



Police Powers and Responsibilities Act 2000

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(includes commenced amendments up to 2004 Act No. 53)**

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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**
- **editorial changes made in earlier reprints.**

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Queensland

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Police Powers and Responsibilities Act 2000

[as amended by all amendments that commenced on or before 1 December 2004]

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 3,¹ 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.

3 Dictionary

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

¹ 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).

3A Notes in text

A note in the text of this Act is part of 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.

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- 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 372² 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.³

- (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

² Section 372 (Entry of place to prevent offence, injury or domestic violence)

³ *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).

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.

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 3,⁴ require the person to state the following—
 - (a) the person's name and address;
 - (b) the person's date of birth.⁵
- (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.

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

5 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.⁶
- (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.

⁶ 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.⁷
- (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 place⁸ 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 named in a forensic procedure order or a registered corresponding forensic procedure order;
or

7 For the functions of the police service, see the *Police Service Administration Act 1990*, section 2.3 (Functions of service).

8 See section 392 (Use of force likely to cause damage to enter places) for relevant safeguards.

- (d) to detain a person who may be detained under an order made under section 298, 311, 312, 316, 318D or 318ZF;⁹ or
 - (e) 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.
 - (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;

⁹ Section 298 (Court may order taking of identifying particulars), 311 (Taking DNA sample from adult before court), 312 (Taking DNA sample after finding of guilt), 316 (Taking DNA sample from child), 318D (Application to court under s 312 for order) or 318ZF (Order for person who fails to comply with reporting notice)

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- (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;¹⁰ or
 - (b) the Road Use Management Act, section 133;¹¹
- 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—

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

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

- (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 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;¹²
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
- (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,

¹² For what is unlawful deprivation of liberty, see the Criminal Code, section 355.

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—

- (a) the person has something that may be—
 - (i) a weapon, knife or explosive the person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

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- (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;¹³
- (f) the person has committed, is committing, or is about to commit—
- (i) an offence against the *Racing Act 2002*; or

13 *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;¹⁴ 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 198¹⁵ 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

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

15 Section 198 (Arrest without warrant)

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—
 - (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 another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; 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 100¹⁶
 - 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;

¹⁶ *Corrective Services Act 2000*, section 96 (Prohibited things), 97 (Removing things from facilities) or 100 (Interviewing and photographing prisoners etc.)

- (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.
- (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 2.¹⁷
- (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,

¹⁷ Chapter 3 (Search warrants, obtaining documents, and crime scenes), part 2 (Search of place to prevent loss of evidence)

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 445¹⁸ 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, order or court document; or
 - (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;

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

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- (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 an order of a court made under section 298 or 318ZF;¹⁹ or
 - (ii) a DNA sample from the person under a DNA sample notice or an order made under section 311, 312, 316, 318D or 318ZF;²⁰
- (ca) an authorised examiner is about to perform a non-medical examination under a non-medical examination notice or under section 318ZF;
- (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, forensic procedure order or registered corresponding forensic procedure order or serve on a person—
 - (i) a forensic procedure order or registered corresponding forensic procedure order; or
 - (ii) a summons; or
 - (iii) another court document;
- (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;
- (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;

19 Section 298 (Court may order taking of identifying particulars) or 318ZF (Order for person who fails to comply with reporting notice)

20 Section 311 (Taking DNA sample from adult before court), 312 (Taking DNA sample after finding of guilt), 316 (Taking DNA sample from child), 318D (Application to court under s 312 for order) or 318ZF (Order for person who fails to comply with reporting notice)

- (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;²¹
- (k) under chapter 8A, a qualified person for performing a forensic procedure is about to perform the forensic procedure on the person.

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.

21 Section 51 (Stopping vehicles for prescribed purposes)

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- (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 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

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- (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 Assembly 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;²² 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.

44 Prevention of offences—general

- (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

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

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.

44A Prevention of particular offences relating to liquor

- (1) This section applies if—
 - (a) a police officer reasonably suspects a person has committed, is committing or is about to commit an offence against any of the following at a place—
 - (i) *Liquor Act 1992*, section 164, 168B or 173B;²³
 - (ii) *Community Services (Aborigines) Act 1984*, section 103;²⁴
 - (iii) *Community Services (Torres Strait) Act 1984*, section 101;²⁵ and
 - (b) the police officer reasonably suspects an opened container of liquor at the place in the person's possession or under the person's control relates to, or is contributing to, or is likely to contribute to, the commission of the offence by the person.
- (2) The police officer may seize—
 - (a) the opened container and its contents; and
 - (b) any unopened container of liquor at the place, and its contents, the police officer reasonably suspects relates to, or is contributing to, or is likely to contribute to, the commission of an offence against a provision mentioned in subsection (1) at the place by the person or another person.

23 *Liquor Act 1992*, section 164 (Conduct causing public nuisance), 168B (Prohibition of possession of liquor in restricted area) or 173B (Consumption of liquor in certain public places prohibited)

24 *Community Services (Aborigines) Act 1984*, section 103 (Possession or consumption of alcohol in or on dry place)

25 *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place)

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- (3) A police officer may dispose of anything seized under subsection (2) in the way the police officer considers reasonably necessary to prevent the commission, continuation or repetition of the offence.

Example for subsection (3)—

The police officer may empty an opened can of beer found by the police officer being consumed by a person in contravention of a provision mentioned in subsection (1) or an unopened can of beer likely to be consumed in contravention of a provision mentioned in subsection (1).

- (4) If the police officer exercises the power under subsection (2)—
- (a) the thing is taken to have been forfeited to the State immediately after the officer seized it; and
 - (b) chapter 11, part 2, division 3 and chapter 11, part 3 do not apply to the thing.²⁶
- (5) For this section, a reference in a provision of an Act mentioned in subsection (1) to alcohol or liquor is taken to include a reference to methylated spirits.
- (6) In this section—

liquor means—

- (a) liquor, as defined in the *Liquor Act 1992*, section 4B;²⁷ or
- (b) methylated spirits.

opened container includes a container that has been opened, even if it is closed at the material time and regardless of whether or not some of its contents have been removed.

26 Chapter 11 (Administration), part 2 (Registers), division 3 (Enforcement registers) and part 3 (Dealing with things in the possession of police service)

27 *Liquor Act 1992*, section 4B (Meaning of *liquor*)

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.²⁸

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.
- (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.

²⁸ Failure to comply with the requirement is an offence against section 445 (Offence to contravene direction or requirement of police officer).

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.²⁹
- (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 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

²⁹ Failure to comply with the requirement is an offence against section 445 (Offence to contravene direction or requirement of 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 a 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 another 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

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- (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 monitoring or enforcing a liquor provision;
 - (d) for enforcing a contravention of law involving putting, dropping and leaving litter on a public place from a vehicle;
 - (e) to conduct a breath test.
- (4) For monitoring or enforcing a liquor provision, the police officer may exercise any of the following powers if the officer reasonably suspects the exercise of the power may be effective for the purpose—
 - (a) enter the vehicle and remain in it for the time reasonably necessary for the purpose;
 - (b) search the vehicle and anything in it;
 - (c) inspect, measure, test, photograph or film the vehicle or anything in it;
 - (d) take samples of anything in or on the vehicle;
 - (e) seize anything the officer reasonably suspects is evidence of the commission of an offence against a liquor provision;
 - (f) copy a document in the vehicle;
 - (g) move the vehicle's load.
- (5) For conducting a breath test, the police officer may enter the vehicle and remain in it for the time reasonably necessary for the purpose.

Examples for subsection (5)—

- 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.

(6) In this section—

in, for a vehicle, includes on the vehicle.

liquor provision means any of the following provisions—

- (a) the *Liquor Act 1992*, section 168B, 169 or 171;
- (b) the *Community Services (Aborigines) Act 1984*, section 103;
- (c) the *Community Services (Torres Strait) Act 1984*, section 101.³⁰

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

52 Power to require vehicles to be moved

- (1) This section applies to a vehicle that is stationary 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 another vehicle—25 km from where the vehicle was stopped.
- (4) Despite subsection (3)(b), a stated reasonable place for the other vehicle may be any place along the vehicle's route to its destination or within 25 km of the route.

30 *Liquor Act 1992*, section 168B (Prohibition of possession of liquor in restricted area), 169 (Authority required for sale) or 171 (Carrying or exposing liquor for sale), *Community Services (Aborigines) Act 1984*, section 103 (Possession or consumption of alcohol in or on dry place), *Community Services (Torres Strait) Act 1984*, section 101 (Possession or consumption of alcohol in or on dry place)

- (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 another vehicle—120 penalty units.
- (6) For a vehicle, other than a private vehicle, if the person does not comply with the requirement, the police officer may move the vehicle to the required place.
- (7) However, if the vehicle is an aircraft or boat, the police officer may move the vehicle only if the officer has the necessary qualification, or has received appropriate training, to control the vehicle.

53 Requirement to remain at a place

- (1) 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 another 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.

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- (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 another vehicle—120 penalty units.

Division 2 Vehicle impounding powers for prescribed offences

59A Application of div 2

- (1) This division applies if a police officer reasonably suspects a person is committing, or has committed, a prescribed offence in relation to a vehicle.
- (2) However, a reference in any provision of this division to a prescribed offence is a reference only to a prescribed offence committed after the commencement of this division.

Example—

The reference to a prescribed offence in section 59G(1).

- (3) Also, nothing in this division affects the rights of a credit provider to repossess a vehicle under the Consumer Credit Code and sell it.

59AA When a person is charged for this division in relation to a notice to appear or an arrest

- (1) This section applies if a proceeding for a prescribed offence is started against a person by notice to appear or arrest.
- (2) If the proceeding is started by notice to appear, the person is taken to be charged with the offence when the notice to appear is issued and served on the person.
- (3) If the proceeding is started by arrest, the person is taken to have been charged with the offence when the person is arrested.

59B Punishment under this division is in addition to other punishment for the same offence

The impounding or forfeiture of a vehicle or the imposition of community service on a person under this division arising out of the commission of a prescribed offence is in addition to any other penalty that may be imposed on the person for the prescribed offence.

59C Powers for prescribed offence

- (1) A police officer may stop the vehicle, if it is moving.
- (2) If a proceeding against the driver of the vehicle for the suspected prescribed offence has been started by notice to appear or arrest a police officer may impound the vehicle.
- (3) To impound a vehicle, a police officer may—
 - (a) direct the driver of the vehicle or the person in possession of the keys necessary to enable the vehicle to be moved to give the keys to a police officer;³¹ and
 - (b) enter the vehicle to impound it; and
 - (c) do anything else reasonably necessary for impounding the vehicle.

31 Failure to comply with the direction is an offence against section 445 (Offence to contravene direction or requirement of police officer).

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Example—

It may be necessary to arrange for a locking device on the vehicle to be made inoperative by removing or dismantling it.

- (4) A vehicle impounded under subsection (2) (*impounded vehicle*) is impounded for 48 hours.
- (5) Also, the police officer must move or arrange for the impounded vehicle to be moved to a holding yard in the way the police officer considers appropriate.

Examples of ways of moving an impounded vehicle—

- 1 Driving the vehicle.
 - 2 Pushing the vehicle.
 - 3 Towing the vehicle.
- (6) However, if the impounded vehicle is a vehicle that is being unlawfully used or has been stolen or is a rental vehicle—
 - (a) the vehicle must be returned to the owner as soon as reasonably practicable; and
 - (b) an application under section 59H or 59HA³² about the vehicle must not be made.

59D Police officer may authorise tow

- (1) This section applies if a police officer arranges for the impounded vehicle to be towed to a holding yard.
- (2) A police officer may sign a towing authority for the impounded vehicle.
- (3) The driver of a tow truck towing the impounded vehicle under the towing authority must tow the vehicle to—
 - (a) if the police officer directs the driver to tow the vehicle to a particular holding yard—the holding yard directed by the police officer; or
 - (b) the holding yard to which the driver ordinarily tows vehicles.

32 Section 59H (Application for impounding order) or 59HA (Application for forfeiture order)

- (4) A person must not unlawfully remove an impounded vehicle from a holding yard.

Maximum penalty—40 penalty units.

- (5) For subsection (4), it does not matter how the vehicle was moved to the holding yard.

- (6) In this section—

towing authority means—

- (a) a towing authority under the *Tow Truck Act 1973*; or
(b) another document authorising a person to tow a vehicle.

59E Notice of impounding to be given

- (1) As soon as reasonably practicable after the vehicle is impounded, a police officer must give written notice of the impounding of the vehicle to—

- (a) the driver of the vehicle; and
(b) if the driver is not the only owner of the vehicle—each owner of the vehicle.

- (2) The notice must include the information required under section 59F or 59G.

59F Content of notice for first offence

- (1) This section applies if section 59G does not apply.

- (2) The notice must state—

- (a) how the owner of the impounded vehicle may recover the vehicle; and
(b) that the vehicle is impounded for 48 hours; and
(c) that, before the vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the vehicle; and
(d) that if the driver is found guilty of the prescribed offence the driver will be required to pay the costs of removing and keeping the vehicle; and

- (e) the penalty for unlawfully removing the vehicle from the place at which it is held.

59G Content of notice for second or subsequent offence

- (1) This section applies if a police officer reasonably suspects that, in addition to the offence for which the vehicle is impounded under section 59C³³ (*initiating impoundment offence* and *initiating impoundment*), and within 3 years before the initiating impoundment (the *relevant period*)—
 - (a) the driver of the impounded vehicle has previously been charged with having committed a prescribed offence on at least 1 previous occasion within the relevant period and the charge has not been decided; or
 - (b) the driver of the impounded vehicle has previously been found guilty of a prescribed offence committed on at least 1 previous occasion within the relevant period.
- (2) Subject to section 59A(2),³⁴ the relevant period includes periods before and after the commencement of this subsection.
- (3) The notice must state—
 - (a) that an application will be made to a Court or a magistrate—
 - (i) for an order that the vehicle be impounded for up to 3 months, if either of the following apply to the driver at the time of the initiating impoundment—
 - (A) the driver has previously been charged with having committed a prescribed offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment;
 - (B) the driver has previously been found guilty of a prescribed offence committed on 1 previous occasion within the relevant period; or

33 Section 59C (Powers for prescribed offence)

34 Section 59A (Application of div 2)

- (ii) for an order that the vehicle be forfeited to the State, if any of the following apply to the driver at the time of the initiating impoundment—
 - (A) the driver has previously been charged with having committed prescribed offences on at least 2 previous occasions within the relevant period and the charges have not been decided before the initiating impoundment;
 - (B) the driver has previously been found guilty of having committed prescribed offences committed on at least 2 previous occasions within the relevant period;
 - (C) the driver has previously been found guilty of having committed a prescribed offence on at least 1 previous occasion within the relevant period and has previously been charged with having committed a prescribed offence on at least 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment; and
- (b) that the driver of the vehicle or owner may apply to the court at any time before the application is heard and decided for the return of the vehicle until the application is heard and decided; and
- (c) that, for an application under paragraph (b), the owner may be required to produce satisfactory evidence of the ownership of the vehicle; and
- (d) that if the driver is found guilty of the prescribed offence, the driver will be required to pay the costs of removing and keeping the vehicle; and
- (e) the penalty for unlawfully removing the vehicle from the place at which it is held.

