 5—Special provisions about creating identity documents****div hdg** ins 2000 No. 22 s 8

**Request for issue of document to conceal identity—general****s 186** ins 2000 No. 22 s 8**Request for issue of document to conceal identity—CMC****prov hdg** amd 2001 No. 69 s 378 sch 1**s 187** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Giving effect to authority under s 186 or 187****s 188** ins 2000 No. 22 s 8**Special provisions about concealing identities of covert operatives****s 189** ins 2000 No. 22 s 8**PART 3—CONTROLLED ACTIVITIES****pt hdg** ins 2000 No. 22 s 8**Authorised controlled activities****s 190** ins 2000 No. 22 s 8**Authorisation of controlled activities by CMC****prov hdg** amd 2001 No. 69 s 378 sch 1**s 191** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**PART 4—MISCELLANEOUS****pt hdg** ins 2000 No. 22 s 8**Disclosure of information****s 192** ins 2000 No. 22 s 8**Protection from liability****s 193** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**Admissibility of evidence obtained through controlled operation and activities****s 194** ins 2000 No. 22 s 8**Cross-jurisdictional protection****s 195** ins 2000 No. 22 s 8**Evidentiary provision****s 196** ins 2000 No. 22 s 8**Powers not to be delegated****s 197** ins 2000 No. 22 s 8  
amd 2001 No. 69 s 378 sch 1**CHAPTER 6—ARREST AND CUSTODY POWERS****ch hdg** (prev ch 5) renum 2000 No. 22 s 7**Arrest without warrant****s 198** (prev s 163) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 9  
amd 2002 No. 6 s 40

**Arrest of escapees etc.**

s 199 (prev s 164) renum 2000 No. 22 s 9  
amd 2000 No. 63 s 276 sch 2

**Arrest of person granted bail**

s 200 (prev s 165) renum 2000 No. 22 s 9

**Arrest of person given notice to appear or summons**

s 201 (prev s 166) renum 2000 No. 22 s 9

**Arrest under warrant**

s 202 (prev s 167) renum 2000 No. 22 s 9

**Arrest warrant application**

s 203 (prev s 168) renum 2000 No. 22 s 9

**Issue of arrest warrant**

s 204 (prev s 169) renum 2000 No. 22 s 9

**What arrest warrant must state**

s 205 (prev s 170) renum 2000 No. 22 s 9

**Power of arrest for offences committed outside the State**

s 206 (prev s 171) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 9

**Police officer to consider alternatives to proceeding against child**

s 207 (prev s 172) renum 2000 No. 22 s 9

**When arrest may be discontinued—general rule**

s 208 (prev s 173) renum 2000 No. 22 s 9

**Additional case when arrest of adult may be discontinued**

s 209 (prev s 174) renum 2000 No. 22 s 9

**Additional case when arrest for being drunk in a public place may be discontinued**

s 210 ins 2000 No. 22 s 10

**Additional case when arrest for minor drugs offence may be discontinued**

s 211 ins 2000 No. 22 s 10

**Additional case when arrest of child may be discontinued**

s 212 prev s 175 renum 2000 No. 22 s 11

**Limit on re-arrest**

s 213 prev s 176 renum 2000 No. 22 s 11

**Notice to appear may be issued for offence**

s 214 prev s 177 renum 2000 No. 22 s 11

**Notice to appear form**

s 215 prev s 178 renum 2000 No. 22 s 11

**Notice to appear must be filed in court without cost to person**

s 216 prev s 179 renum 2000 No. 22 s 11

**General particulars only are required on a notice to appear**

s 217 prev s 180 renum 2000 No. 22 s 11

**Particulars of notice to appear offence must be given in the proceeding**

**s 218** (prev s 181) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 11

**Notice to appear equivalent to a complaint and summons**

**s 219** (prev s 182) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 11  
amd 2002 No. 23 s 67

**Court may order immediate arrest of person who fails to appear**

**s 220** (prev s 183) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 11

**Court must strike out notice to appear if service insufficient**

**s 221** (prev s 184) renum 2000 No. 22 s 11

**Information to be given to arrested person**

**s 222** (prev s 185) renum 2000 No. 22 s 11

**Parent and chief executive must be advised of arrest of child**

**s 223** (prev s 186) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 11

**Duty of police officer after arrest etc. of person**

**s 224** (prev s 187) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 11  
amd 2000 No. 63 s 276 sch 2

**Duty of police officer receiving custody of person arrested for offence**

**s 225** (prev s 188) amd 2000 No. 22 ss 12, 3 sch  
renum 2000 No. 22 s 12(4)  
amd 2002 No. 23 s 68(1)–(2)

**Duty of officer receiving custody of person arrested under warrant other than for offence**

**s 226** (prev s 189) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**CHAPTER 7—POWERS AND RESPONSIBILITIES RELATING TO INVESTIGATIONS AND QUESTIONING FOR INDICTABLE OFFENCES**

**ch hdg** (prev ch 6) renum 2000 No. 22 s 7

**Chapter does not apply to covert operations**

**s 227** (prev s 190) renum 2000 No. 22 s 13

**Right to remain silent not affected**

**s 228** (prev s 191) renum 2000 No. 22 s 13

**Application of pt 2**

**s 229** (prev s 192) renum 2000 No. 22 s 13

**Application for removal of person from lawful custody**

**s 230** (prev s 193) renum 2000 No. 22 s 13  
amd 2000 No. 63 s 276 sch 2

**Chief executive must be advised of application for removal order**

s 231 (prev s 194) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**When magistrate may make removal order**

s 232 (prev s 195) renum 2000 No. 22 s 13

**What removal order must state**

s 233 (prev s 196) renum 2000 No. 22 s 13

**Initial period of detention for investigation or questioning**

s 234 (prev s 197) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**What is a reasonable time to detain a person for questioning or investigation**

s 235 (prev s 198) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**Application for extension of detention period**

s 236 (prev s 199) renum 2000 No. 22 s 13

**When detention period may be extended**

s 237 (prev s 200) renum 2000 No. 22 s 13

**What order must state**

s 238 (prev s 201) renum 2000 No. 22 s 13

**Use of time out during extended detention period**

s 239 (prev s 202) renum 2000 No. 22 s 13

**Effect of unforeseen delays on detention**

s 240 (prev s 203) renum 2000 No. 22 s 13

**Effect of another arrest on questioning period**

s 241 (prev s 204) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**When does detention period start for offenders arrested outside Queensland**

s 242 (prev s 205) renum 2000 No. 22 s 13

**When person detained may be taken to a place other than a police establishment**

s 243 (prev s 206) renum 2000 No. 22 s 13

**Persons helping in covert investigations not under arrest**

s 244 (prev s 207) renum 2000 No. 22 s 13

**Part applies only to indictable offences**

s 245 (prev s 208) renum 2000 No. 22 s 13

**When does this part apply to a person**

s 246 (prev s 209) renum 2000 No. 22 s 13

**Questioning generally**

s 247 (prev s 210) renum 2000 No. 22 s 13

**Questioning of person after proceeding started**

s 248 (prev s 211) renum 2000 No. 22 s 13



**Right to communicate with friend, relative or lawyer**

s 249 (prev s 212) renum 2000 No. 22 s 13

**Speaking to and presence of friend, relative or lawyer**

s 250 (prev s 213) renum 2000 No. 22 s 13

**Questioning of aboriginal people and Torres Strait islanders**

s 251 (prev s 214) renum 2000 No. 22 s 13

**Questioning of children**

s 252 (prev s 215) renum 2000 No. 22 s 13

**Questioning of persons with impaired capacity**

s 253 (prev s 216) renum 2000 No. 22 s 13

**Questioning of intoxicated persons**

s 254 (prev s 217) renum 2000 No. 22 s 13

**What is “unreasonable interference” for divs 2–3**

s 255 (prev s 218) renum 2000 No. 22 s 13

**Requirements before excluding persons unreasonably interfering with questioning**

s 256 (prev s 219) renum 2000 No. 22 s 13

**If police officer excludes person from questioning**

s 257 (prev s 220) renum 2000 No. 22 s 13

**Cautioning of persons**

s 258 (prev s 221) renum 2000 No. 22 s 13

**Provision of information relating to a relevant person**

s 259 (prev s 222) renum 2000 No. 22 s 13

**Right to interpreter**

s 260 (prev s 223) renum 2000 No. 22 s 13

**Right of visiting foreign national to communicate with embassy etc.**

s 261 (prev s 224) renum 2000 No. 22 s 13

**Rights of a person to be electronically recorded**

s 262 (prev s 225) renum 2000 No. 22 s 13

**Recording of questioning etc.**s 263 (prev s 226) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13**Requirements for written record of confession or admission**

s 264 (prev s 227) renum 2000 No. 22 s 13

**Access to electronic recordings of questioning etc.**s 265 (prev s 228) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13**Admissibility of records of questioning etc.**s 266 (prev s 229) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**List of support persons and interpreters**

s 267 (prev s 230) renum 2000 No. 22 s 13

**When sections 249-253, 259 and 261 do not apply**

prov hdg (prev s 231) amd 2000 No. 22 s 3 sch

s 268 (prev s 231) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 13

**CHAPTER 8—POWERS IN RELATION TO PERSONS IN CUSTODY**

ch hdg (prev ch 7) renum 2000 No. 22 s 7

**Search of persons in custody**

s 269 (prev s 232) amd 2000 No. 22 s 14(1)  
renum 2000 No. 22 s 14(2)

**Taking identifying particulars of person in custody**

s 270 (prev s 233) renum 2000 No. 22 s 15

**Taking identifying particulars—proceedings started by notice to appear or complaint and summons**

s 271 (prev s 234) renum 2000 No. 22 s 15

**Identifying particulars notice may be given**

s 272 (prev s 235) amd 2000 No. 22 s 16(1)  
renum 2000 No. 22 s 16(2)

**Court may order taking of identifying particulars**

s 273 (prev s 236) renum 2000 No. 22 s 17

**Destruction of identifying particulars**

s 274 (prev s 237) renum 2000 No. 22 s 17

**Identification of suspects**

s 275 (prev s 238) renum 2000 No. 22 s 17

**Application of pt 3**

s 276 (prev s 239) renum 2000 No. 22 s 17

**Consent or approval needed for performing medical or dental procedure under this part**

s 277 (prev s 240) renum 2000 No. 22 s 17

**Right to interpreter**

s 278 (prev s 241) renum 2000 No. 22 s 17

**Person must be told of need for consent or approval**

s 279 (prev s 242) renum 2000 No. 22 s 17

**Speaking to and presence of friend, relative or lawyer**

s 280 (prev s 243) renum 2000 No. 22 s 17

**Special consent requirement for children and persons with impaired capacity**

s 281 (prev s 244) renum 2000 No. 22 s 17

**Absence of independent person not to affect lawfulness of custody etc.**

s 282 (prev s 245) renum 2000 No. 22 s 17

**Requirements before excluding persons unreasonably interfering with performance of medical or dental procedure**

s 283 (prev s 246) renum 2000 No. 22 s 17

**If police officer excludes person from performance of medical or dental procedure**

s 284 (prev s 247) renum 2000 No. 22 s 17

**Consent to be recorded**

s 285 (prev s 248) renum 2000 No. 22 s 17

**Doctor's powers**

s 286 (prev s 249) renum 2000 No. 22 s 17

**Dentist's powers**

s 287 (prev s 250) renum 2000 No. 22 s 17

**Application of div 3**s 288 (prev s 251) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 17**Application for order for performance of medical or dental procedure**

s 289 (prev s 252) renum 2000 No. 22 s 17

**Making of order**

s 290 (prev s 253) renum 2000 No. 22 s 17

**Copy of order to be given to person**

s 291 (prev s 254) renum 2000 No. 22 s 17

**Performing medical procedures without consent**

s 292 (prev s 255) renum 2000 No. 22 s 17

**Performing dental procedures without consent**

s 293 (prev s 256) renum 2000 No. 22 s 17

**Power to analyse samples**

s 294 (prev s 257) renum 2000 No. 22 s 17

**Samples and test results to be given to person**

s 295 (prev s 258) renum 2000 No. 22 s 17

**PART 4—DNA PROCEDURES**

pt hdg ins 2000 No. 22 s 18

**Division 1—Application and purpose of pt 4**

div hdg ins 2000 No. 22 s 18

**Primary purpose of pt 4**

s 296 ins 2000 No. 22 s 18

**Division 2—Preliminary provisions about taking DNA samples for DNA analysis**

div hdg ins 2000 No. 22 s 18

**Who may take DNA samples**

s 297 ins 2000 No. 22 s 18

**Where DNA samples may be taken**

s 298 ins 2000 No. 22 s 18

**How DNA samples may be taken**

s 299 ins 2000 No. 22 s 18

**Division 3—Taking DNA samples with consent**

div hdg ins 2000 No. 22 s 18

**Informed consent needed for taking DNA sample**

s 300 ins 2000 No. 22 s 18

**Special requirements for obtaining consent from persons with impaired capacity**

s 301 ins 2000 No. 22 s 18

**Special requirement for obtaining consent from children**

s 302 ins 2000 No. 22 s 18

**Explanation to be given before asking for consent**

s 303 ins 2000 No. 22 s 18

**Explanation and consent to be recorded**

s 304 ins 2000 No. 22 s 18

**Division 4—Taking DNA samples without consent**

div hdg ins 2000 No. 22 s 18

**Purpose of div 4**

s 305 ins 2000 No. 22 s 18

**Special requirement if person with impaired capacity**

s 306 ins 2000 No. 22 s 18

**Taking DNA sample if proceedings started against adult by arrest, notice to appear or complaint and summons**

s 307 ins 2000 No. 22 s 18

**DNA sample notice may be given**

s 308 ins 2000 No. 22 s 18

**Taking DNA sample from adult before court**

s 309 ins 2000 No. 22 s 18

**Division 3—Return of seized things**

div hdg om 2000 No. 22 s 21

**Taking DNA sample after conviction of adult**

s 310 prev s 310 om 2000 No. 22 s 21

pres s 310 ins 2000 No. 22 s 18

**Taking DNA sample from prisoner**

s 311 prev s 311 om 2000 No. 22 s 21

pres s 311 ins 2000 No. 22 s 18

amd 2000 No. 63 s 276 sch 2

exp 23 June 2003 (see s 311(4) as ins 2000 No. 22 s 18)**Division 4—Disposal of seized things**