59H Application for impounding order

- (1) This section applies if, in addition to the initiating impoundment offence—

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- (a) the driver of the vehicle has previously been charged with having committed a prescribed offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment; or
 - (b) the driver of the vehicle has previously been found guilty of a prescribed offence committed on 1 previous occasion within the relevant period.
- (2) Within 48 hours after the initiating impoundment, a police officer must apply for an order that the impounded vehicle be held at a holding yard for a period of not more than 3 months (*impounding order*).
- (3) The application must be made in relation to 2 prescribed offences, consisting of—
- (a) the prescribed offence the circumstances of which apply to the driver under subsection (1)(a) or (b); and
 - (b) the initiating impoundment offence.
- (4) The application must be made to a Magistrates Court but may be started by application to a magistrate under section 451³⁵ and subsection (6) of this section.
- (5) Subsection (4) applies even though the value of the vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- (6) If the application is properly made to a magistrate under section 451, the magistrate must—
- (a) order—
 - (i) that a police officer may have the application brought on for hearing and decision in the relevant Magistrates Court and adjourn the application to that court; and
 - (ii) that the vehicle be returned to a named person; and

35 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

- (b) give a copy of the application and the order to the clerk of the court of the relevant Magistrates Court.
- (7) In this section—
- relevant Magistrates Court* means the relevant Magistrates Court as defined under section 59J.³⁶

59HA Application for forfeiture order

- (1) This section applies if, at the time of the initiating impoundment, in addition to the initiating impoundment offence, the driver of the vehicle has previously been charged with having committed prescribed offences on at least 2 previous occasions within the relevant period and any of the following circumstances apply to the driver—
 - (a) the charges of the prescribed offences have not been decided before the initiating impoundment;
 - (b) the driver has been found guilty of 1 of the prescribed offences but the other charge or charges have not been decided before the initiating impoundment;
 - (c) the driver has previously been found guilty of having committed the prescribed offences on at least 2 previous occasions.
- (2) Within 48 hours after the initiating impoundment, a police officer must apply for an order that the impounded vehicle be forfeited to the State (*forfeiture order*).
- (3) The application must be made in relation to at least 3 prescribed offences consisting of—
 - (a) the prescribed offences the circumstances of which apply to the driver under subsection (1)(a), (b) or (c); and
 - (b) the initiating impoundment offence.
- (4) The application must be made to a Magistrates Court but may be started by application to a magistrate under section 451 and subsection (6) of this section.

36 Section 59J (Where application is to be decided)

- (5) Subsection (4) applies even though the value of the vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.
- (6) If the application is properly made to a magistrate under section 451, the magistrate must—
- (a) order—
 - (i) that a police officer may have the application brought on for hearing and decision in the relevant Magistrates Court and adjourn the application to that court; and
 - (ii) that the vehicle be returned to a named person; and
 - (b) give a copy of the application and the order to the clerk of the court of the relevant Magistrates Court.
- (7) In this section—
- relevant Magistrates Court* means the relevant Magistrates Court as defined under section 59J.

59I Orders on application for impounding order if relevant offence not decided

- (1) This section applies if—
- (a) an application is made to a relevant Magistrates Court for an impounding order about an impounded vehicle; and
 - (b) any proceeding on a charge of a prescribed offence or offences in relation to which the application is made (*initiating application charges*) has not been decided.
- (2) If the driver of the vehicle has not been found guilty of prescribed offences in relation to offences committed on 2 occasions within the prescribed period, the court must adjourn the application until the driver of the impounded vehicle is found guilty of charges in relation to offences committed on 2 occasions within the prescribed period.
- (3) Unless the initiating impoundment has already ended, the court adjourning the application must order that the impounded vehicle be returned to a named person.

- (4) If the application relates to at least 1 prescribed offence of which the driver has previously been found guilty, the court may, if satisfied the vehicle should be impounded to stop the commission of another prescribed offence, refuse to order the return of the impounded vehicle.
- (5) The owner of the vehicle must not sell or otherwise dispose of a vehicle returned under subsection (3) until the application for the impounding order is decided or otherwise ends.
Maximum penalty—40 penalty units.
- (6) If the court does not order the return of the vehicle to the owner under subsection (3), the period for which the vehicle is impounded must not be more than 3 months.
- (7) In this section—
prescribed period means the prescribed period as defined under section 59L.

59IA Orders on application for forfeiture order if relevant offence not decided

- (1) This section applies if—
 - (a) an application is made to a relevant Magistrates Court for a forfeiture order about an impounded vehicle; and
 - (b) any proceeding on a charge of a prescribed offence or offences in relation to which the application is made has not been decided.
- (2) If the driver of the vehicle has not been found guilty of prescribed offences in relation to offences committed on 3 occasions within the prescribed period, the court must adjourn the application until the driver of the impounded vehicle is found guilty of charges in relation to offences committed on at least 3 occasions within the prescribed period.
- (3) Unless the initiating impoundment has already ended, the court adjourning the application must order that the impounded vehicle be returned to a named person.
- (4) If the application relates to at least 1 prescribed offence of which the driver has previously been found guilty, the court

may, if satisfied the vehicle should be impounded to stop the commission of another prescribed offence, refuse to order the return of the impounded vehicle.

- (5) The owner of the vehicle must not sell or otherwise dispose of a vehicle returned under subsection (3) until the application for the forfeiture order is decided or otherwise ends.

Maximum penalty—40 penalty units.

- (6) If the court does not order the return of the vehicle to the owner under subsection (3), the period for which the vehicle is impounded must not be more than 3 months.

- (7) In this section—

prescribed period means the prescribed period as defined under section 59L.

59J Where application is to be decided

- (1) An application for an impounding order or a forfeiture order must be heard and decided by the relevant Magistrates Court.

- (2) An application for an order mentioned in subsection (1) must be heard and decided as soon as practicable after the person to whom an application relates is found guilty of—

(a) for an impounding order—2 prescribed offences committed on 2 occasions within the prescribed period;
or

(b) for a forfeiture order—3 prescribed offences committed on 3 occasions within the prescribed period.

- (3) In this section—

prescribed period means the prescribed period as defined under section 59L.

relevant Magistrates Court means the Magistrates Court for the Magistrates Court district, or division of the district, in which the vehicle was impounded for the initiating impoundment offence.

59K Advice to owner of date of hearing

As soon as reasonably practicable after a date is set for the hearing of an application for an impounding order or a forfeiture order in relation to an impounded vehicle, a police officer must give the driver of the vehicle and each owner of the vehicle written notice of the date, time and place of the hearing.

59L Consideration of application

- (1) On the hearing of the application, the relevant court may—
 - (a) if the driver of the impounded vehicle has been found guilty of a prescribed offence committed on 2 occasions within the prescribed period—order that the vehicle be impounded for a stated period, of not more than 3 months; or
 - (b) if the driver of the impounded vehicle has been found guilty of a prescribed offence committed on 3 occasions within the prescribed period—order that the vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court; or
 - (c) if the application was for a forfeiture order and the court can not make the order under paragraph (b) but can make an order under paragraph (a)—order, under paragraph (a), that the vehicle be impounded for a stated period, of not more than 3 months.
- (2) However, if the relevant court is satisfied impounding or forfeiting the vehicle will cause severe financial or physical hardship to an owner or usual driver of the vehicle, the court may, instead of ordering the impounding or forfeiture of the vehicle—
 - (a) order that the vehicle be returned to the owner or the usual driver; and
 - (b) if the driver of the impounded vehicle was an adult—order the driver to perform not more than 240 hours community service.
- (3) An order made under subsection (2)(b)—

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- (a) is taken to be an order made under the *Penalties and Sentences Act 1992* for the performance of community service under a fine option order under that Act; and
 - (b) is taken to have been made in the proceeding for the prescribed offence giving rise to the application for the impounding order or forfeiture order.
- (4) Also, if an owner of the vehicle raises the defence mentioned in section 59M and the relevant court is satisfied the defence has been made out, the court may order that the vehicle be returned to the owner.
- (5) On the making of a forfeiture order for a vehicle—
- (a) the vehicle becomes the property of the State; and
 - (b) any right of a person to enforce a charge or other security interest registered under the *Motor Vehicles and Boats Securities Act 1986* against a person other than the State by taking possession of the vehicle is extinguished.
- (6) In this section—
- prescribed period*, in relation to an application for an impounding order or a forfeiture order, includes—
- (a) the relevant period; and
 - (b) any period from the end of the relevant period to and including the day on which the application is heard and decided.

59LA Counting the occasions

- (1) For sections 59G to 59L, for an occasion of the commission of an offence to be counted in addition to another occasion counted, an occasion must be a separate occasion, that is, an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.
- (2) However, if a series of events that would, apart from this subsection, be treated as a single occasion of the commission of an offence under subsection (1) includes the intervention in any way by a police officer between the commission of

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1 prescribed offence and another in the course of the events, the events that happen after the police officer's intervention must be treated as a separate occasion.

Example for subsection (2)—

A driver commits a prescribed offence at 10 p.m. on 1 January. The driver is stopped by a police officer. Before the driver can be given a notice to appear in relation to the prescribed offence, the driver continues to commit the offence but using another vehicle. A police officer again stops the driver. The police officer impounds both vehicles. Because a police officer has intervened between the happening of the first and second offences, the occasions must be treated as 2 separate occasions for this division.

- (3) In sections 59G to 59HA, a reference to a prescribed offence committed on a previous occasion is a reference to a prescribed offence committed on an occasion before the occasion on which the initiating impoundment offence was committed.
- (4) Subject to subsections (1) to (3), for a decision under sections 59H to 59L of whether or not a person has previously been charged with, or found guilty of, a prescribed offence committed on a previous occasion or a number of previous occasions or on a number of occasions, the following do not matter—
 - (a) whether or not any finding of guilt relied on relates to a charge heard and decided together with another charge or other charges relating to another or other findings of guilt being relied on;
 - (b) whether or not findings of guilt relied on relate to charges that were heard and decided in the order in which the occasions of the commission of offences to which they related happened;
 - (c) whether or not any occasion of the commission of an offence, or any charge or any finding of guilt, relied on happened before or after any occasion of the commission of an offence, charge or finding of guilt also relied on.

Example—

An offender commits prescribed offences on 1 January (offence 1), 1 May (offence 2) and 1 June (offence 3). The offender is charged with offence 1 on 1 January, offence 2 on 1 May and offence 3 on 1 June. The

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offender is convicted of offence 3 on 15 June and offences 1 and 2 on 1 October. When a court or magistrate considers the application for impoundment or forfeiture on 1 December, for the purpose of counting the occasions mentioned in subsection (1), there are 3 occasions the court may rely on to make an order.

- (5) For the purpose of a decision under section 59L, the following does not matter—
- (a) whether or not any finding of guilt relied on relates to an initiating application charge;

Example—

An application may relate to particular prescribed offences but before the initiating application charges of prescribed offences committed by a driver are decided, the driver is found guilty on a charge of a prescribed offence committed after the charge or charges of the prescribed offence in relation to which the application is made have been decided.

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

59M Defence

In a proceeding for an impounding order or a forfeiture order in relation to an impounded vehicle, it is a defence for an owner of the vehicle to prove that the prescribed offence happened without the knowledge and consent of the owner.

Example—

A parent lends a vehicle to his or her child to visit friends and the child commits a prescribed offence in the vehicle. If the Magistrates Court is satisfied, on evidence tendered or submissions made by the parent, that the child committed the offence without the knowledge and consent of the parent, the Magistrates Court may order the vehicle's return to the parent.

59N Appeal

- (1) An order made against a person under section 59L(2)(b) may be appealed against as a sentence imposed on the person.
- (2) A person may appeal against any other order of a Magistrates Court or magistrate under this division to the District Court within 28 days after the day the order is made.

- (3) Also, a person may appeal against an order of the District Court under this division to the Court of Appeal within 28 days after the day the order is made.
- (4) On the appellant's application, an appeal under subsection (2) may be by way of rehearing from the start.

59O Powers for enforcing court order

- (1) This section applies if—
 - (a) the court orders the return of a vehicle to its owner under section 59I(3) or 59IA(3); and
 - (b) the relevant court later makes an impounding order or a forfeiture order for the vehicle.
- (2) For giving effect to the impounding order or forfeiture order, the relevant court may, in the order, authorise a police officer, without warrant, to enter any place the police officer reasonably suspects is a place where the vehicle may be found and search for, seize and remove the vehicle.

59P Who must pay costs of impounding

- (1) This section applies in relation to an impounded vehicle.
- (2) The driver of the vehicle when it was impounded under section 59C because of a prescribed offence is liable to pay the costs of removing and keeping the vehicle.
- (3) However, if the driver is found not guilty of the prescribed offence or the proceeding is withdrawn, the State is liable to pay the costs of removing and keeping the vehicle.
- (4) Also, the State is liable to pay the costs of removing and keeping the vehicle for the first 48 hours.
- (5) However, if a person who is entitled to recover a vehicle after the first 48 hours of impounding ends fails to recover the vehicle, the person is liable to pay the costs of keeping the vehicle for each day after the first 48 hours ends.
- (6) If the driver is found guilty of the prescribed offence the costs paid by the State under subsection (4) or someone else on the driver's behalf become a debt payable to the State or other person by the driver.

- (7) If the driver fails to pay the costs owing to the State, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—
 - (a) the commissioner were the registrar of a court; and
 - (b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.
- (8) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.³⁷

59Q Return of vehicle impounded for first prescribed offence

- (1) This section applies if a notice under section 59F was served on a person.
- (2) When the 48 hours for which the vehicle is impounded ends, the owner of the vehicle is entitled to recover the vehicle from the holding yard at which it is kept whether or not the State has paid the costs of removing the vehicle to, and keeping it at, the holding yard.
- (3) The person holding the vehicle must return the vehicle to the owner on request.

59R Return of vehicle if driver found not guilty etc.

If a driver is found not guilty of the prescribed offence or the proceeding is discontinued, the vehicle must be returned to the owner as soon as reasonably practicable.

59S Protection from liability

- (1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to the vehicle during the impounding of the vehicle.

³⁷ *State Penalties Enforcement Act 1999*, section 34 (Default in paying fine, penalty or other amount under court order)

- (2) If subsection (1) prevents liability attaching to a police officer, liability instead attaches to the State.
- (3) Also, if a police officer signs a towing authority under section 59D for the vehicle, the State is not liable for any damage, loss or depreciation to the vehicle while it is being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the vehicle.

59T Recovery of impounded vehicle

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

59U Voluntary transfer of ownership of vehicle to State

- (1) Despite section 59I(5) and 59IA(5), the owner of an impounded vehicle may agree to transfer ownership of the vehicle to the State.
- (2) The agreement must be written and witnessed by a person who may witness a statutory declaration.
- (3) If the State agrees in writing to the transfer of the vehicle—
 - (a) the vehicle becomes the property of the State; and
 - (b) the commissioner may sell or dispose of the vehicle and anything in it or on it in the way the commissioner considers appropriate.

59V Disposal of forfeited vehicle

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

59W Application of proceeds of sale

- (1) This section applies if the commissioner decides to sell a vehicle under section 59T or 59V.
- (2) The proceeds of the sale of the vehicle are to be paid—
 - (a) first, in payment of the expenses of the sale; and
 - (b) second, in payment of the cost of impounding and keeping the vehicle and for searching registers for giving notice of the vehicle's impounding; and
 - (c) third, if there is an amount owing to a person under a security interest registered for the vehicle under the *Motor Vehicles and Boats Securities Act 1986*—in payment of the amount owing to the holder of the security interest; and
 - (d) fourth—
 - (i) if the vehicle is sold under section 59T—to the owner; or
 - (ii) if the vehicle is sold under section 59V—to the consolidated fund.
- (3) Compensation is not recoverable against the State in relation to a payment made under this section.

59X Third party protection from forfeiture order

- (1) A person, other than the defendant, who did not appear at the hearing of an application for a forfeiture order and has an interest in the vehicle forfeited to the State under the order may apply to the relevant court for an order under subsection (5).
- (2) Unless the relevant court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.

- (3) The relevant court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant's neglect.
- (4) Unless the relevant court gives leave, a person who was given notice of the application for the forfeiture order can not apply to the court for an order under subsection (5).
- (5) On an application, an order may be made—
 - (a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the vehicle; and
 - (b) directing the State—
 - (i) if the vehicle is still vested in the State—to transfer the vehicle to the applicant; or
 - (ii) if the vehicle is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the vehicle after taking into account any amount paid to the holder of a registered security interest under section 59W(2)(c).
- (6) The relevant court must, and may only, make the order if it is satisfied—
 - (a) the applicant has or, apart from the forfeiture, would have a genuine interest in the vehicle; and
 - (b) the relevant prescribed offence happened without the knowledge and consent of the applicant.
- (7) For all applications, including applications for leave to apply—
 - (a) the applicant must give notice of the making of the application to—
 - (i) for an application made to a Magistrates Court—the commissioner; or
 - (ii) for an application made to another court—the Attorney-General; and
 - (b) the party given notice is a party to the application.

(8) In this section—

defendant means the person found guilty of the prescribed offence because of which the forfeiture order was made.

relevant court means the relevant court to which the application for the forfeiture order was made.

relevant prescribed offence means the prescribed offence because of which the forfeiture order was made.

Division 3 Removal powers other than for impounded vehicles

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;
 - (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 4 Animal welfare directions**65A Application of div 4**

- (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.

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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; or
- (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.³⁸

(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

³⁸ See the Animal Care and Protection Act, section 161 (Failure to comply with animal welfare direction) and the schedule, definition *animal welfare direction*.

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- (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 60(1), 66(2)(c) or (d) or 74(1)(h)—
 - (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 (1), 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);
 - (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—

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- (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 5 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
 - (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—

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- (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; or

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 60(1), 66(2)(c) or (d) or 74(1)(h) 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—
 - (a) evidence of the commission of an offence; or
 - (b) evidence that may be confiscation related evidence in relation to a confiscation related activity.
- (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—
 - (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; or
 - (c) confiscation related evidence.

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Example for paragraph (a)(ii)—

The search may be for evidence for which an application for a restraining order may be made under chapter 2 or chapter 3 of the Confiscation Act.

- (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—
 - (i) the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates; or
 - (ii) the confiscation related activity 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 or confiscation related evidence—

- (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 or confiscation related evidence 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 or confiscation related evidence 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; or
 - (iii) a confiscation related activity—brief particulars of the activity; 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 warrant relates to an offence and 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 205.³⁹

74 Powers under search warrant

- (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;

³⁹ Criminal Code, section 205 (Disobedience to lawful order issued by statutory authority)

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- (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;
 - (f) if the warrant relates to an offence and 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 or confiscation related evidence 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 or confiscation related evidence to which the warrant relates;
 - (j) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence or confiscation related evidence 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 or confiscation related evidence.
- (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—
 - Confiscation Act
 - *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 425,⁴⁰ whether or not a post-search approval order is made.

⁴⁰ Section 424 (Application by owner etc. for return of relevant things) or 425 (Application by police officer for order if ownership dispute)

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
 - (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.⁴¹
- (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.

Example—

- 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.

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.⁴²
- (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.

41 For crime scene powers, see division 3.

42 For provisions about crime scene warrants, see division 2.

- (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—
 - (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

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- (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—
 - (a) evidence of the commission of an offence by someone else; or
 - (b) confiscation related evidence in relation to a confiscation related activity involving 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 or confiscation related activity 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—
 - (i) evidence of the commission of an offence; or
 - (ii) confiscation related evidence; 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 or confiscation related evidence.
- (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 the following within the meaning of the Confiscation Act—
 - (a) a confiscation offence;
 - (b) a serious crime related activity.
- (2) For this part, the question whether a person has been charged with or found guilty of an interstate confiscation 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—
 - (a) a confiscation offence of which a person has been found guilty; or
 - (b) a confiscation offence a police officer reasonably suspects a person has committed; or
 - (c) a serious crime related activity a police officer reasonably suspects a person has engaged in.
- (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 confiscation offence or serious crime related activity 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 suspected of having 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) If an application relating to a serious crime related activity includes information that the police officer reasonably suspects—
- (a) the person who is suspected of having engaged in the serious crime related activity derived a benefit from the person's illegal activity; and
 - (b) the property specified in the information is subject to the effective control of the person;

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

- (4) In deciding whether to treat a document as a property-tracking document under subsection (2) or (3), the judge may have regard to the matters mentioned—
- (a) for subsection (2), in the Confiscation Act, section 187;⁴³ or
 - (b) for subsection (3), in the Confiscation Act, section 82.⁴⁴

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.

43 Confiscation Act, section 187 (Assessment of benefits)

44 Confiscation Act, section 82 (Matters to which Supreme Court must have regard)

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

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 and suspension orders

Division 1 Definition

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.

Division 2 Monitoring orders

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—
 - (a) may be made without notice to any party; and
 - (b) must—
 - (i) be sworn and state the grounds on which the order is sought; and
 - (ii) 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 confiscation offence; or
- (b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or
- (d) has been, or is about to be, involved in a serious crime related activity; or
- (e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

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.
- (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) 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.
- (7) In this section—
officer, of a financial institution, means—
- (a) a secretary, executive officer or employee of the financial institution; or
 - (b) anyone who, under the Confiscation Act, is a director of the financial institution.

Division 3 Suspension orders

121A Suspension order application

- (1) A police officer may apply to a Supreme Court judge for an order (***suspension order***) directing a financial institution to give information to a police officer about a named person.
- (2) The application—
- (a) may be made without notice to any person; and
 - (b) must—
 - (i) be sworn and state the grounds on which the order is sought; and
 - (ii) include information required under the responsibilities code about any suspension orders issued within the previous year in relation to an account held with the financial institution by the named person.
- (3) Subsection (2)(b)(ii) 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.

121B Making of suspension order

The Supreme Court judge may make the suspension 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 confiscation offence; or
- (b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or
- (d) has been, or is about to be, involved in a serious crime related activity; or
- (e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

121C What suspension order must state

- (1) The suspension order must order a financial institution—
- (a) to notify a police officer immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order; and

- (b) to notify a police officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and
 - (c) to refrain from completing or effecting the transaction for 48 hours, unless a named police officer gives the financial institution written consent to the transaction being completed immediately.
- (2) In addition, the suspension order must 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.
- (3) 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.

121D When period stated in suspension order starts

A suspension order has effect from the time notice of the order is given to the financial institution.

121E Contravention of suspension order

A financial institution that has been given notice of a suspension 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.

121F Existence and operation of suspension order not to be disclosed

- (1) A financial institution that is or has been subject to a suspension 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.
- (2) A person to whom the existence or operation of a suspension 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 suspension 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 suspension order.
- (5) A person who contravenes subsection (1) or (2) commits a crime.
- Maximum penalty—350 penalty units or 7 years imprisonment.
- (6) A reference in this section to disclosing the existence or operation of a suspension 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 suspension order.
- (7) In this section—
- officer*, of a financial institution, means—
- (a) a secretary, executive officer or employee of the financial institution; or
 - (b) anyone who, under the Confiscation Act, is a director of the financial institution.

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) The place stated in the application (the *relevant place*) may be a public place and may be described by reference to a class of place.
- (6) 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.
- (7) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

- (8) 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 relevant 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 or the relevant place;
- (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 a surveillance warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing—
 - (a) the relevant person has been, is, or is likely to be, involved in the commission of an indictable offence and is likely to be at the relevant place; or
 - (b) evidence of the commission of an indictable offence is likely to be obtained using a surveillance device at the relevant place.
- (2) The warrant may authorise the use of a class A surveillance device only if the offence is a serious indictable offence.
- (3) 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.
- (4) 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 (4)(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(4);
- (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;
- (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.

Example—

- 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.

Example—

- 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

147A Meaning of *terrorist act* and *terrorism* for div 6

- (1) An action is a *terrorist act* if—
 - (a) it does any of the following—
 - (i) causes serious harm that is physical harm to a person;
 - (ii) causes serious damage to property;
 - (iii) causes a person's death;

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- (iv) endangers the life of someone other than the person taking the action;
 - (v) creates a serious risk to the health or safety of the public or a section of the public;
 - (vi) seriously interferes with, seriously disrupts, or destroys an electronic system; and
- (b) it is done with the intention of advancing a political, religious or ideological cause; and
- (c) it is done with the intention of—
 - (i) coercing, or influencing by intimidation, the government of the Commonwealth, a State or a foreign country, or of part of a State or a foreign country; or
 - (ii) intimidating the public or a section of the public.
- (2) A threat of action is a ***terrorist act*** if—
 - (a) the threatened action is likely to do anything mentioned in subsection (1)(a)(i) to (vi); and
 - (b) the threat is made with the intentions mentioned in subsection (1)(b) and (c).
- (3) However, an action or threat of action is not a ***terrorist act*** if the action or threatened action—
 - (a) is advocacy, protest, dissent or industrial action; and
 - (b) is not intended—
 - (i) to cause serious harm that is physical harm to a person; or
 - (ii) to cause a person's death; or
 - (iii) to endanger the life of a person, other than the person taking the action; or
 - (iv) to create a serious risk to the health or safety of the public or a section of the public.
- (4) ***Terrorism*** is—
 - (a) criminal activity that involves a terrorist act; or
 - (b) something that is—

- (i) preparatory to the commission of criminal activity that involves a terrorist act; or
 - (ii) undertaken to avoid detection of, or prosecution for, criminal activity that involves a terrorist act.
- (5) A reference in this section to a person or property is a reference to a person or property wherever situated, within or outside the State (including within or outside Australia).

(6) In this section—

electronic system includes any of the following electronic systems—

- (a) an information system;
- (b) a telecommunications system;
- (c) a financial system;
- (d) a system used for the delivery of essential government services;
- (e) a system used for, or by, an essential public utility;
- (f) a system used for, or by, a transport system.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

public includes the public of another State or of a country other than Australia.

serious harm means harm, including the cumulative effect of any harm, that—

- (a) endangers, or is likely to endanger, a person's life; or
- (b) is, or is likely to be, significant and longstanding.

threat includes a threat made by conduct, whether express or implied and whether conditional or unconditional.

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 or terrorism.

- (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 or terrorism 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 or terrorism;
- (b) the extent to which issuing the warrant would help prevent, detect or provide evidence of, the offence or terrorism;
- (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 evidence of organised crime or terrorism—
 - (a) is at the place; or
 - (b) is likely to be taken to the place within the next 72 hours.

- (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 or details of the terrorism 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 or terrorism;
- (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 or terrorism;
- (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 and Child Guardian.

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 177⁴⁵ 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 191⁴⁶ to engage in a controlled activity in accordance with the authority and procedures established by the relevant entity's chief executive officer.

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.

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

46 Section 190 (Authorised controlled activities) or 191 (Authorisation of controlled activities by CMC)

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—
 - (a) for the police service—
 - (i) the commissioner; or

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- (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 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.

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 179,⁴⁷ as varied under subsection (1), has the effect mentioned in section 179.

47 Section 179 (Effect of approval)

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 named officer is authorised under section 186 or 187 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—

- (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.⁴⁸
- (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.

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—

⁴⁸ Under the *Freedom of Information Act 1992*, section 19 (Availability of certain documents) the policy documents must be made available for inspection and purchase by members of the community.

- (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;

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- (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 10.5.⁴⁹

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.

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

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 191⁵⁰ may not be delegated.
- (3) Subsections (1) and (2) apply despite any other Act.

50 Section 191 (Authorisation of controlled activities by CMC)

Chapter 6 Arrest and custody powers

Part 1 Arrest without warrant

198 Arrest without warrant

- (1) It is lawful for a police officer, without warrant, to arrest an adult 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;
 - (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;⁵¹
 - (j) because the offence is an offence against the *Domestic and Family Violence Protection Act 1989*, section 80;⁵²
 - (k) because of the nature and seriousness of the offence;
 - (l) because the offence is—

51 Section 444 (Offence to assault or obstruct police officer) or 445 (Offence to contravene direction or requirement of police officer)

52 *Domestic and Family Violence Protection Act 1989*, section 80 (Breach of order or conditions)

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- (i) an offence against the *Corrective Services Act 2000*, section 103(3);⁵³ or
 - (ii) an offence to which the *Corrective Services Act 2000*, section 104 applies.⁵⁴
- (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 7.⁵⁵
- (3) Subject to the *Juvenile Justice Act 1992*, section 13,⁵⁶ 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.⁵⁷

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.
- (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

53 *Corrective Services Act 2000*, section 103 (Persons near prisoners)

54 *Corrective Services Act 2000*, section 104 (Temporary detention for security offences)

55 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

56 *Juvenile Justice Act 1992*, section 13 (Police officer's power of arrest preserved in particular general circumstances)

57 Under the juvenile justice principles in the *Juvenile Justice Act 1992*, schedule 1, it is a principle of that Act that a child should be detained in custody for an offence, whether on arrest or sentence, only as a last resort and for the least time that is justified in the circumstances.