div hdg om 2000 No. 22 s 21

**Taking DNA sample from child**

**s 312** prev s 312 om 2000 No. 22 s 21  
pres s 312 ins 2000 No. 22 s 18

**Division 5—General requirements about taking DNA samples**

**div hdg** ins 2000 No. 22 s 18

**Protecting the dignity of persons while taking DNA samples**

**s 313** prev s 313 om 2000 No. 22 s 21  
pres s 313 ins 2000 No. 22 s 18

**Help with DNA sampling**

**s 314** prev s 314 om 2000 No. 22 s 21  
pres s 314 ins 2000 No. 22 s 18

**Division 6—General**

**div hdg** ins 2000 No. 22 s 18

**Power to analyse etc. DNA samples**

**s 315** prev s 315 om 2000 No. 22 s 21  
pres s 315 ins 2000 No. 22 s 18

**When DNA samples and results must be destroyed**

**s 316** prev s 316 om 2000 No. 22 s 21  
pres s 316 ins 2000 No. 22 s 18

**Division 5—Ministerial arrangements**

**div hdg** om 2000 No. 22 s 21

**DNA database**

**s 317** prev s 317 om 2000 No. 22 s 21  
pres s 317 ins 2000 No. 22 s 18

**Restricted use of DNA samples**

**s 318** ins 2000 No. 22 s 18

**PART 5—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF  
COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES**

**pt hdg** ins 2000 No. 22 s 18

**Division 1—Preliminary**

**div hdg** ins 2000 No. 22 s 18

**Purpose of pt 5**

**s 319** ins 2000 No. 22 s 18

**Application of pt 5**

**s 320** ins 2000 No. 22 s 18

**Certain Acts do not apply to this part**

**s 321** ins 2000 No. 22 s 18

**Division 2—Taking blood and urine samples**

**div hdg** ins 2000 No. 22 s 18

**Application for order for blood and urine testing of person**

**s 322** ins 2000 No. 22 s 18

**Notice to be given of application for disease test order for child**

s 323 ins 2000 No. 22 s 18

**Disease test order**

s 324 ins 2000 No. 22 s 18

**What disease test order must state**

s 325 ins 2000 No. 22 s 18

**Appeal against disease test order**

s 326 ins 2000 No. 22 s 18

**Taking blood and urine samples**

s 327 ins 2000 No. 22 s 18

**Division 3—General**

div hdg ins 2000 No. 22 s 18

**Analysis of blood and urine samples**

s 328 ins 2000 No. 22 s 18

**Restriction on disclosure of results of analysis**

s 329 ins 2000 No. 22 s 18

**Certain evidence inadmissible**

s 330 ins 2000 No. 22 s 18

**CHAPTER 9—OTHER POWERS**

ch hdg (prev ch 8) renum 2000 No. 22 s 7

**Power to require reasons for entry to state building**

s 331 (prev s 259) renum 2000 No. 22 s 19

**Use of electronic screening devices in state buildings**

s 332 (prev s 260) renum 2000 No. 22 s 19

**Police officer may ask entrant to remove outer garment etc.**

s 333 (prev s 261) renum 2000 No. 22 s 19

**Direction by police officer to leave building**s 334 (prev s 262) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 19**Power to search person or vehicle without warrant not affected**

s 335 (prev s 263) renum 2000 No. 22 s 19

**Seizure of proscribed things**

s 336 (prev s 264) renum 2000 No. 22 s 19

**Refusal of entry to and removal from building**s 337 (prev s 265) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 19**Application of pt 2**

s 338 (prev s 266) renum 2000 No. 22 s 19

**Purpose of pt 2**

s 339 (prev s 267) renum 2000 No. 22 s 19

**Declaration of special event**

s 340 (prev s 268) renum 2000 No. 22 s 19

**Requirements for declaring special events**

s 341 (prev s 269) renum 2000 No. 22 s 19

**Notice of declaration to be given**

s 342 (prev s 270) renum 2000 No. 22 s 19

**Statutory conditions of entry**

s 343 (prev s 271) renum 2000 No. 22 s 19

**Statutory condition about restricted areas**

s 344 (prev s 272) renum 2000 No. 22 s 19

**Appointment of authorised persons**

s 345 (prev s 273) renum 2000 No. 22 s 19

**Identity card**

s 346 (prev s 274) renum 2000 No. 22 s 19

**Production or display of authorised person's identity card**

s 347 (prev s 275) renum 2000 No. 22 s 19

**Power to require reasons for entry to special event site**

s 348 (prev s 276) renum 2000 No. 22 s 19

**Use of electronic screening devices at special event site**

s 349 (prev s 277) renum 2000 No. 22 s 19

**Police officer or authorised person may ask entrant to remove outer garment etc.**

s 350 (prev s 278) renum 2000 No. 22 s 19

**Frisk search of persons**

s 351 (prev s 279) renum 2000 No. 22 s 19

**Refusal of entry to and removal from site**

s 352 (prev s 280) amd 2000 No. 22 s 3  
renum 2000 No. 22 s 19

**Unauthorised entry to a special event site**

s 353 (prev s 281) renum 2000 No. 22 s 19

**Unauthorised entry to a restricted area**

s 354 (prev s 282) renum 2000 No. 22 s 19

**Interference with a special event**

s 355 (prev s 283) renum 2000 No. 22 s 19

**Prohibited items**

s 356 (prev s 284) renum 2000 No. 22 s 19

**Assault etc. of authorised person**

s 357 (prev s 285) renum 2000 No. 22 s 19

**Application of pt 3**

s 358 (prev s 286) renum 2000 No. 22 s 19

**Complaint about noise**

s 359 (prev s 287) renum 2000 No. 22 s 19

**Powers of police officers on investigation of complaint**

s 360 (prev s 288) renum 2000 No. 22 s 19

**Compliance with noise abatement direction**

s 361 (prev s 289) renum 2000 No. 22 s 19

**Additional powers of police officers on later investigation**

s 362 (prev s 290) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 19

**Offence to interfere with locked etc. property**

s 363 (prev s 291) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 19

**Recovery of seized property**

s 364 (prev s 292) renum 2000 No. 22 s 19

**Recovery of costs of seizure etc.**

s 365 (prev s 293) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 19

**General powers and role of certain police officers**

s 366 (prev s 294) renum 2000 No. 22 s 19

**Power to require answers to questions**

s 367 (prev s 295) renum 2000 No. 22 s 19

**Behaviour in moveable dwelling park causing serious nuisance**

s 368 (prev s 296) renum 2000 No. 22 s 19

**Power to enter moveable dwellings**

s 369 (prev s 297) renum 2000 No. 22 s 19

**Initial direction about serious nuisance**

s 370 (prev s 298) renum 2000 No. 22 s 19

**Direction to leave park**

s 371 (prev s 299) renum 2000 No. 22 s 19

**Power to seize potentially harmful things**

s 371A ins 2000 No. 22 s 20

**Entry of place to prevent offence, injury or domestic violence**

s 372 (prev s 300) renum 2000 No. 22 s 19

**Police actions after domestic violence order is made**

s 372A ins 2002 No. 6 s 41

**Attendance at rental premises while person or property is removed**

s 372B ins 2002 No. 19 s 141

**Police officer may use assistance in exercising certain powers**

s 373 (prev s 301) renum 2000 No. 22 s 19



**Protection for assistants from liability**

s 374 (prev s 302) renum 2000 No. 22 s 19

**Power to use force—exercise of certain powers**s 375 (prev s 303) renum 2000 No. 22 s 19  
sub 2001 No. 22 s 6**Power to use force against individuals**

s 376 (prev s 304) renum 2000 No. 22 s 19

**Power to use force against individuals in critical situations**

s 377 (prev s 305) renum 2000 No. 22 s 19

**CHAPTER 10—OTHER STANDARD SAFEGUARDS**

ch hdg (prev ch 9) renum 2000 No. 22 s 7

**Chapter does not apply to covert operations**

s 378 (prev s 306) renum 2000 No. 22 s 19

**Application of pt 2**

s 379 (prev s 307) renum 2000 No. 22 s 19

**Receipt for seized property**

s 380 (prev s 308) renum 2000 No. 22 s 19

**Right to inspect seized documents**

s 381 (prev s 309) renum 2000 No. 22 s 19

**General provision about searches of persons**

s 382 (prev s 318) renum 2000 No. 22 s 22

**Taking a person to another place for search**

s 383 (prev s 319) renum 2000 No. 22 s 22

**Limitation on period of detention for search**

s 384 (prev s 320) renum 2000 No. 22 s 22

**General provision about searches of vehicles**

s 385 (prev s 321) renum 2000 No. 22 s 22

**Dealing with persons who obstruct search of person or vehicle**

s 386 (prev s 322) renum 2000 No. 22 s 22

**Removal of clothing for search**s 387 (prev s 323) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 22**Protecting the dignity of persons during search**

s 388 (prev s 324) renum 2000 No. 22 s 22

**Special requirements for searching children and persons with impaired capacity**

s 389 (prev s 325) renum 2000 No. 22 s 22

**If video cameras monitor place where person is searched**

s 390 (prev s 326) renum 2000 No. 22 s 22

**Safeguards for directions or requirements**

s 391 (prev s 327) renum 2000 No. 22 s 22

**Use of force likely to cause damage to enter places**

s 392 (prev s 328) renum 2000 No. 22 s 22

**Police officer to give notice of damage**

s 393 (prev s 329) renum 2000 No. 22 s 22

**Supplying police officer's details**

s 394 (prev s 330) renum 2000 No. 22 s 22

**Record of execution of warrant or order**

s 395 (prev s 331) renum 2000 No. 22 s 22

**CHAPTER 11—ADMINISTRATION**

ch hdg (prev ch 10) renum 2000 No. 22 s 7

**Control of persons in watch-houses**

s 396 (prev s 332) renum 2000 No. 22 s 22

**Transfer of persons in watch-houses**s 397 (prev s 333) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 22  
amd 2000 No. 63 s 276 sch 2**Application of pt 2**s 398 (prev s 334) renum 2000 No. 22 s 22  
amd 2001 No. 69 s 378 sch 1**Purpose and explanation of pt 2**

s 399 (prev s 335) renum 2000 No. 22 s 22

**Application of div 2**

s 400 (prev s 336) renum 2000 No. 22 s 22

**Particular Acts do not apply to this division**s 401 (prev s 337) amd 2000 No. 22 s 23(1)  
renum 2000 No. 22 s 23(2)**Register of covert acts**s 402 (prev s 338) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1**Information to be recorded in register**

s 403 (prev s 339) renum 2000 No. 22 s 24

**Who must record information in register**s 404 (prev s 340) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 24**Which register to be used**s 405 (prev s 341) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1**Who may inspect police service register**s 406 (prev s 342) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**Who may inspect CJC's register**

s 407 (prev s 343) renum 2000 No. 22 s 24  
om 2001 No. 69 s 378 sch 1

**Who may inspect CMC's register**

prov hdg amd 2001 No. 69 s 378 sch 1  
s 408 (prev s 344) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**Other authorised inspections**

s 409 (prev s 345) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**General restrictions on inspections by monitor**

s 410 (prev s 346) renum 2000 No. 22 s 24

**Application of div 3**

s 411 (prev s 347) renum 2000 No. 22 s 24

**Register of enforcement acts**

s 412 (prev s 348) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**Who must record information in register**

s 413 (prev s 349) renum 2000 No. 22 s 24

**Which register to be used**

s 414 (prev s 350) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**Persons to be given copy of information in register**