- (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—
 - (A) the condition for the person's appearance; or
 - (B) 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

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- (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) However, before arresting a child under subsection (3), a police officer must consider whether, in all the circumstances, it would be more appropriate for an application to be made under the *Bail Act 1980* for a variation or revocation of the child's bail.
- (5) Subsection (4) does not apply to the arrest of a child under subsection (3)(a)(i)(A), (a)(iv) or (c).
- (6) 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.
- (3) This section does not apply to a child.

Part 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 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.

Part 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.

Part 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 or care necessary to enable the person to recover safely from the effects of being drunk (a *place of safety*).

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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;

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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;⁵⁸ 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)—

⁵⁸ Section 445 (Offence to contravene direction or requirement of police officer)

- (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 youth justice conference under the *Juvenile Justice Act 1992*; or
 - (d) to take the child before a court by notice to appear 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 part 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.

Part 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 a

person that reduces the need for custody associated with arrest and does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.⁵⁹

- (2) If a police officer reasonably suspects that a person has committed or is committing an offence, the police officer may issue and serve a notice (*notice to appear*) on the person.⁶⁰
- (3) A notice to appear must be personally served on a person.
- (4) If a person is alleged to have committed offences as a child and as an adult, a separate notice to appear must be issued for the offences committed as a child.

214A Notice to appear must be served discreetly on a child

A notice to appear must be served on a child—

- (a) as discreetly as practicable; and
- (b) not at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably effected.

215 Notice to appear form

- (1) A notice to appear must—
 - (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) clearly state whether the person was, at the time of the alleged offence, an adult or a child; and
 - (d) require the person to appear before a court of summary jurisdiction in relation to the offence at a stated time and place; and

⁵⁹ For starting proceedings against children by notices to appear, see the *Juvenile Justice Act 1992*.

⁶⁰ A notice to appear differs from a complaint and summons in requiring the police officer with the suspicions mentioned to also serve the notice.

- (e) 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 before a court must be a time—
 - (a) for an adult—at least 14 days or, with the person's written agreement, a stated shorter time, after the notice is served; or
 - (b) for a child—
 - (i) as soon as practicable after service of the notice to appear; and
 - (ii) fixed generally by the clerk of the court for hearing matters under the *Juvenile Justice Act 1992*.

216 Filing of notice to appear

- (1) As soon as reasonably practicable after service of a notice to appear on a person, and before the time the person is required to appear at a place before a court under the notice, the notice must be lodged with the clerk of the court at the place.
- (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),⁶¹ 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.

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 a 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 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 445⁶² applies.
- (3) If an officer-in-charge of a police establishment or a watch-house manager issues and serves a notice to appear on a person under section 225(2)(b), the police officer who

61 *Justices Act 1886*, section 43 (Matter of complaint)

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

arrested the person, and not the officer-in-charge or the watch-house manager, is taken to have started the proceeding against the person.

- (4) Subject to this part, 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 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.
- (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.
- (5) Subsection (1)(b) does not prevent a court delaying the issue or execution of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court.
- (6) The bail and custody provisions of the *Juvenile Justice Act 1992*, part 5 apply to a child arrested on a warrant issued under subsection (1)(b).

221 Court must strike out notice to appear if service insufficient

- (1) If a person fails to appear before a 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.

Part 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 to be advised of arrest or service of notice to appear

- (1) A police officer who arrests a child must promptly advise the persons mentioned in subsection (3) of the arrest and whereabouts of the child.
- (2) A police officer who has served a notice to appear on a child must promptly advise the persons mentioned in subsection (3) of the service of the notice to appear.
- (3) The persons to be notified are—
 - (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.

- (4) Subsections (1) and (2) do not apply in relation to a child if a police officer believes on reasonable grounds that the child is an adult.
- (5) In deciding whether the police officer had the reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest or service of the notice.
- (6) 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;⁶³
 - (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 part 4;⁶⁴ or
 - (b) is being detained under chapter 7⁶⁵ for an indictable offence; or

63 Section 200 (Arrest of person granted bail) or 201 (Arrest of person given notice to appear or summons)

64 Part 4 (Discontinuing arrest)

65 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

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- (c) is being detained under the Road Use Management Act, section 80;⁶⁶ 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.

- (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.

⁶⁶ Road Use Management Act, section 80 (Provisions with respect to breath tests and laboratory tests)

- (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) issue and serve a notice to appear on the person; or
 - (c) 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;⁶⁷ or
 - (d) 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.
- (4) This section does not apply to a child.⁶⁸

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

- (1) This section applies if—
 - (a) under section 202,⁶⁹ 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;

67 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)

68 See the *Juvenile Justice Act 1992*, section 50 (Dealing with a child if court can not be promptly constituted).

69 Section 202 (Arrest under 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 person⁷⁰ 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.

70 For persons to whom this part applies, see section 229 (Application of pt 2).

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—
 - (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 237.⁷¹

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.

71 Section 237 (When detention period may be extended)

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 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.⁷²

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.
- (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—

⁷² See also the *Criminal Law Amendment Act 1894*, section 10 (Confessions).

- (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.⁷³

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.
- (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.

⁷³ For Aboriginal people and Torres Strait Islanders, see section 251 and for children, see section 252.

- (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 chosen by the child in circumstances in which the conversation will not be overheard; and
 - (b) a support person is present while the child is being questioned.
- (3) However, the child may not choose as a support person a person against whom the offence is alleged to have been committed.
- (4) 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.

Division 5 Cautioning and rights of persons**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 6 Recording of questioning

263 Recording of questioning etc.

- (1) This section applies to the questioning of a relevant person.

Police Powers and Responsibilities Act 2000

- (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—

Police Powers and Responsibilities Act 2000

- (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 7 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 261⁷⁴ 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 Search powers for persons in custody

269 Application of ch 8

This chapter applies to a person if the person—

- (a) is lawfully arrested; or
- (b) is in lawful custody for a charge of an offence that has not been decided; or

74 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.)

Examples—

- 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.
- (c) is in custody under a sentence for a period of imprisonment or, for a child, a detention order; or
- (d) is otherwise lawfully detained under another Act.

270 Police officer may search person in custody

- (1) A police officer may search and re-search a person to whom this chapter applies.
- (2) A police officer may seize from the person anything found during the search that the police officer reasonably suspects may provide evidence of the commission of an offence.
- (3) 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.

271 Powers relating to thing taken from person taken to place of safety

- (1) This section applies if a police officer takes a thing under section 270(3) from a person who is taken to a place of safety under section 210.⁷⁵
- (2) A police officer may give the thing—

⁷⁵ Section 210 (Additional case when arrest for being drunk in a public place may be discontinued)

- (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 of the person—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.
- (3) 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 home of the person from whom the thing was taken, must return the thing to that person before the person voluntarily leaves the place of safety.

Chapter 8A Forensic procedures

Part 1 Qualified persons and authorising forensic procedures

272 Who are qualified persons

- (1) This section states who are *qualified persons* to perform forensic procedures.
- (2) A doctor or dentist is a qualified person to perform an intimate forensic procedure and a non-intimate forensic procedure.
- (3) A DNA sampler is a qualified person for taking a DNA sample.
- (4) An authorised examiner is a qualified person to perform a non-intimate forensic procedure that is a non-medical examination.
- (5) A police officer is a qualified person for taking identifying particulars.

- (6) Without limiting subsections (2) to (5), a person who is specifically authorised under this chapter to perform a procedure that is a forensic procedure is a qualified person to perform the forensic procedure.
- (7) If a qualified person may take a person's identifying particulars under this chapter, the qualified person may also photograph the person's identifying particulars.

273 Limitation on forensic procedures that dentist may perform

Despite section 272(2), a dentist may perform a forensic procedure only to the extent necessary to—

- (a) examine a person's mouth; or
- (b) take a sample of a person's saliva; or
- (c) take a dental impression of a person's mouth; or
- (d) examine a bite mark on a person.

274 When forensic procedures are authorised

- (1) A forensic procedure may be performed on a person under this chapter if—
 - (a) either of the following gives consent (*forensic procedure consent*) to the procedure being performed—
 - (i) the person on whom it is proposed to perform the forensic procedure;
 - (ii) someone else authorised under part 2 to give consent for the person if the person is a child under 14 years or a person with impaired capacity; or
 - (b) the procedure is performed under a forensic procedure order; or
 - (c) this chapter otherwise authorises a qualified person to perform the procedure.
- (2) A person on whom it is proposed to perform a forensic procedure may in this chapter be referred to as a *relevant person*.

Part 2 Obtaining consent for forensic procedure

275 What pt 2 provides

- (1) This part states general rules—
 - (a) for obtaining a forensic procedure consent from a person suspected of committing an offence; or
 - (b) for obtaining a forensic procedure consent, that relates only to the taking of a DNA sample, from a person for any of the following purposes—
 - (i) to help decide whether or not the person may be a suspect in relation to an offence;

Example—

Members of the community may be asked to provide DNA samples for DNA analysis for comparison with the results of analysis of a DNA sample seized at a crime scene.

- (ii) to help locate a missing person;

Example—

A relative of a missing person may be asked to provide a DNA sample to help locate the missing person.

- (iii) to help identify a deceased person or the remains of a deceased person.

Example—

A person may be asked to provide a DNA sample to help decide whether a deceased person is a relative of the person.

Note—

See section 281 for the explanation that must be given to a person asked to give a forensic procedure consent.

- (2) However, nothing in this part requires a police officer or other person to obtain consent under this part to perform a forensic procedure under this chapter that the person is not specifically required to have consent for.
- (3) Also, nothing in this part requires a police officer to obtain a forensic procedure consent to perform a non-intimate forensic procedure on a person if the procedure does not involve the

touching of the person by anyone other than the person or the taking of a DNA sample.

- (4) Subject to subsection (1)(b), this part must not be construed as requiring a police officer to act under this part to obtain the consent of a person to the performance of a forensic procedure on the person if the person is not suspected of having committed an offence.

276 General rules about asking for consent

- (1) A police officer may ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent only if the police officer is satisfied the person's ability to give the consent is not affected by alcohol or a drug.
- (2) A police officer must not ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent for an intimate forensic procedure unless the police officer suspects the relevant person may have committed an indictable offence.
- (3) This section applies whether or not the relevant person has been proceeded against for an offence for which the results of performing the forensic procedure may be relevant.

277 Special requirement for child of at least 14

- (1) This section applies if a police officer reasonably suspects the relevant person is a child who is at least 14 years.
- (2) The police officer may ask the child to give a forensic procedure consent.
- (3) The police officer must ensure a support person is present when the explanation mentioned in section 281⁷⁶ is given and when any consent is given.
- (4) To assist the child to consider the explanation and decide whether or not to consent, the police officer must ensure the child is given a reasonable opportunity to speak to the support

⁷⁶ Section 281 (General requirements for giving informed forensic procedure consent)

person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.

- (5) Subsection (6) applies if the child gives a forensic procedure consent relating to the performance of a non-intimate forensic procedure.
- (6) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

278 Special requirement for child under 14

- (1) This section applies if a police officer reasonably suspects the relevant person is a child who is under 14 years.
- (2) The police officer may ask a parent of the child to give a forensic procedure consent for the child.
- (3) If the parent gives a forensic procedure consent for the child authorising the taking of a sample for DNA analysis, the sample taken must be a DNA sample and not a sample of the child's blood.
- (4) Subsection (5) applies if the parent gives a forensic procedure consent for the child relating to the performance of a non-intimate forensic procedure.
- (5) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

279 Special requirement for person with impaired capacity

- (1) This section applies if a police officer reasonably suspects the relevant person is a person with impaired capacity.
- (2) The police officer may ask the person to give a forensic procedure consent.

- (3) However, the police officer must ensure a support person is present when the explanation mentioned in section 281 is given and when any consent is given.
- (4) Also, to assist the person to consider the explanation and decide whether or not to consent, the police officer must ensure the person is given a reasonable opportunity to speak to the support person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.
- (5) If the person does not have the capacity to give a forensic procedure consent, the police officer may ask a parent of the person to give the consent for the person.
- (6) Subsection (7) applies if the parent gives a forensic procedure consent for the person relating to the performance of a non-intimate forensic procedure.
- (7) Before the procedure is performed a police officer must ask the person whether he or she wants a support person to be present while the procedure is being performed and, if the person wants a support person to be present, must ensure a support person is present while the procedure is being performed.

280 Consent must be informed consent

- (1) A police officer must ensure a person asked to give a forensic procedure consent is given the explanation required under section 281 and a reasonable time to consider the explanation.
- (2) If, under section 278(2) or 279(5) a parent is asked to give a forensic procedure consent for a child or a person with impaired capacity and the child or person is not present when the explanation required under section 281 is given to the parent, a police officer—
 - (a) must, to the extent that is reasonably practicable in the circumstances, give the child or person an explanation of the matters mentioned in section 281(1)(a) to (i); and
 - (b) must tell the child or person that he or she may object to the performance of the forensic procedure.

281 General requirements for giving informed forensic procedure consent

- (1) To enable a person to give an informed forensic procedure consent, a police officer must explain all the following to the person—
 - (a) why it is proposed to perform the forensic procedure on the person;
 - (b) whether it is proposed to perform an intimate forensic procedure or a non-intimate forensic procedure or both;
 - (c) the general nature of the forensic procedure;
 - (d) the class of qualified person who may perform the forensic procedure;
 - (e) that the person may refuse to give the consent;
 - (f) that if the person gives the consent, the person may withdraw the consent before the forensic procedure is performed or while it is being performed;
 - (g) if a sample may be taken for DNA analysis and sections 278(3) and 306⁷⁷ do not apply—
 - (i) that the person may limit the purpose for which the results of the DNA analysis may be used to the purpose stated by the police officer under paragraph (a); and
 - (ii) that unless the person limits the purposes of the consent in that way, the results of the DNA analysis of the sample may be included in QDNA and used in a way permitted under this chapter;
 - (h) if a sample may be taken for DNA analysis and sections 278(3) and 306 do apply—
 - (i) that the sample taken for DNA analysis must be a DNA sample and not a sample of blood; and
 - (ii) that a DNA analysis of the sample may be used only for the purpose stated by the police officer under paragraph (a);

⁷⁷ Sections 278 (Special requirement for child under 14) and 306 (Use of DNA analysis of DNA sample taken from child under 14)

- (i) that the forensic procedure may provide evidence that may be used in a court proceeding.
- (2) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.

282 Recording consent

- (1) If a police officer gives the explanation under section 281 orally, the giving of the explanation and any consent to perform the forensic procedure must, if reasonably practicable, be electronically recorded.
- (2) Unless a forensic procedure consent is electronically recorded under subsection (1), it must be written and signed by the person giving the consent.
- (3) If a child mentioned in section 277(1) or a person with impaired capacity gives a written forensic procedure consent, it must also be signed by the support person present when the consent is given.
- (4) A person giving a written forensic procedure consent may give the consent by signing an approved form for the consent.

283 Qualified person may perform forensic procedure

A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure consent.

Part 3 Forensic procedure orders

284 Application of pt 3

- (1) This part applies if a police officer is satisfied performing a forensic procedure on a person suspected of committing an indictable offence may provide evidence of the commission of the offence.

Police Powers and Responsibilities Act 2000

Note—

In some circumstances, procedures that are forensic procedures may be performed under part 4, 5 or 6.⁷⁸

- (2) Also, this part applies whether or not the relevant person is dead.
- (3) A police officer may not apply for a forensic procedure order under this part in relation to a child if—
 - (a) the only purpose of the application is to obtain authority to take a sample for DNA analysis; and
 - (b) it is practicable to make an application under section 316 (*other application*) for an order to take a DNA sample from the child; and
 - (c) it is likely that an order made under that section can be given immediate effect.
- (4) A police officer may not apply for a forensic procedure order under this part in relation to a child if—
 - (a) the only purpose of the application is to obtain authority to take an identifying particular within the meaning of the *Juvenile Justice Act 1992*, section 10; and
 - (b) it is practicable to make an application under section 10 (also *other application*) of that Act for an order to take the identifying particular from the child; and
 - (c) it is likely that an order made under that section can be given immediate effect.
- (5) Without limiting subsection (3)(b) or (4)(b), it is taken not to be practicable to make the other application if the whereabouts of the child to whom it relates are not sufficiently known to the police officer to allow the officer to give notice of the other application to the child.

285 Application for forensic procedure order

- (1) A police officer may apply to a magistrate in the approved form for an order (*forensic procedure order*) authorising a

⁷⁸ Part 4 (Identifying particulars), 5 (DNA procedures) or 6 (Non-medical examinations)

qualified person to perform an intimate or non-intimate forensic procedure, or both an intimate and a non-intimate forensic procedure, on the person named in the application.

- (2) If the person is a child, the application must be made to a Childrens Court magistrate.
- (3) The application—
 - (a) must be sworn and state the grounds on which it is made; and
 - (b) may be made whether or not the person has previously consented to the forensic procedure being performed.
- (4) The magistrate may refuse to consider the application until the police officer gives the magistrate 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.

286 Notice of application must ordinarily be given

- (1) The person to whom the application relates must be given notice in the approved form of the application at least 7 days before the day the application is to be heard.
- (2) The notice must state—
 - (a) the grounds on which the application is made; and
 - (b) the date when and the place where the application is to be heard; and
 - (c) the person may appear at the hearing and be heard on the application; and
 - (d) that if the person does not appear, the application may be decided in the absence of the person; and
 - (e) if the police officer making the application knows the person is in lawful custody in another State, the effect of subsections (5) and (6) and the address of the place where the written submissions mentioned in subsection (5) may be sent.

- (3) If the person appears at the time and place stated in the notice, the person is entitled to be heard on the application.
- (4) If the person does not appear at the time and place stated in the notice, the application may be decided in the absence of the person.
- (5) If the person is in lawful custody in another State, the magistrate may receive submissions about the application through the person's lawyer, in writing from the person or by using technology allowing reasonably contemporaneous and continuous communication between the magistrate and the person.
- (6) Written submissions made under subsection (5) need not be considered by the magistrate unless they are received at the place where the application is to be heard before the date the application is heard.
- (7) Subsection (1) does not apply if the person is dead.
- (8) This section is subject to section 287.

287 When notice of application need not be given etc.

- (1) This section applies if the magistrate is satisfied—
 - (a) a police officer has made a reasonable attempt to locate the person to whom the application relates and was unable to locate the person; or
 - (b) the person is likely to abscond if given notice of the application; or
 - (c) evidence that may be obtained by performing the forensic procedure to which the application relates on the person is likely to be lost or destroyed if the person is given notice of the application; or
 - (d) giving notice of the application to the person may jeopardise the investigation of any indictable offence the person is suspected of having committed because—
 - (i) evidence relating to the offence may be concealed, fabricated or destroyed; or
 - (ii) a witness may be intimidated; or

- (iii) an accomplice or accessory of the person may take steps to avoid apprehension
- (2) The person is not entitled to be given notice of the application under section 286 or to be heard on the application.

288 Making forensic procedure order

- (1) A magistrate may make a forensic procedure order in relation to a person only if satisfied on the balance of probabilities there are reasonable grounds for believing performing the forensic procedure concerned on the person may provide evidence of the commission of an indictable offence the person is suspected of having committed (a *suspected offence*) and carrying out the forensic procedure is justified in the circumstances.
- (2) In deciding whether performing the forensic procedure on the person is justified in the circumstances, the magistrate must balance the rights and liberties of the person and the public interest.
- (3) In balancing those interests the magistrate may have regard to any of the following matters—
 - (a) the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;
 - (b) the degree of the person's alleged participation in the commission of the suspected offence;
 - (c) the age and physical and mental health of the person, to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);
 - (d) if the person is a child or a person with impaired capacity—the welfare of the person;
 - (e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person committed the suspected offence;
 - (f) if the person has been asked for and refused to give a forensic procedure consent in relation to the suspected

offence—the reasons for the refusal to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);

- (g) if the person is in custody for the suspected offence—
 - (i) the period for which the person has already been detained; and
 - (ii) the reason for any delay in applying for the forensic procedure order;
- (h) any other matter the magistrate considers relevant to balancing those interests.

289 What forensic procedure order must state

A forensic procedure order must state—

- (a) the relevant person's name; and
- (b) that a forensic procedure may be performed on the person by a qualified person; and
- (c) whether a qualified person may perform—
 - (i) an intimate forensic procedure; or
 - (ii) a non-intimate forensic procedure; or
 - (iii) both an intimate and a non-intimate forensic procedure; and
- (d) that a police officer may exercise the powers in section 291.

290 When forensic procedure order ends

- (1) A forensic procedure order stops having effect when the forensic procedure authorised under the order is completed.
- (2) However, if a doctor is performing an intimate forensic procedure under the order and decides to also perform a non-intimate procedure under section 318ZA(3),⁷⁹ the order

79 Section 318ZA (Doctor's powers)

extends to the performance of the non-intimate procedure and stops having effect when both procedures are completed.

291 Powers for enforcing forensic procedure order

- (1) For enforcing a forensic procedure order, a police officer has the following powers—
 - (a) power to detain the relevant person for a reasonable time and take the person to a place with appropriate facilities and persons for performing the relevant forensic procedure;
 - (b) power to direct the relevant person—
 - (i) to attend at a stated place on a stated day or between stated hours, within 7 days after the direction is given to the person to enable the relevant forensic procedure to be performed; and
 - (ii) to stay at the place for the time reasonably necessary to enable the relevant procedure to be performed.
- (2) Subsection (1)(a) applies whether or not the relevant person is given a direction under subsection (1)(b).

292 Order must be given before forensic procedure is performed

- (1) A police officer must give a copy of a forensic procedure order to a relevant person before a qualified person performs a forensic procedure on the person under the order.
- (2) Subsection (1) does not apply if the person is unconscious or dead.

293 Qualified person may perform forensic procedure

A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure order.

Part 4 Identifying particulars

Division 1 Particular provisions about taking identifying particulars

294 Taking identifying particulars of person in custody

- (1) If a person is in custody for an identifying particulars offence the charge of which has not been decided, a police officer may take or photograph all or any of the person's identifying particulars.
- (2) 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) 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.

295 Taking identifying particulars—proceeding 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) Within a reasonable time 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.

Division 2 Taking identifying particulars under identifying particulars notice

296 Application of div 2

This division applies if a police officer decides to start, 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 identifying particulars.

297 Identifying particulars notice may be given

- (1) A police officer may, by written notice (*identifying particulars notice*) given to the person, require the person—
 - (a) to report to a police officer at a stated police station or police establishment 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; and
 - (b) to stay at the police station or police establishment for the time reasonably necessary to enable the identifying particulars to be taken or photographed.
- (2) The identifying particulars notice—
 - (a) may state the days and times within which the person must attend the police station or police establishment; and
 - (b) must state—
 - (i) it is an offence to fail to comply with the notice; and
 - (ii) that, before the identifying particulars are taken, the person must produce satisfactory evidence of his or her identity; and
 - (c) must be given to the person with the notice to appear or complaint and summons; and
 - (d) must be signed by the police officer giving the notice.
- (3) If the person attends at a police station or police establishment as required under the identifying particulars notice, a police

officer may take or photograph all or any of the person's identifying particulars.

Division 3 Taking identifying particulars under court order

298 Court may order taking of identifying particulars

- (1) This section applies if, in a proceeding for 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 of having committed; or
 - (b) confirm the person's identity; or
 - (c) find out the person's criminal history; or
 - (d) keep criminal records.
- (2) The court may make either of the following orders—
 - (a) an order that a police officer may detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars;
 - (b) an order—
 - (i) that the person—
 - (A) report to a police officer at a stated police station or police establishment on a stated day or between stated hours within 7 days; and
 - (B) stay at the place for the time reasonably necessary to enable a police officer to take or photograph all or any of the person's identifying particulars; and
 - (ii) authorising a police officer to detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars if the person does not comply with subparagraph (i).

- (3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.
Maximum penalty—2 years imprisonment.
- (4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

299 Detention for taking identifying particulars

- (1) A police officer may, to give effect to an order made under section 298(2)(a) or (b)(ii), detain the person.
- (2) If the person is not already in custody, the time for which the person may be detained is—
 - (a) 1 hour; or
 - (b) a longer reasonably necessary time, having regard to the particular circumstances.

300 Who may take identifying particulars

Any police officer may take or photograph all or any of the identifying particulars of a person to whom an order made under section 298(2) relates.

Division 4 Destruction of identifying particulars

301 Destruction of identifying particulars

- (1) If a person is found not guilty of an identifying particulars offence or is not further proceeded against for the offence, any identifying particulars taken under this part in relation to the offence must be destroyed within a reasonable time in the presence of a justice.
- (2) Subsection (1) does not apply if—
 - (a) the person has been proceeded against for another identifying particulars offence the charge of which has not been decided; or

- (b) the person has previously been found guilty of another identifying particulars offence, whether before or after the commencement of this section; 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 for the identifying particulars offence because he or she has been found incapable of standing trial because of mental illness.
- (3) If, because of subsection (2)(a), a person's identifying particulars are not destroyed and the person is found not guilty of the other identifying particulars offence or the charge of that other offence is not proceeded with, the identifying particulars must be destroyed within a reasonable time after the relevant event happens.
- (4) However, the identifying particulars must not be destroyed under subsection (3) if subsection (2) continues to apply to the person.
- (5) In this section—
- identifying particulars*, of a person, includes a photograph of the identifying particulars.

Part 5 DNA procedures

Division 1 Preliminary provisions about DNA sampling and DNA analysis

302 Taking DNA sample by doctor or nurse

A DNA sampler who is a doctor or nurse may take a DNA sample from a person for DNA analysis under this chapter only if asked by a police officer to do so.

303 Commissioner may authorise police officers to take DNA samples

- (1) The commissioner may authorise a police officer to take DNA samples.
- (2) 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.

304 Where DNA sample may be taken

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

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

305 How DNA samples may be taken

A DNA sampler may take a DNA sample from a person only by—

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

Division 2 Taking DNA sample from particular persons with consent

306 Use of DNA analysis of DNA sample taken from child under 14

- (1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a child under 14 years.
- (2) A DNA analysis of the sample may be used only for the purpose for which the consent was given.

307 Taking DNA sample from person with impaired capacity

- (1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a person with impaired capacity.
- (2) A police officer must ensure a support person is present when the sample is being taken if it is reasonably practicable to do so.

Division 3 Taking DNA samples after proceedings commenced and from certain prisoners

308 Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.

- (1) This section applies if—
 - (a) a police officer starts or continues a proceeding for an indictable offence against an adult by arrest; or
 - (b) a police officer starts a proceeding for an indictable offence against an adult by a 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 senior officer under subsection (3) to take a DNA sample from the person.

- (3) A police officer may, with the approval of a senior 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 304(a), (b) or (d)⁸⁰ for the purpose.
- (4) Before approving the detention of the person, the senior officer must have regard to the rights and liberties of the person and the public interest.
- (5) A DNA sampler may take a DNA sample for DNA analysis from a person detained under an approval of a senior officer under this section.
- (6) In this section—

senior officer means—

 - (a) if the police officer investigating the offence holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
 - (b) if the police officer investigating the offence holds the rank of senior sergeant or above—a police officer who is more senior than the investigating officer.

309 DNA sample notice

- (1) This section applies if a police officer—
 - (a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 209(2)(b);⁸¹ or
 - (b) decides to start, or continues, a proceeding for an indictable offence against an adult by a notice to appear or complaint and summons;

and decides it is not necessary to immediately take a DNA sample from the person.
- (2) With the approval of a senior officer, a police officer may, by written notice (*DNA sample notice*), require the person to report to a police officer at a stated police station or police

80 Section 304 (Where DNA sample may be taken)

81 Section 209 (Additional case when arrest of adult may be discontinued)

establishment to enable a DNA sampler to take a DNA sample from the person.

- (3) The senior 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 a DNA sample is reasonably necessary in the particular circumstances.
- (4) A DNA sampler may take a DNA sample for DNA analysis from a person who attends at a police station or police establishment as required under a DNA sample notice.
- (5) In this section—

senior officer means—

- (a) if the police officer investigating the offence holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
- (b) if the police officer investigating the offence holds the rank of senior sergeant or above—a police officer who is more senior than the investigating officer.

310 Requirements for DNA sample notice

A DNA sample notice—

- (a) must require the relevant person to report to a police officer at a stated police station or police establishment—
 - (i) within 7 days after the issue of the notice; or
 - (ii) on a stated day or within 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; and

- (b) 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

- (c) must be given to the person—
 - (i) if section 309(1)(a) applies, with the notice to appear or summons mentioned in section 209(2)(b); or
 - (ii) if section 309(1)(b) applies, with the notice to appear or complaint and summons; and
- (d) must be signed by the police officer giving the notice.

311 Taking DNA sample from adult before court

- (1) This section applies if, in a proceeding against an adult for 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 a DNA sample for DNA analysis from the person.
- (2) The court may make either of the following orders—
 - (a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;
 - (b) an order—
 - (i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and
 - (ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).
- (3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.
Maximum penalty—2 years imprisonment.
- (4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

- (5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police establishment as required under an order made under subsection (2)(b).