s 415 (prev s 351) renum 2000 No. 22 s 24  
amd 2001 No. 69 s 378 sch 1

**Restriction on disclosure of certain information**

s 416 (prev s 352) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 24

**Application of div 4**

s 417 (prev s 353) renum 2000 No. 22 s 24

**Information to be given to NCA**

s 418 (prev s 354) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 24

**Correcting registers**

s 419 (prev s 355) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 24

**PART 3—DEALING WITH THINGS IN THE POSSESSION OF POLICE SERVICE**

pt hdg ins 2000 No. 22 s 25

**Division 1—Preliminary**

div hdg ins 2000 No. 22 s 25

**Application of pt 3**

s 420 ins 2000 No. 22 s 25

**Object of pt 3**

s 421 ins 2000 No. 22 s 25

**Responsibilities of police officer taking possession of relevant thing**

s 422 ins 2000 No. 22 s 25

**Division 2—Return of seized things**

div hdg ins 2000 No. 22 s 25

**Return of seized things**

s 423 ins 2000 No. 22 s 25

**Application by owner etc. for return of relevant things**

s 424 ins 2000 No. 22 s 25

**Application by police officer for order if ownership dispute**

s 425 ins 2000 No. 22 s 25

**Application for order in relation to seized things**

s 426 ins 2000 No. 22 s 25

**Orders issuer may make in relation to seized thing**

s 427 ins 2000 No. 22 s 25

**Disposal of seized things at end of proceeding**

s 428 ins 2000 No. 22 s 25

**Commissioner to decide way of destruction or disposal**

s 429 ins 2000 No. 22 s 25

**Division 3—Dealing with dangerous drugs etc.**

div hdg ins 2000 No. 22 s 25

**Application of div 3**

s 430 ins 2000 No. 22 s 25

**Destruction of drug evidence soon after seizure**

s 431 ins 2000 No. 22 s 25

**Destruction of dangerous drug after notice**

s 432 ins 2000 No. 22 s 25

**Destruction of things used in the administration of a dangerous drug**

s 433 ins 2000 No. 22 s 25

**Division 4—Dealing with weapons**

div hdg ins 2000 No. 22 s 25

**Disposal of weapons**

s 434 ins 2000 No. 22 s 25

**What is the appointed day for disposal of weapons under s 434**

s 435 ins 2000 No. 22 s 25

**Division 5—Dealing with other things****div hdg** ins 2000 No. 22 s 25**Perishable things****s 436** ins 2000 No. 22 s 25**Division 6—Forfeiture****div hdg** ins 2000 No. 22 s 25**Application of div 6****s 437** ins 2000 No. 22 s 25**Order for forfeiture of particular relevant things****s 438** ins 2000 No. 22 s 25**Order for forfeiture of relevant things connected with offences****s 439** ins 2000 No. 22 s 25**Division 7—Dealing with forfeited things****div hdg** ins 2000 No. 22 s 25**Application of div 7****s 440** ins 2000 No. 22 s 25**Dealing with forfeited things****s 441** ins 2000 No. 22 s 25**Division 8—Arrangements about relevant things****div hdg** ins 2000 No. 22 s 25**Ministerial arrangements for transmission and return of seized things****s 442** ins 2000 No. 22 s 25**Commissioner may make arrangements****s 443** ins 2000 No. 22 s 25**CHAPTER 12—GENERAL****ch hdg** (prev ch 11) renum 2000 No. 22 s 7**Offence to assault or obstruct police officer****s 444** (prev s 356) renum 2000 No. 22 s 26**Offence to contravene direction or requirement of police officer****s 445** (prev s 357) renum 2000 No. 22 s 26**Performance of duty****s 446** (prev s 358) renum 2000 No. 22 s 26**Assistance at fire or chemical incidents****s 447** (prev s 359) renum 2000 No. 22 s 26**Assistance to courts, etc****s 448** (prev s 360) renum 2000 No. 22 s 26**Service and enforcement of process****s 449** (prev s 361) renum 2000 No. 22 s 26

**Provisions restricting starting of proceeding**

s 450 (prev s 362) renum 2000 No. 22 s 26

**Obtaining warrants, orders and authorities, etc., by telephone or similar facility**

s 451 (prev s 363) renum 2000 No. 22 s 26

**Steps after issue of prescribed authority**

s 452 (prev s 364) renum 2000 No. 22 s 26

**Presumption about exercise of powers under prescribed authority**

s 453 (prev s 365) renum 2000 No. 22 s 26

**Protection of methodologies**s 454 (prev s 366) renum 2000 No. 22 s 26  
amd 2001 No. 69 s 378 sch 1**Compensation**

s 455 (prev s 367) renum 2000 No. 22 s 26

**Availability of Act**

s 456 (prev s 368) renum 2000 No. 22 s 26

**Approved forms**

s 457 (prev s 369) renum 2000 No. 22 s 26

**Review of Act**

s 458 (prev s 370) renum 2000 No. 22 s 26

**Regulation-making power**

s 459 (prev s 371) renum 2000 No. 22 s 26

**CHAPTER 13—REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENTS**

ch hdg (prev ch 12) renum 2000 No. 22 s 7

**PART 1—ACTS REPEALED AND AMENDED****Acts repealed**

s 460 (prev s 372) renum 2000 No. 22 s 26

**Acts amended**s 461 (prev s 373) renum 2000 No. 22 s 26  
om R1 (see RA s 40)**PART 2—TRANSITIONAL PROVISIONS****Division 1—Transitional provisions commencing on date of assent**

div hdg exp immediately before ch 13 pt 2 div 2 commenced (see s 465)

**Definitions for div 1**s 462 (prev s 374) renum 2000 No. 22 s 26  
exp immediately before pt 2 div 2 commenced (see s 465)**Continued operation of 1997 Act, s 8(3) and (4)**s 463 (prev s 375) renum 2000 No. 22 s 26  
exp immediately before pt 2 div 2 commenced (see s 465)

**Continued operation of 1997 Act, s 136**

**s 464** (prev s 376) renum 2000 No. 22 s 26  
exp immediately before pt 2 div 2 commenced (see s 465)

**Expiry of division**

**s 465** (prev s 377) renum 2000 No. 22 s 26  
exp immediately before pt 2 div 2 commenced (see s 465)

**Division 2—Transitional provisions commencing at a later date****Definitions for div 2**

**s 466** (prev s 378) renum 2000 No. 22 s 26

**Transitional provision about change in way powers may be exercised**

**s 467** (prev s 379) renum 2000 No. 22 s 26  
exp 8 July 2000 (see s 467(3))

**Transitional provision about warrants, orders and notices**

**s 468** (prev s 380) renum 2000 No. 22 s 26

**Transitional provision about noise abatement**

**s 469** (prev s 381) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 26

**Transitional provision about nuisance in moveable dwelling parks**

**s 470** (prev s 382) amd 2000 No. 22 s 3 sch  
renum 2000 No. 22 s 26

**Transitional provisions about registers of covert and enforcement acts**

**s 471** (prev s 383) renum 2000 No. 22 s 26

**Transitional provision about entries in registers**

**s 472** (prev s 384) renum 2000 No. 22 s 26

**Transitional provision about public interest monitor**

**s 473** (prev s 385) renum 2000 No. 22 s 26

**PART 3—AMENDMENT OF CRIME COMMISSION ACT 1997**

**pt hdg** om R1 (see RA s 40)

**Act amended in pt 3**

**s 474** (prev s 386) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Replacement of ss 74–77**

**s 475** (prev s 387) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Replacement of s 79 (Access to seized things)**

**s 476** (prev s 388) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Replacement of pt 6, div 3 hdg**

**s 477** (prev s 389) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Amendment of s 81 (Certain Acts do not apply to this part)**

**s 478** (prev s 390) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Replacement of ss 82-91**

**s 479** (prev s 391) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Amendment of s 92 (Register of warrants and applications for warrants)**

**s 480** (prev s 392) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**Amendment of schedule (Dictionary)**

**s 481** (prev s 393) renum 2000 No. 22 s 26  
om R1 (see RA s 40)

**SCHEDULE 1—ACTS NOT AFFECTED BY THIS ACT**

amd 2000 No. 16 s 590 sch 1 pt 2; 2000 No. 22 ss 27, 3 sch; 2000 No. 63 s 276  
sch 2; 2001 No. 69 s 378 sch 1; 2001 No. 81 s 153; 2002 No. 6 s 42;  
2002 No. 12 s 329 sch 2

**SCHEDULE 2—ACTS AMENDED ON ASSENT**

amd 2000 No. 22 s 3 sch  
om R1 (see RA s 40)

**SCHEDULE 3—ACTS AMENDED AFTER ASSENT**

amd 2000 No. 22 ss 28, 3 sch; 2000 No. 21 s 45 (as amd 2000 No. 13 s 113)  
om R1 (see RA s 40)