312 Taking DNA sample after finding of guilt

- (1) This section applies if a court finds an adult guilty of an indictable offence, including an indictable offence that is dealt with summarily.
- (2) The court may make either of the following orders—
- (a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;
 - (b) an order—
 - (i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and
 - (ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).
- (3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.
Maximum penalty—2 years imprisonment.
- (4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.
- (5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police establishment as required under an order made under subsection (2)(b).

- (6) If the application for the order is not made at the time, or soon after, the person is found guilty of the indictable offence, the court must consider whether it is appropriate to make the order having regard to the period of time that has elapsed since the finding of guilt and any reason given for the delay in making the application.

313 Detention for taking DNA sample

- (1) To give effect to an order made under section 311(2)(a) or (b)(ii) or 312(2)(a) or (b)(ii), a police officer may detain the person.
- (2) If the person is not already in custody, the time for which the person may be detained is—
 - (a) 1 hour; or
 - (b) a longer reasonably necessary time, having regard to the particular circumstances.

314 Taking DNA sample from prisoner in corrective services facility

- (1) This section applies to a prisoner who is serving a term of imprisonment for an indictable offence, including an indictable offence that is dealt with summarily.
- (2) If the person is detained in a corrective services facility, a DNA sampler may, under an arrangement between the commissioner and the person in charge of the facility—
 - (a) enter the facility; and
 - (b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample from the prisoner for DNA analysis; 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 1 year after it commences.

315 Taking DNA sample from transferred prisoner

- (1) This section applies to a transferred prisoner who is detained in a corrective services facility.
- (2) A DNA sampler may, under an arrangement between the commissioner and the person in charge of the facility—
 - (a) enter the facility; and
 - (b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample from the prisoner for DNA analysis; 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 has effect from when section 314 expires.
- (5) In this section—

transferred prisoner means—

- (a) a prisoner who—
 - (i) was transferred to Queensland from another State under an arrangement under the *Prisoners (Interstate Transfer) Act 1982*; and
 - (ii) is serving a term of imprisonment for an indictable offence committed in the other State, even though the offence was dealt with summarily; or
- (b) a prisoner who—
 - (i) is transferred to Australia from another country under the *International Transfer of Prisoners Act 1997* (Cwlth) and is detained in a Queensland prison under an arrangement made under section 50 of that Act between the Governor-General and the Governor; and

Note—

The Governor may make the arrangement under the *Prisoners International Transfer (Queensland) Act 1997*, section 8.

- (ii) is serving a term of imprisonment for an offence that, if committed in Australia, would be an indictable offence.

316 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, notice to appear or complaint and summons; and
 - (b) considers it is reasonably necessary to take a DNA sample from the child for DNA analysis.
- (2) The police officer may apply to the Childrens Court for an order authorising a DNA sampler to take a DNA sample from the child for DNA analysis.
- (3) 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 for which that chief executive has responsibility.
- (4) The court may order the taking of a DNA 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 will not be in custody when the sample is proposed to be taken, the order—
 - (a) must require the child to report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

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- (b) authorise a police officer to detain the child and take the child to an appropriate place to enable a DNA sample to be taken from the child for DNA analysis if the child does not comply with paragraph (a).
- (6) A child named in an order made under subsection (4) that contains a requirement mentioned in subsection (5) must not contravene the order, unless the child has a reasonable excuse.
Maximum penalty—10 penalty units.
- (7) For subsection (6)—
 - (a) it is a reasonable excuse for the child to contravene the order that a copy of the order has not been given to the child; and
 - (b) it is not a reasonable excuse for the child to contravene the order that complying with it may tend to incriminate the child.
- (8) A DNA sampler may take a DNA sample from the child if the child is in custody, attends at a police station or police establishment as required under an order made under subsection (5) or is detained under an order made under that subsection.
- (9) To give effect to an order made under subsection (4) or (5)(b), a police officer may detain the child.
- (10) If the child is not already in custody, the time for which the child may be detained is—
 - (a) 1 hour; or
 - (b) a longer reasonably necessary time, having regard to the particular circumstances.
- (11) In this section—
parent, of a child, includes an approved foster carer of the child under the *Child Protection Act 1999*.

Division 4 Taking DNA samples from prisoners released under post-prison community based release orders

317 Application of div 4 and non-application of pt 2

- (1) This division applies to a prisoner who—
 - (a) is serving a term of imprisonment for an indictable offence, including an indictable offence that is dealt with summarily; and
 - (b) is the subject of a post-prison community based release order.
- (2) Part 2 does not apply in relation to the asking for, or giving of, a forensic procedure consent under this division or the performance of the forensic procedure under the consent.

318 Definitions for div 4

In this division—

post-prison community based release order see the *Corrective Services Act 2000*, schedule 3.

prescribed indictable offence means any of the following indictable offences—

- an offence against the Criminal Code, section 210
- murder
- grievous bodily harm
- rape
- robbery.

Note—

For the offences see the Criminal Code, sections 210 (Indecent treatment of children under 16), 300 (Unlawful homicide), 320 (Grievous bodily harm), 349 (Rape) and 409 (Definition of *robbery*).

318A Prisoner serving term of imprisonment for prescribed indictable offence

- (1) This section applies if the indictable offence for which the prisoner is serving the term of imprisonment is a prescribed indictable offence.
- (2) A police officer may by written notice given to the prisoner, require the prisoner to report to a police officer at a stated police station or police establishment to enable a DNA sampler to take a DNA sample from the prisoner for DNA analysis.
- (3) The notice must be in the form of a DNA sample notice under section 310(a), (b) and (d).
- (4) A DNA sampler may take a DNA sample for DNA analysis from a prisoner who attends at a place under the notice.

318B Prisoner serving term of imprisonment for other indictable offences

- (1) This section applies if the indictable offence for which the prisoner is serving the term of imprisonment is not a prescribed indictable offence.
- (2) A police officer may by notice in the approved form given to the prisoner ask the prisoner for a forensic procedure consent to the taking of a DNA sample from the prisoner.
- (3) The prisoner may give the forensic procedure consent by signing an approved form for the consent.
- (4) If the prisoner consents, a DNA sampler may take a DNA sample for DNA analysis from the prisoner.

318C General requirements for giving informed consent

- (1) To enable the prisoner to give an informed consent, the approved form must state the following—
 - (a) the results of the DNA analysis of the DNA sample may be included in QDNA and used in a way permitted under this chapter;
 - (b) how a DNA sample may be taken and where it may be taken from;

- (c) the class of qualified person who may take the DNA sample;
- (d) that the prisoner may refuse to give the consent;
- (e) that if the prisoner gives the consent, the prisoner may withdraw the consent before the DNA sample is taken or while it is being taken;
- (f) that the results of the DNA analysis may provide evidence that may be used in a court proceeding.

318D Application to court under s 312 for order

- (1) This section applies if a prisoner is asked to consent to the taking of a DNA sample under section 318B and the person fails to consent or withdraws the consent.
- (2) A police officer may apply to a court under section 312 for an order under that section.

318E Court make order despite time that has elapsed since finding of guilt

- (1) In deciding an application made under section 318D the time that has elapsed since the prisoner was found guilty of any indictable offence is immaterial.
- (2) This section applies despite section 312(6).

318F Expiry of div 4

This division expires 1 year after it commences.

Division 5 Analysis and use of DNA samples**318G 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 chapter or received from a declared law enforcement agency; and
 - (b) to perform any further analysis of a DNA sample that may be reasonably necessary for ensuring the accuracy of an earlier analysis; and
 - (c) to keep a DNA sample and the results of a DNA analysis of the sample until they are 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 QDNA; and
 - (e) to compare the results of a DNA analysis of a DNA sample with other results of DNA analyses of samples, whether or not DNA samples, to which the police officer or person has access.
- (2) A DNA sample mentioned in subsection (1)(c) must be kept in a secure place.
 - (3) It is lawful for a police officer to use the results of any DNA analysis for performing any function of the police service.

318H When DNA sample taken from suspected person and results must be destroyed

- (1) A DNA sample taken from a person suspected of having committed an indictable offence and the results of a DNA analysis of the sample must be destroyed within a reasonably practicable time after the end of 1 year from—
 - (a) if the person's arrest for the indictable offence is discontinued under section 208(1) or 211(6)⁸²—the day the arrest is discontinued; or
 - (b) if the proceeding for the indictable offence is discontinued before a court—the day the proceeding is discontinued; or

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

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- (c) if the person is found not guilty of the indictable offence, including on appeal—the day the person is found not guilty of the offence; or
 - (d) if a proceeding for the indictable offence is not started within 1 year after the sample is taken—the day the sample is taken.
- (2) Subsection (1) does not apply if—
- (a) the person has been proceeded against for another indictable offence the charge of which has not been decided; or
 - (b) the person has been found guilty of another indictable offence, including an indictable offence dealt with summarily, 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 for an indictable offence because he or she has been found unfit for trial because of mental illness.
- (3) Subsection (1) does not apply if the DNA sample was taken under a forensic procedure consent and the person has not, under section 281(1)(g),⁸³ limited the purpose for which the sample may be used under the consent.
- (4) Subsection (1) does not apply to a DNA sample taken from a prisoner under section 314 or 315 or division 4,⁸⁴ or the results of a DNA analysis of the sample, other than to the extent subsection (1)(c) applies to the offence for which the person was imprisoned.
- (5) For subsection (1), the results of a DNA analysis may be destroyed by deleting any information in QDNA that

83 Section 281 (General requirements for giving informed forensic procedure consent)

84 Section 314 (Taking DNA sample from prisoner in corrective services facility), 315 (Taking DNA sample from transferred prisoner) or division 4 (Taking DNA samples from prisoners released under post-prison community based release orders)

identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample.

Division 6 DNA databases

318I State DNA database

- (1) The commissioner may record information obtained by a DNA analysis of a DNA sample taken under this chapter in a database in Queensland that is approved by the commissioner (*QDNA*).
- (2) The commissioner may also include in QDNA—
 - (a) information held by or for the commissioner and obtained by a DNA analysis of either of the following—
 - (i) a sample, including blood, taken before or after the commencement of this section;
 - (ii) a thing a police officer reasonably suspects is evidence of the commission of an offence; and
 - (b) information obtained under an arrangement made under section 318ZY;⁸⁵ and
 - (c) information obtained from a declared law enforcement agency if there is no arrangement made under section 318ZY relevant to the information.
- (3) If the commissioner considers it appropriate, the information may also be included in an appropriate QDNA index.
- (4) If the commissioner considers it appropriate, the commissioner may—
 - (a) transfer information from one QDNA index to another QDNA index; or
 - (b) use information in one QDNA index for the purposes of another QDNA index; or
 - (c) compare information within a QDNA index; or

85 Section 318ZY (Ministerial arrangements)

- (d) compare information in one QDNA index with information in another QDNA index.

318J Transmitting information to CrimTrac

- (1) The commissioner may transmit to CrimTrac information kept in QDNA for inclusion in the CrimTrac database for the purpose of CrimTrac, on behalf of the commissioner—
 - (a) comparing the information; or
 - (b) comparing the information with other information supplied to CrimTrac by a declared law enforcement agency.
- (2) The comparison mentioned in subsection (1) may happen at any time.
- (3) The commissioner may enter into an arrangement with CrimTrac about how, and in what circumstances, information transmitted to it by the commissioner may be compared, kept or otherwise managed.
- (4) Subsection (1) is not dependent on the existence of an arrangement made under section 318ZY.⁸⁶

318K Use of QDNA or CrimTrac database

It is lawful for the commissioner to use QDNA or the CrimTrac database for performing any function of the police service.

318L Limitation on use of results of DNA analysis

- (1) The use of the results of a DNA analysis under section 318G, 318I(4), 318J or 318K is subject to—
 - (a) any limitation made under section 281(1)(g)⁸⁷ that applies to that analysis; or
 - (b) section 306.⁸⁸

86 Section 318ZY (Ministerial arrangements)

87 Section 281 (General requirements for giving informed forensic procedure consent)

88 Section 306 (Use of DNA analysis of DNA sample taken from child under 14)

- (2) The results of a DNA analysis must not be compared with the results of another DNA analysis that is in a QDNA index unless a table prescribed under a regulation permits the comparison.
- (3) The table must not permit a comparison that is contrary to—
 - (a) any limitation made under section 281(1)(g) that applies to that analysis; or
 - (b) section 306.
- (4) A regulation may exempt a comparison of the results of DNA analyses from subsection (2).
- (5) A regulation may prescribe the types of QDNA indexes and the type of information that may be included in each index.

Part 6 Non-medical examinations

318M Application of pt 6

This part applies if a police officer is satisfied performing a non-medical examination on a person may provide evidence of the commission of an indictable offence.

318N Definition for pt 6

In this part—

authorised police officer means—

- (a) if the police officer seeking approval under section 318P(3)—
 - (i) holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or
 - (ii) holds the rank of senior sergeant or above—a police officer who is more senior than the police officer seeking approval; or
- (b) in any case—

- (i) the police officer in charge of a police station or police establishment; or
- (ii) a police officer performing functions for the police service as a scientific officer or scenes of crime officer.

318O Commissioner may authorise police officer to perform non-medical examinations

- (1) The commissioner may authorise a police officer to perform non-medical examinations.
- (2) 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 perform the examinations; or
 - (b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

318P Examination if proceeding started against adult by arrest, notice to appear or complaint and summons

- (1) This section applies if a police officer—
 - (a) starts or continues a proceeding for an indictable offence against an adult by arrest; or
 - (b) starts a proceeding for an indictable offence against an adult by 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 an authorised police officer under subsection (3) to perform a non-medical examination on the person.
- (3) A police officer may, with the approval of an authorised police officer, detain the person for the time reasonably necessary to perform the examination on the person and, if necessary, take the person to a place with appropriate facilities for performing the examination.
- (4) Before approving the detention of the person, the authorised police officer must be satisfied performing the examination

may provide evidence of the commission of an indictable offence.

- (5) An authorised examiner may perform a non-medical examination on a person detained under an approval of an authorised police officer under this section.

318Q Non-medical examination notice

- (1) This section applies if a police officer—
 - (a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 209(2)(b);⁸⁹ or
 - (b) decides to start, or continues, a proceeding for an indictable offence against an adult by notice to appear or complaint and summons;

and decides it is not necessary to immediately perform a non-medical examination on the person.

- (2) With the approval of an authorised police officer, a police officer may, by written notice (*non-medical examination notice*) given to the person, require the person to report to a police officer at a stated police station or police establishment to enable an authorised examiner to perform a non-medical examination on the person.
- (3) Before approving the issue of a non-medical examination notice, the authorised police officer must be satisfied performing the examination may provide evidence of the commission of an indictable offence.
- (4) An authorised examiner may perform a non-medical examination on a person who attends at a police station or police establishment as required under a non-medical examination notice.

318R Requirements for non-medical examination notice

A non-medical examination notice—

⁸⁹ Section 209 (Additional case when arrest of adult may be discontinued)

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- (a) must require the person to report to a police officer at a stated police station or police establishment—
 - (i) within 7 days after the issue of the notice; or
 - (ii) on a stated day or within stated hours within 7 days after the issue of the notice;to enable an authorised examiner to perform a non-medical examination on the person; and
- (b) must state—
 - (i) it is an offence to fail to comply with the notice; and
 - (ii) that, before the examination is performed, the person must produce to a police officer satisfactory evidence of his or her identity; and
- (c) must be given to the person—
 - (i) if section 318Q(1)(a) applies, with the notice to appear or summons mentioned in section 209(2)(b); or
 - (ii) if section 318Q(1)(b) applies, with the notice to appear or complaint and summons; and
- (d) must be signed by the police officer giving the notice.

Part 7 Forensic procedures performed by doctors and dentists

Division 1 Preliminary

318S Application of pt 7

- (1) This part applies to the performance of a forensic procedure by a doctor or dentist under this chapter other than the taking of a DNA sample under part 5.⁹⁰
- (2) Nothing in this part requires a person who has custody of an independent person mentioned in section 318U(b) to deliver the independent person to the place where a forensic procedure is to be performed by a doctor or dentist.
- (3) Also, nothing in this part requires a police officer to allow a relevant person to telephone or speak to an independent person, or allow an independent person to be present while a forensic procedure is being performed by a doctor or dentist—
 - (a) if the police officer reasonably suspects the independent person is an accomplice or accessory of the relevant person; or
 - (b) if the police officer considers that to do so is likely to result in—
 - (i) an accomplice or accessory of the relevant person taking steps to avoid apprehension; or
 - (ii) evidence being concealed, fabricated or destroyed; or
 - (iii) a witness being intimidated.

Division 2 Actions by police officers and presence of independent persons

318T When doctor or dentist may be asked to perform forensic procedure

- (1) A police officer may ask a doctor or dentist to perform a forensic procedure on a person only if the performance of the procedure is authorised under a forensic procedure consent or a forensic procedure order.
- (2) If the relevant forensic procedure is to be performed under a forensic procedure order, the police officer must give the doctor or dentist a copy of the order.

318U What person must be told before doctor or dentist performs a forensic procedure

Before a doctor or dentist performs a forensic procedure on a person, a police officer must tell the person—

- (a) if the procedure is authorised under a forensic procedure order—a forensic procedure may be performed on the person without the person’s consent because a forensic procedure order authorises its performance; and
- (b) that the person has the right to have 2 people (each of whom is an *independent person*) of his or her choice present while it is being performed; and
- (c) that, for exercising the right mentioned in paragraph (b), he or she may—
 - (i) telephone or speak to a friend or relative to inform that person of his or her whereabouts and ask the person to be present while the procedure is being performed; and
 - (ii) telephone or speak to a lawyer and arrange, or attempt to arrange, for the lawyer to be present while the procedure is being performed.

318V Arrangements for attendance of independent person

- (1) The police officer must delay performing the forensic procedure for a reasonable time to allow the relevant person to telephone or speak to a person mentioned in section 318U(c).
- (2) What is a reasonable time to delay performing the procedure to allow the relevant person to speak to an independent person will depend on the particular circumstances, including, for example, the relevant person's age and the nature of the proposed procedure.
- (3) If the relevant person arranges for an independent person to be present, the police officer must delay performing the procedure for a reasonable time to allow the independent person to arrive.
- (4) What is a reasonable time to delay performing the procedure to allow the independent person to arrive will depend on the particular circumstances, including, for example—
 - (a) how far the independent person has to travel to the place where the forensic procedure is to be performed; and
 - (b) when the independent person indicated he or she would arrive at the place.
- (5) The State is not responsible for paying any costs of the independent person's attendance.
- (6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

318W Speaking to and presence of independent person

- (1) This section applies if the independent person arrives.
- (2) If the relevant person asks to speak to the independent person, the investigating police officer must—
 - (a) as soon as practicable, provide reasonable facilities to enable the relevant person to speak to the independent person; and
 - (b) if the relevant person is a child and it is reasonably practicable to do so—allow the relevant person to speak to the independent person in circumstances in which the conversation can not be overheard; and

- (c) in any case—if the independent person is a lawyer and it is reasonably practicable to do so, allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.
- (3) If the relevant person asks that the independent person be present while the forensic procedure is being performed, the investigating police officer must allow the independent person to be present and give advice to the relevant person during the performance of the procedure.

318X Absence of independent person does not affect lawfulness of custody etc.

- (1) This section applies if a relevant person wishes to have an independent person present while a forensic procedure is being performed on the person and—
 - (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 forensic procedure is delayed to allow the independent person to attend.
- (2) The lawfulness of the detention in custody of the relevant person or of the performance of the forensic procedure is not affected by the absence, while the procedure is being performed, of the independent person.

318Y When police officer may exclude independent person

- (1) If a police officer considers an independent person is unreasonably interfering with the performance of a forensic procedure, the police officer may exclude the independent person from being present while the procedure is being performed.
- (2) Before excluding the independent person, the police officer must—
 - (a) warn the person not to unreasonably interfere with the performance of the procedure; and

- (b) tell the person that he or she may be excluded from being present if he or she continues to unreasonably interfere with the performance of the procedure; and
- (c) give the person 1 opportunity to stop unreasonably interfering.

318Z Action by police officer if independent person excluded

- (1) This section applies if a police officer excludes an independent person from being present while a forensic procedure is being performed on a person.
- (2) The police officer must—
 - (a) advise the person that he or she may telephone or speak to another independent person, to ask the person to be present while the procedure is being performed; and
 - (b) if the person arranges for another independent person to be present—delay the performance of the procedure for a reasonable time to allow the other independent person to be present while the procedure is being performed.
- (3) Also, the police officer must arrange for someone else to be present while the procedure is being performed if the person on whom the procedure is being performed—
 - (a) is a child or a person with impaired capacity; and
 - (b) has not arranged for another independent person to be present while the procedure is being performed.

Division 3 Performing forensic procedures

318ZA Doctor's powers

- (1) This section applies if a police officer asks a doctor under section 318T to perform a forensic procedure on a person.
- (2) The doctor may perform a forensic procedure that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

- (3) If the doctor is performing an intimate forensic procedure and considers it reasonably necessary to also perform a non-intimate forensic procedure or a medical examination the doctor may also perform a non-intimate forensic procedure or a medical examination on the person that may provide evidence of the commission of the offence.
- (4) The doctor may act under subsection (3) whether or not it is necessary to do so to enable the doctor to perform the intimate forensic procedure.

318ZB Dentist's powers

- (1) This section applies if a police officer asks a dentist to perform a forensic procedure on a person under section 318T.
- (2) The dentist may perform a forensic procedure to the extent mentioned in section 273 that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

318ZC Samples and results of analysis to be given to person

- (1) A doctor or dentist who takes a sample or other thing from another person in performing an intimate forensic procedure under this chapter must give the other person, or someone nominated by the person, 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 a part of the sample or thing or an equivalent sample or thing to the other person; or

Example—

The size of the sample taken is too small to effectively provide the person with an equivalent sample.

- (b) in the case of a sample, an equivalent sample for the purpose may be taken from the other person's body at any time.

Example—

A sample of blood taken for DNA analysis.

- (3) Also, if a doctor considers complying with subsection (1) may be inappropriate because, for example, the part or equivalent sample or thing may be used to, or could, transmit a communicable disease, the doctor may instead send, at the other person's expense, the part or equivalent sample or thing to a doctor nominated by the other person or by the other person's lawyer for safe custody.
- (4) If the other person or the other person's lawyer does not nominate a doctor, the doctor taking the sample or thing need not provide the part or equivalent sample or thing and the part or equivalent sample or thing intended to be given to the other person may be destroyed.
- (5) As soon as reasonably practicable after a police officer is given the results of an analysis conducted using a sample or other thing taken as mentioned in subsection (1), the police officer must give the person to whom the results relate, or someone nominated by the person, a copy of the results.

Part 8 Matters relating to performing forensic procedures

318ZD Right to interpreter

- (1) This section applies if a police officer reasonably suspects a relevant person is unable, because of an inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.
- (2) Before a qualified person performs a forensic procedure under a forensic procedure consent or a forensic procedure order, the police officer must arrange for the presence of an interpreter and delay performing the procedure until the interpreter is present.

318ZE Power to analyse samples

- (1) It is lawful for a person to analyse a sample, substance, impression, photograph or other thing taken under this chapter.
- (2) It is lawful for a police officer to keep the thing and the results of the analysis for use in a proceeding for an offence.
- (3) It is lawful for the commissioner to use the thing or results of the analysis for performing any function of the police service.
- (4) This section is subject to section 301 and part 5, division 5.⁹¹

318ZF Order for person who fails to comply with reporting notice

- (1) This section applies if a police officer reasonably believes that a person has failed to comply with a reporting notice.
- (2) A police officer may apply to a magistrate in the approved form for an order authorising a police officer to detain the person to perform any forensic procedure to which the reporting notice relates for the time reasonably necessary to perform the procedure.
- (3) A magistrate may make the order if the magistrate is satisfied on the balance of probabilities that the person failed to comply with a reporting notice and making the order is justified in the circumstances.
- (4) The person named in the application is not entitled to be given notice of, or to be heard on, the application.
- (5) A qualified person for the forensic procedure to which the order relates may perform the procedure on the person.
- (6) In this section—

reporting notice means an identifying particulars notice, DNA sample notice, non-medical examination notice or a notice under section 318A(2).⁹²

91 Section 301 (Destruction of identifying particulars) and part 5 (DNA procedures), division 5 (Analysis and use of DNA samples)

92 Section 318A (Prisoner serving term of imprisonment for prescribed indictable offence)

318ZG Detention for performing forensic procedure

To give effect to an order made under section 318ZF(3), a police officer may detain the person for—

- (a) 1 hour; or
- (b) a longer reasonably necessary time, having regard to the particular circumstances.

318ZH General power for performing forensic procedure

- (1) This section applies for performing a forensic procedure under this chapter.
- (2) A police officer may give any reasonably necessary directions for ensuring the procedure is performed.
- (3) If the procedure is being performed under a forensic procedure consent, it is not an offence for the person who gave the consent or the person to whom it relates to fail to comply with a direction given under subsection (2).
- (4) In performing the forensic procedure, a qualified person may use any equipment necessary for the purpose.

318ZI Help with, and use of force for, performing forensic procedure

- (1) This section applies if a qualified person may perform a forensic procedure on a person.
- (2) The qualified person may ask another person to give reasonably necessary help.
- (3) If the forensic procedure is an intimate forensic procedure, the person asked to help the doctor or dentist must be—
 - (a) a person of the same sex as the person who is to undergo the procedure; or
 - (b) another doctor or another dentist;unless a person mentioned in paragraph (a) or (b) can not reasonably be called on.
- (4) It is lawful for the qualified person and the person helping to use reasonably necessary force for performing the procedure.

318ZJ General power to require further attendance

- (1) This section applies if a person attends at a stated place as required by an order, requirement or direction (*original direction*) to have a forensic procedure performed on the person and a police officer considers it is not reasonably practicable to perform the forensic procedure because—
 - (a) a qualified person who may perform the procedure is not available to perform the procedure; or
 - (b) equipment required to perform the procedure is not available at the place; or
 - (c) for another reason it is impracticable to perform the procedure.
- (2) A police officer may direct the person (*later direction*) to attend the place or another place for the performance of the relevant forensic procedure at a stated reasonable time on a stated reasonable day.
- (3) A later direction has effect as an extension of the original direction.

318ZK Protecting the dignity of person in performing a non-intimate forensic procedure

- (1) If it is reasonably necessary for performing a non-intimate forensic procedure on a person, a police officer may ask the person to remove stated items of the person's clothing.
- (2) Subsection (3) applies if a direction under section 318ZH(2) relating to a non-intimate forensic procedure requires a person to remove stated items of the person's clothing.
- (3) 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 procedure to be performed; and
 - (b) if reasonably practicable, must ensure the procedure is not performed—
 - (i) in the presence of someone whose presence is not required while the procedure is being performed; or

- (ii) where someone not involved in performing the procedure can see the procedure being performed.

318ZL Effect of withdrawal of consent

- (1) This section applies if a forensic procedure is being performed under a forensic procedure consent.
- (2) If the person who gave the consent withdraws the consent, the person performing the procedure and any person helping that person must immediately stop performing the procedure.
- (3) Subsection (4) applies if the procedure is to be, or is being, performed on—
 - (a) a child under 14 years; or
 - (b) a person with impaired capacity and the consent was given for the person by a parent of the person.
- (4) The person who consented to the procedure being performed is taken to have withdrawn the consent if the child or person with impaired capacity objects to the performance of the procedure or resists while the procedure is being performed.
- (5) Withdrawal of consent does not affect the admissibility in evidence of—
 - (a) anything observed, taken or collected before the consent was withdrawn; or
 - (b) an analysis done on anything taken or collected before the consent was withdrawn; or
 - (c) anything else done under this chapter in relation to a thing mentioned in paragraph (a) or an analysis mentioned in paragraph (b).

318ZM Powers under this part are additional to other powers

The powers a person has under this part are additional to, and are not limited by, the powers the person otherwise has under this chapter.

Part 9 **Corresponding forensic procedure orders**

318ZN Definitions for pt 9

In this part—

appropriate person means—

- (a) the person performing functions in relation to the police force or service of the Commonwealth or another State that correspond to the functions of the commissioner; or
- (b) another authority prescribed under a regulation.

responsible Minister means a Minister of the Commonwealth or of another State responsible for the administration of a law that authorises the performance of any forensic procedure.

318ZO Arrangements with the Commonwealth and other States

The Minister may, for the State, enter into an arrangement with a responsible Minister providing for—

- (a) the registration by the commissioner of orders for performing forensic procedures made under the law of the responsible Minister's jurisdiction (*corresponding forensic procedure orders*); or
- (b) the registration of forensic procedure orders under the law of the responsible Minister's jurisdiction.

318ZP Registration of orders

- (1) An appropriate person may apply to the commissioner for the registration, or the cancellation of registration, of a corresponding forensic procedure order.
- (2) The application must be accompanied by a copy of the corresponding forensic procedure order, certified by the person who made it.