**SCHEDULE 4—DICTIONARY**

def “**Animal Care and Protection Act**” ins 2001 No. 64 s 229  
def “**animal welfare direction**” ins 2001 No. 64 s 229  
def “**animal welfare offence**” ins 2001 No. 64 s 229  
def “**approving officer**” ins 2000 No. 22 s 29(2)  
def “**arrest warrant**” amd 2000 No. 22 s 3 sch  
def “**assistant**” amd 2000 No. 22 s 3 sch  
def “**associated domestic violence**” amd 2002 No. 6 s 43(2)  
def “**authorised person**” amd 2000 No. 22 s 3 sch  
def “**chapter 5 criminal activity**” ins 2000 No. 22 s 29(2)  
def “**chief executive (health)**” ins 2000 No. 22 s 29(2)  
def “**chief executive officer**” sub 2001 No. 69 s 378 sch 1  
def “**CJC**” om 2001 No. 69 s 378 sch 1  
def “**CJC officer**” ins 2000 No. 22 s 29(2)  
om 2001 No. 69 s 378 sch 1  
def “**CMC**” ins 2001 No. 69 s 378 sch 1  
def “**CMC assistant commissioner**” ins 2001 No. 69 s 378 sch 1  
def “**CMC officer**” ins 2001 No. 69 s 378 sch 1  
def “**commissioned officer**” ins 2000 No. 22 s 29(2)  
def “**committee**” ins 2000 No. 22 s 29(2)  
def “**Confiscation Act**” ins 2000 No. 22 s 29(2)  
def “**controlled activity**” ins 2000 No. 22 s 29(2)  
def “**controlled operation**” ins 2000 No. 22 s 29(2)  
def “**controlled operations committee**” ins 2000 No. 22 s 29(2)



- def “**corrective services facility**” ins 2000 No. 63 s 276 sch 2
- def “**covert operative**” ins 2000 No. 22 s 29(2)
- def “**detention period**” amd 2000 No. 22 s 3 sch
- def “**disease test order**” ins 2000 No. 22 s 29(2)
- def “**DNA database**” ins 2000 No. 22 s 29(2)
- def “**DNA sample**” ins 2000 No. 22 s 29(2)
- def “**DNA sample notice**” ins 2000 No. 22 s 29(2)
- def “**DNA sampler**” ins 2000 No. 22 s 29(2)
- def “**domestic violence**” amd 2002 No. 6 s 43(2)
- def “**domestic violence order**” ins 2002 No. 6 s 43(1)
- def “**drug diversion assessment program**” ins 2000 No. 22 s 29(2)
- def “**electronic screening**” amd 2000 No. 22 s 3 sch
- def “**enforcement act**” amd 2000 No. 22 ss 29(3), 3 sch; 2000 No. 46 s 3 sch
- def “**entity**” amd 2000 No. 22 s 3 sch; 2001 No. 69 s 378 sch 1
- def “**final nuisance direction**” amd 2000 No. 22 s 3 sch
- def “**health department**” ins 2000 No. 22 s 29(2)
- def “**identifying particulars notice**” amd 2000 No. 22 s 3 sch
- def “**identifying particulars offence**” amd 2002 No. 13 s 124 sch
- def “**independent member**” ins 2000 No. 22 s 29(2)
- def “**initial nuisance direction**” amd 2000 No. 22 s 3 sch
- def “**interstate domestic violence order**” ins 2002 No. 6 s 43(1)
- def “**list of support persons and interpreters**” amd 2000 No. 22 s 3 sch
- def “**major crime**” sub 2001 No. 69 s 378 sch 1
- def “**minor drugs offence**” ins 2000 No. 22 s 29(2)
- def “**misconduct offence**” ins 2000 No. 22 s 29(2)  
amd 2001 No. 69 s 378 sch 1
- def “**noise abatement direction**” amd 2000 No. 22 s 3 sch
- def “**notice to appear**” amd 2000 No. 22 s 3 sch
- def “**nurse**” ins 2000 No. 22 s 29(2)
- def “**otherwise unlawful activity**” ins 2000 No. 22 s 29(2)
- def “**outer garment**” amd 2000 No. 22 s 29(4)
- def “**pain**” ins 2001 No. 64 s 229
- def “**parliamentary commissioner**” sub 2001 No. 69 s 378 sch 1
- def “**person in charge**” ins 2001 No. 64 s 229
- def “**place of safety**” ins 2000 No. 22 s 29(2)
- def “**police officer**” sub 2000 No. 22 s 29(1)–(2)
- def “**prescribed authority**” amd 2000 No. 22 s 3 sch
- def “**prescribed nurse**” ins 2000 No. 22 s 29(2)
- def “**prescribed place**” amd 2000 No. 22 s 29(5)–(6)
- def “**prison**” amd 2000 No. 63 s 276 sch 2
- def “**prisoner**” amd 2000 No. 63 s 276 sch 2
- def “**property officer**” ins 2000 No. 22 s 29(2)
- def “**property point**” ins 2000 No. 22 s 29(2)
- def “**Public Records Act**” ins 2000 No. 22 s 29(2)
- def “**QCC**” om 2001 No. 69 s 378 sch 1
- def “**QCC officer**” om 2001 No. 69 s 378 sch 1
- def “**question**” amd 2000 No. 22 s 3 sch
- def “**register of covert acts**” amd 2000 No. 22 s 3 sch
- def “**register of enforcement acts**” amd 2000 No. 22 s 3 sch

def “**registrar-general**” ins 2000 No. 22 s 29(2)  
 def “**relevant act**” amd 2000 No. 46 s 3 sch  
 def “**relevant criminal activity**” om 2001 No. 69 s 378 sch 1  
 def “**relevant disease**” ins 2000 No. 22 s 29(2)  
 def “**relevant person**” amd 2000 No. 22 s 3 sch  
 def “**relevant thing**” ins 2000 No. 22 s 29(2)  
 def “**removal order**” amd 2000 No. 22 s 3 sch  
 def “**restricted item**” ins 2000 No. 22 s 29(2)  
 def “**special event**” amd 2000 No. 22 s 3 sch  
 def “**take**” ins 2000 No. 22 s 29(2)  
 def “**time out**” amd 2000 No. 22 ss 29(7), 3 sch  
 def “**veterinary surgeon**” ins 2001 No. 64 s 229  
 def “**walk-through detector**” amd 2000 No. 22 s 3 sch  
 def “**weapon**” sub 2000 No. 22 s 29(1)–(2)  
 def “**welfare**” ins 2001 No. 64 s 229  
 def “**X-ray machine**” amd 2000 No. 22 s 3 sch

## **8 List of forms**

### **Form 1 Version 1—1 July 2000—Notice to Appear**

pubd gaz 25 August 2000 pp 1469–70

### **Form 1a Version 1—1 July 2000—Notice to Appear**

pubd gaz 25 August 2000 pp 1469–70

### **Form 2 Version 1—1 July 2000—Application for Crime Scene Warrant (Issued by a Supreme Court Judge/Magistrate)**

pubd gaz 25 August 2000 pp 1469–70

### **Form 2a Version 1—1 July 2000—Application for Extension of Crime Scene Warrant (Issued by a Supreme Court Judge/Magistrate)**

pubd gaz 25 August 2000 pp 1469–70

### **Form 3 Version 1—1 July 2000—Notice to Occupier of the Making of an Application for the Issue of a Crime Scene Warrant by a Supreme Court Judge/Magistrate**

pubd gaz 25 August 2000 pp 1469–70

### **Form 4 Version 1—1 July 2000—Crime Scene Warrant**

pubd gaz 25 August 2000 pp 1469–70

### **Form 5 Version 1—1 July 2000—Notice to Occupier of the Making of an Application to Extend Crime Scene Warrant before a Supreme Court Judge/Magistrate**

pubd gaz 25 August 2000 pp 1469–70

### **Form 6 Version 2—28 March 2002—Application for Declaration of Notified Area**

pubd gaz 3 May 2002 p 84

### **Form 7 Version 1—1 July 2000—Notice to Owner regarding Order for Forfeiture of Relevant Things Connected with Offences**

pubd gaz 25 August 2000 pp 1469–70

- Form 8 Version 1—1 July 2000—Statement to Occupier (Summary of the Occupier’s Rights and Obligations Under a Crime Scene Warrant)**  
pubd gaz 25 August 2000 pp 1469–70
- Form 9 Version 1—1 July 2000—Application for Search Warrant**  
pubd gaz 25 August 2000 pp 1469–70
- Form 10 Version 1—1 July 2000—Search Warrant**  
pubd gaz 25 August 2000 pp 1469–70
- Form 11 Version 1—1 July 2000—Statement to Occupier (Summary of Occupier’s Rights and Obligations Under a Search Warrant)**  
pubd gaz 25 August 2000 pp 1469–70
- Form 12 Version 1—1 July 2000—Application for Post-Search Approval Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 13 Version 1—1 July 2000—Post-Search Approval Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 14 Version 1—1 July 2000—Application for Production Notice**  
pubd gaz 25 August 2000 pp 1469–70
- Form 15 Version 1—1 July 2000—Production Notice**  
pubd gaz 25 August 2000 pp 1469–70
- Form 16 Version 1—1 July 2000—Application for Access Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 17 Version 1—1 July 2000—Access Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 18 Version 1—1 July 2000—Application for Removal Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 19 Version 1—1 July 2000—Removal Order**  
pubd gaz 25 August 2000 pp 1469–70
- Form 20 Version 1—1 July 2000—Application for Extension of Detention Period**  
pubd gaz 25 August 2000 pp 1469–70
- Form 21 Version 2—1 August 2001—Application for Order Authorising the Performance of a Medical/Dental Procedure**  
pubd gaz 19 October 2001 p 577
- Form 22 Version 2—1 August 2001—Order Authorising the Performance of a Medical Procedure by a Doctor/a Dental Procedure by a Dentist**  
pubd gaz 19 October 2001 p 577
- Form 23 Version 2—1 August 2001—Consent to Medical/Dental Procedure**  
pubd gaz 19 October 2001 p 577
- Form 24 Version 1—1 July 2000—Application for Order in Relation to Thing Seized (No Ownership Dispute)**  
pubd gaz 25 August 2000 pp 1469–70
- Form 25 Version 1—1 July 2000—Order in Relation to Thing Seized**  
pubd gaz 25 August 2000 pp 1469–70

**Form 26 Version 1—1 July 2000—Undertaking to Produce a Thing Before a Court**  
pubd gaz 25 August 2000 pp 1469–70

**Form 29 Version 1—1 July 2000—Identifying Particulars Notice**  
pubd gaz 25 August 2000 pp 1469–70

**Form 34 Version 1—1 July 2000—Warrant to Apprehend Defendant for Failure to Appear**  
pubd gaz 25 August 2000 pp 1469–70

**Form 35 Version 1—1 July 2000—Notice to Owner regarding Seizure of Vehicle or Animal**  
pubd gaz 25 August 2000 pp 1469–70

**Form 37 Version 1—1 January 2001—DNA Sample Notice**  
pubd gaz 16 February 2001 p 686

**Form 40 Version 1—1 July 2000—Arrest Warrant Application**  
pubd gaz 25 August 2000 pp 1469–70

**Form 41 Version 1—1 July 2000—Arrest Warrant**  
pubd gaz 25 August 2000 pp 1469–70

**Form 42A Version 1—1 April 2001—Minor Drugs Offence Diversion (Agreement to Attend and Requirement to Comply or Non-acceptance)**  
pubd gaz 8 June 2001 p 483

**Form 43 Version 1—1 July 2000—Notice to Owner regarding Order for Forfeiture of Particular Relevant Things**  
pubd gaz 25 August 2000 pp 1469–70

**Form 44 Version 1—1 July 2000—Place of Safety Undertaking**  
pubd gaz 25 August 2000 pp 1469–70

**Form 45 Version 1—1 July 2000—Application for Order regarding Ownership Dispute**  
pubd gaz 25 August 2000 pp 1469–70

**Form 46 Version 1—1 July 2000—Notice to Exercise of Power Under section 200**  
pubd gaz 25 August 2000 pp 1469–70

**Form 47 Version 2—27 July 2001—Application for a Disease Test Order**  
pubd gaz 19 October 2001 p 577

**Form 48 Version 2—27 July 2001—Disease Test Order**  
pubd gaz 19 October 2001 p 577

**Form 49 Version 1—1 July 2000—Destruction Notice**  
pubd gaz 25 August 2000 pp 1469–70

**Form 50 Version 1—1 July 2000—Notice of Damage**  
pubd gaz 25 August 2000 pp 1469–70

**Form 51 Version 2—1 March 2001—Statement of Informed Consent for Taking a DNA Sample from an Adult**  
pubd gaz 6 April 2001 p 1447

- Form 52 Version 2—1 March 2001—Statement of Informed Consent for Taking a DNA Sample from a Child**  
pubd gaz 6 April 2001 p 1447
- Form 53 Version 2—1 March 2001—Statement of Informed Consent for Taking a DNA Sample from a Person with Impaired Capacity**  
pubd gaz 6 April 2001 p 1447
- Form 54 Version 1—1 January 2001—Request for a Search Warrant in a Reciprocating State—Affidavit**  
pubd gaz 8 June 2001 p 483
- Form 55 Version 1—1 January 2001—Grounds in Support of a Request for a Search Warrant in a Reciprocating State—Affidavit**  
pubd gaz 8 June 2001 p 483
- Form 56 Version 1—1 January 2001—Authority to Request Issue of a Search Warrant in Another Jurisdiction**  
pubd gaz 8 June 2001 p 483
- Form 57 Version 1—1 January 2001—Authority to Receive Property Seized in a Reciprocating State**  
pubd gaz 8 June 2001 p 483
- Form 58 Version 1—1 January 2001—Application for Court Order to take a DNA Sample from an Adult (Before Court)**  
pubd gaz 16 February 2001 p 686
- Form 59 Version 1—1 January 2001—Court Order to Take a DNA Sample from an Adult Before Court (1 hour)**  
pubd gaz 16 February 2001 p 686
- Form 60 Version 1—1 January 2001—Court Order to Take a DNA Sample from an Adult Before Court (7 days)**  
pubd gaz 16 February 2001 p 686
- Form 61 Version 1—1 January 2001—Application for an Order to take a DNA Sample from an Adult (After Conviction)**  
pubd gaz 16 February 2001 p 686
- Form 62 Version 1—1 January 2001—Order to Take a DNA Sample from an Adult After Conviction (1 hour)**  
pubd gaz 16 February 2001 p 686
- Form 63 Version 1—1 January 2001—Court Order to Take a DNA Sample from an Adult After Conviction (7 days)**  
pubd gaz 16 February 2001 p 686
- Form 64 Version 1—1 January 2001—Application for an Order Authorising the Taking of a DNA Sample From a Child**  
pubd gaz 16 February 2001 p 686
- Form 65 Version 1—1 January 2001—Order to Take a DNA Sample from a Child (7 days)**  
pubd gaz 16 February 2001 p 686

**Form 66 Version 1—1 January 2001—Order to Take a DNA Sample from a Child (In Custody)**

pubd gaz 16 February 2001 p 686

**F2869 Jul 2000 Defective Vehicle Notice**

pubd gaz 25 August 2000 pp 1469–70

**F3162 Jul 2000 Vehicle Movement Prohibition Notice**

pubd gaz 25 August 2000 pp 1469–70

**F3632 Jul 2000 Driver Prohibition Notice**

pubd gaz 25 August 2000 pp 1469–70

## **9 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**Domestic Violence Legislation Amendment Act 2002 No. 6 pt 3** reads as follows—

### **37 Act amended in pt 3**

This part amends the *Police Powers and Responsibilities Act 2000*.

### **38 Amendment of s 28 (Prescribed circumstances for searching persons without warrant)**

Section 28(a)(i), after ‘possess’—

*insert—*

‘, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order’.

### **39 Amendment of s 30 (Prescribed circumstances for searching vehicle without warrant)**

Section 30(a), after ‘possess’—

*insert—*

‘, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order’.

**40 Amendment of s 198 (Arrest without warrant)**

Section 198(1)(j), ‘*Domestic Violence (Family Protection) Act 1989*’—  
*omit, insert—*  
 ‘*Domestic and Family Violence Protection Act 1989*’.

**41 Insertion of new s 372A**

After section 372—  
*insert—*

**‘372A Police actions after domestic violence order is made**

‘(1) This section applies if, under the *Weapons Act 1990*, section 29B,<sup>129</sup> the person named as the respondent in a domestic violence order (the “**respondent**”) is to give a weapon the respondent possesses to a police officer.

‘(2) If the respondent was not in court when the court made the domestic violence order, the police officer to whom the clerk of the court has given the order must ensure the order is given to the respondent as soon as practicable.

‘(3) At the time the police officer gives the order to the respondent, the police officer must—

- (a) if the order is given to the respondent at the respondent’s place of residence—take all steps necessary to ensure the respondent’s weapons licence and weapon are seized immediately; or
- (b) in any other case—make arrangements to ensure the respondent’s weapons licence and weapon are surrendered to the police officer as soon as practicable.

‘(4) To seize a weapon as mentioned in subsection (3)(a), the police officer may enter and search the respondent’s place of residence if the officer has reasonable grounds for suspecting the weapon is at the place.

*Examples of how the police officer may have reasonable grounds for suspecting that a weapon is at a place of residence—*

1. In making the domestic violence order, the court includes information about a weapons licence or weapon in the respondent’s possession.

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<sup>129</sup> *Weapons Act 1990*, section 29B (Arrangements for surrender of suspended or revoked licences and weapons)

2. The police officer has received apparently reliable information that the respondent possesses a weapon.

‘(5) A police officer must exercise the powers under this section in a way that—

- (a) is consistent with the need to ensure the protection of a person who is an aggrieved, or a named person, as stated in the domestic violence order; and
- (b) tries to minimise disruption to the respondent.’.

#### **42 Amendment of sch 1 (Acts not affected by this Act)**

Schedule 1, ‘*Domestic Violence (Family Protection) Act 1989*’—  
*omit, insert—*

‘*Domestic and Family Violence Protection Act 1989*’.

#### **43 Amendment of sch 4 (Dictionary)**

(1) Schedule 4—

*insert—*

“**domestic violence order**” see *Domestic and Family Violence Protection Act 1989*, section 13(2).

“**interstate domestic violence order**” means an interstate order under the *Domestic and Family Violence Protection Act 1989*, whether or not the interstate order is registered under that Act.’

(2) Schedule 4, definitions “**associated domestic violence**” and “**domestic violence**”, ‘*Domestic Violence (Family Protection) Act 1989*’—

*omit, insert—*

‘*Domestic and Family Violence Protection Act 1989*’.

**Land Protection (Pest and Stock Route Management) Act 2002 No. 12 s 329 sch 2**  
reads as follows—

#### **1 Schedule 1, ‘*Rural Lands Protection Act 1985*’—**

*omit.*



**Residential Services (Accommodation) Act 2002 No. 19 pt 14 div 1 reads as follows—**

**140 Act amended in div 1**

This division amends the *Police Powers and Responsibilities Act 2000*.

**141 Insertion of new s 372B**

Before section 373—

*insert—*

**‘372B Attendance at rental premises while person or property is removed**

‘(1) At the request of a service provider, a police officer may enter and stay in a person’s room in rental premises while the service provider, or someone helping the service provider, exercises a power under the *Residential Services (Accommodation) Act 2002*, section 82<sup>130</sup> to remove the person or the person’s property from the rental premises.

‘(2) Subsection (1) does not limit any other power of the police officer under another Act or law.

‘(3) In this section—

“**rental premises**” means premises in which a residential service is being conducted.

“**residential service**” see the *Residential Services (Accreditation) Act 2002*, section 4.

“**service provider**” means a person conducting a residential service.’.

**Criminal Law Amendment Act 2002 No. 23 pt 10 reads as follows—**

**66 Act amended in pt 10**

This part amends the *Police Powers and Responsibilities Act 2000*.

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130 *Residential Services (Accommodation) Act 2002*, section 82 (Power to remove resident)

**67 Amendment of s 219 (Notice to appear equivalent to a complaint and summons)**

(1) Section 219(3)—

*renumber* as section 219(4).

(2) Section 219—

*insert*—

‘(3) If an officer-in-charge of a police establishment or a watch-house manager—

(a) if the person is an adult—issues and serves a notice to appear on a person under section 225(2)(b); or

(b) if the person is a child—serves on the person an attendance notice under the *Juvenile Justice Act 1992*;

the police officer who arrested the person, and not the officer-in-charge or the watch-house manager, is taken to have started the proceeding against the person.’.

**68 Amendment of s 225 (Duty of police officer receiving custody of person arrested for offence)**

(1) Section 225(2)(b) and (c)—

*renumber* as section 225(2)(d) and (e).

(2) Section 225(2)—

*insert*—

‘(b) if the person is an adult—issue and serve a notice to appear on the person; or

(c) if the person is a child—serve on the person an attendance notice under the *Juvenile Justice Act 1992*; or’.