318ZQ Effect of registration

On registration of a corresponding forensic procedure order by the commissioner, the order has effect and may be enforced as if it were a forensic procedure order made under this chapter.

Part 10 Offences**318ZR Unlawful supply of destroyable DNA sample**

- (1) A person must not unlawfully supply a destroyable DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the CrimTrac database knowing that the material was a destroyable DNA sample.

Maximum penalty—2 years imprisonment.

- (2) In this section—

destroyable DNA sample means a DNA sample for which the time in which it must be destroyed under section 318H has passed.

318ZS Unlawful supply of DNA sample

- (1) A person must not unlawfully supply a DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the CrimTrac database.

Maximum penalty—2 years imprisonment.

- (2) In this section—

a DNA sample means a DNA sample that is not related to the performance at any time of a function of the police service or a function authorised under this chapter.

318ZT Unlawful use of stored information

- (1) A person must not access information stored in QDNA or the CrimTrac database (*stored information*) other than to perform a function of the police service or a function authorised under this chapter.

Maximum penalty—2 years imprisonment.

- (2) Subsection (1) does not apply to—
 - (a) stored information that can not be used to discover the identity of any person; or
 - (b) accessing information stored in the CrimTrac database if the access is authorised under another law.

318ZU Unlawful matching of DNA analysis results

- (1) A person must not knowingly do anything that results in a DNA record being compared with another DNA record, other than as permitted under this chapter.

Maximum penalty—2 years imprisonment.

- (2) Subsection (1) applies whether or not the DNA record is compared with DNA records kept on the same or a separate part of QDNA or the CrimTrac database.
- (3) It is not an offence to match DNA records in contravention of subsection (1) only for the purpose of administering QDNA or the CrimTrac database.
- (4) In this section—

DNA record means a record on QDNA or the CrimTrac database of the results of a DNA analysis.

318ZV Unlawful recording of identifying information on QDNA

- (1) A person must not knowingly cause identifying information about a person that is obtained from a DNA sample taken from the person under this chapter to be recorded in QDNA after the time the sample to which the information relates is required under section 318H to be destroyed.

Maximum penalty—2 years imprisonment.

- (2) In this section—

identifying information, about a person, means information that identifies the person.

318ZW Unlawful retention of results of DNA analysis in QDNA

- (1) A person must not wilfully retain in QDNA the results of a DNA analysis after the time the results are required to be destroyed under section 318H.

Maximum penalty—2 years imprisonment.

- (2) A person does not commit an offence against subsection (1) if the results of the DNA analysis have been destroyed as mentioned in section 318H(5).

318ZX Unlawful disclosure of information

- (1) A person who has access to information stored in QDNA or the CrimTrac database must not unlawfully disclose the information to anyone else.

Maximum penalty—2 years imprisonment.

- (2) A person may only disclose information stored in QDNA or the CrimTrac database for one or more of the following purposes—

- (a) to perform a function of the police service;
- (b) for a purpose authorised under this or another Act;
- (c) in accordance with an arrangement made under section 318ZO or 318ZY;
- (d) to make the information available, as permitted under a regulation, to the person to whom the information relates;
- (e) to administer QDNA or the CrimTrac database;
- (f) for a coronial inquest or investigation.

- (3) This section does not apply to information that can not be used to discover the identity of a person.

Part 11 Other provisions

318ZY Ministerial arrangements

- (1) The Minister may, for the State, make an arrangement with a declared law enforcement agency, or a responsible Minister of another jurisdiction, relating to any of the following—
 - (a) access by the declared law enforcement agency or an entity of the other jurisdiction to DNA material held by the commissioner;
 - (b) access by the commissioner to DNA material held by a declared law enforcement agency or an entity of the other jurisdiction;
 - (c) the use by the declared law enforcement agency, an entity of the other jurisdiction or the commissioner of the DNA material.
- (2) An arrangement may recognise that access to, and comparison of, the results of DNA analyses may be by use of the CrimTrac database.
- (3) The commissioner may, under an arrangement made under this section, provide access to DNA material held by the commissioner or stored on the CrimTrac database to a declared law enforcement agency or an entity of another jurisdiction.
- (4) The commissioner may use DNA material to which the commissioner has access under an arrangement made under this section for performing any function of the police service.
- (5) In this section—

DNA material means—

 - (a) the results of DNA analyses of things whether or not stored on a database; or
 - (b) things on which DNA analyses have been performed.

responsible Minister, of another jurisdiction, means a Minister of the Commonwealth or another State responsible for the administration of a law that authorises the taking of a sample for DNA analysis.

318ZZ Application of other laws

- (1) This chapter does not limit or exclude the operation of another law of the State relating to any of the following—
 - (a) performing a forensic procedure, including a procedure not mentioned in this chapter;
 - (b) without limiting paragraph (a), performing a breath analysis or a breath test or producing samples of blood or urine to determine the level of alcohol or drugs, if any, present in a person's body;
 - (c) taking forensic samples, including samples not mentioned in this chapter;
 - (d) taking identification evidence;
 - (e) searching a person;
 - (f) keeping or using anything taken or information obtained because of an activity described in paragraphs (a) to (e).
- (2) It is lawful for a person to exercise a power under this chapter to do something mentioned in subsection (1) even though the other law specifies the way the power may or must be exercised.

318ZZA Forensic material lawfully obtained in another jurisdiction

- (1) This section applies to forensic material lawfully obtained under the law of another jurisdiction, whether before or after the commencement of this section.
- (2) The material may be retained and used in this State for performing a function of the police service despite the material having been obtained in circumstances in which this Act would not authorise the material to be obtained, or under requirements that are less stringent, or otherwise substantially different to, the requirements that would apply under this Act.
- (3) In this section—

forensic material means anything obtained by performing a forensic procedure and includes the results of the analysis of the thing.

318ZZB Evidentiary provision

- (1) A certificate signed by the commissioner and stating any of the following is evidence of what it states—
 - (a) on a stated day and at a stated time a stated police officer authorised the performance of a stated forensic procedure on a stated person;
 - (b) a stated police officer was on a stated day an authorised examiner;
 - (c) a stated person was on a stated day a DNA sampler;
 - (d) the way in which a DNA sample taken from a stated person was handled and stored;
 - (e) a stated person took or sent a stated DNA sample from a stated place to another stated place;
 - (f) a stated person received a stated DNA sample at a stated place;
 - (g) a certificate given under the *Evidence Act 1977*, section 95A,⁹³ relates to a stated DNA sample taken from a stated person.
- (2) If, in a criminal proceeding, the prosecuting authority intends to rely on the certificate, it must at least 10 business days before the hearing day, give a copy of the certificate to the defendant or the defendant's lawyer.
- (3) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 3 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.
- (4) If the defendant acts under subsection (3), the certificate stops being evidence of the matter to be challenged.
- (5) In this section—

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

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

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

Chapter 8B Blood and urine testing of persons suspected of committing sexual or other serious assault offences

Part 1 Preliminary

319 Purpose of ch 8B

The purpose of this chapter 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 ch 8B

- (1) This chapter 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.⁹⁴
- (2) This chapter 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 chapter does not apply to an assault that involves—
 - (a) the penetration of the anus or vagina by an object other than a penis; or
 - (b) the transfer of blood or another bodily fluid in a way that does not penetrate the anus, vagina, a mucous membrane or the skin of a victim; or
 - (c) spitting saliva onto intact skin.

321 Certain Acts do not apply to this chapter

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

⁹⁴ 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).

Part 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.

Part 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 chapter 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;

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- (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 chapter 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 chapter 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 445⁹⁵—

- (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.

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

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.

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.⁹⁶

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 445⁹⁷—
 - (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
- (b) has the consent of the event organiser; or

⁹⁶ See section 382 (General provision about searches of persons).

⁹⁷ Section 445 (Offence to contravene direction or requirement of police officer)

(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) Also, this part applies to the abatement of environmental nuisance caused by excessive noise that—
 - (a) is emitted from a vehicle on a road or in a public place; and
 - (b) is emitted by an appliance for electronically producing or amplifying music or other sounds.
- (3) However, this part does not apply to the abatement of environmental nuisance caused by 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.
- (4) Also, in relation to environmental nuisance caused by excessive noise emitted from a motor vehicle on a road or in a public place, this part only applies to excessive noise emitted

by a radio, CD player or other similar equipment in the vehicle.

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.
- (3) However, this section does not stop a police officer taking action under this part without a complaint in relation to excessive noise emitted from a motor vehicle on a road or in a public place.

360 Powers of police officers on investigation of excessive noise

- (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) Also, this section applies if a police officer is reasonably satisfied the noise being emitted from a vehicle on a road or in a public place is excessive in the circumstances.
- (3) In deciding whether noise is excessive noise in the circumstances for subsection (1), 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.

- (4) In deciding for subsection (2) whether noise is excessive in the circumstances, a police officer may have regard to the degree of interference or annoyance the noise is causing, or is likely to cause, to persons in the vicinity of the road or public place.

Example—

The person may be causing interference or annoyance to patrons of a motel by continually driving past the motel with the volume of a radio in the car at an excessive level.

- (5) 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, or, for a vehicle, the driver of the vehicle, 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***).
- (6) 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 360 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—

- 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 nuisance direction*) may be given orally or by written notice.

Part 4A Powers for assisting coroners

371AA Entry of place on suspicion of death or injury

- (1) This section applies if a police officer reasonably suspects someone in a place is dead or in need of urgent medical treatment.

Example—

A police officer may form a reasonable suspicion because of a person's concerns about an elderly neighbour who has not been seen for several days and whose absence can not otherwise be explained.

- (2) The police officer may enter the place to find out whether someone in the place is dead or in need of urgent medical treatment.
- (3) If a person at the place is found dead or in need of urgent medical treatment, the police officer may remain at the place for only as long as is necessary to ensure that anything necessary to be done for the person is done.

Examples for subsection (3)—

- 1 It may be necessary for a body to be taken to a mortuary.
- 2 It may be necessary for an ambulance to be called to take a person to hospital.
- 3 It may be necessary for a police photographer to photograph a body or other thing that may help a coroner establish the cause of death of the person.
- 4 It may be necessary to take steps to secure the premises.

371AB Powers for reportable deaths

- (1) This section applies if—
 - (a) a police officer attends a place where there is the body of a deceased person; and
 - (b) the officer reasonably believes the person's death is a death that must, under the *Coroners Act 2003*, be reported to a coroner.

- (2) The officer may arrange for the person's body to be taken to a mortuary where autopsies ordered by coroners are conducted.⁹⁸
- (3) The officer may take reasonable steps to restrict entry to the place for as long as is necessary to arrange for the person's body to be taken to the mortuary.
- (4) The officer may seize anything at the place that the officer reasonably suspects may be relevant to an investigation of the death by a coroner.
- (5) The officer may photograph the body, or anything else at the place that the officer reasonably suspects may be relevant to an investigation of the death by a coroner.
- (6) The officer may stay on the place and re-enter it for the time reasonably necessary to do something permitted under this section.

371AC Restricting entry to place to allow investigation

- (1) This section applies if—
 - (a) a coroner is investigating a death at a place where—
 - (i) the death is believed to have happened; or
 - (ii) something that caused or contributed to the death is believed to have happened; and
 - (b) the place is not a crime scene; and
 - (c) the coroner directs a police officer to restrict entry to the place.
- (2) The officer may take reasonable steps to restrict entry to the place by anyone other than—
 - (a) a police officer or another person who is helping the coroner investigate the death; or
 - (b) a person whose presence is needed to preserve life or property at the place; or

⁹⁸ See the *Coroners Act 2003*, section 18(2)(a) for the power of a police officer to give directions to a person taking the body to a mortuary.

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- (c) someone who has the coroner's permission to be at the place.
- (3) The officer must not restrict entry to the place for any longer than is necessary for the investigation.
- (4) A person must not enter a place to which entry is restricted, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—120 penalty units.

371AD Coroner's search warrant

- (1) A coroner may, on his or her own initiative, issue a search warrant for a place if the coroner reasonably suspects that there is evidence at the place that may be relevant to the coroner's investigation.
- (2) The search warrant must state—
 - (a) that a police officer may exercise the powers mentioned in subsection (4) at the place; and
 - (b) brief particulars that identify the death that the coroner is investigating; and
 - (c) the 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 search warrant ends, being no more than 7 days after the search warrant is issued.
- (3) The ways that a coroner may send the search warrant to a police officer include by fax or other electronic means.
- (4) Under the search warrant, a police officer has—
 - (a) the powers described in section 74(1)(a) to (e) and (g); and
 - (b) power to seize a thing found at the place, or on a person found at the place, that the police officer reasonably suspects may be relevant to the coroner's investigation; and

Example of paragraph (b)—

A suicide note.

- (c) power to inspect, measure, photograph or film the place or anything at the place; and
 - (d) power to take a thing, or a sample of a thing, from the place for testing; and
 - (e) power to copy a document at the place; and
 - (f) power to require a person at the place to give the police officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).
- (5) A police officer must comply with section 75 when executing the search warrant.
- (6) A police officer must not exercise a power under subsection (4)(c) to (f) unless the police officer reasonably suspects that the exercise of the power is necessary for the coroner's investigation.

371AE Dealing with seized things

- (1) This section applies if a police officer seizes something under—
- (a) section 371AB(4); or
 - (b) a search warrant issued under section 371AD.
- (2) Having seized something, the officer may—
- (a) move the thing from the place; or
 - (b) leave the thing at the place, but take reasonable action to restrict access to it; or
- Examples of restricting access to a thing—*
- 1 Sealing a thing and marking it to show access to it is restricted.
 - 2 Sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted.
- (c) deal with the thing in another way that a coroner directs.
- (3) If the police officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or

something restricting access to the thing, without the approval of a police officer.

Maximum penalty—120 penalty units.

371AF Power to require information

- (1) This section applies if—
 - (a) a police officer is helping a coroner to investigate a death; and
 - (b) the officer reasonably believes a person may be able to give information relevant to the investigation.
- (2) The officer may require the person to give information relevant to the investigation.
- (3) When making the requirement, the officer must inform the person that the person may—
 - (a) fail to give the information if the information would tend to incriminate the person; and
 - (b) seek legal advice before giving the information.

371AG Use of evidence obtained under Coroners Acts

To remove doubt, it is declared that a thing obtained by a police officer under this part may be used in a criminal proceeding.

Part 5 Miscellaneous powers

371A Power to seize potentially harmful things

- (1) This section applies if a police officer—
 - (a) finds a person in circumstances in which the police officer reasonably suspects the person is in possession of a potentially harmful thing the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale; or

- (b) finds a person in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale, the thing.

Example for paragraph (a)—

A police officer finds a person with paint on the person's lips.

- (2) The police officer may search the person and anything in the person's possession to find out whether the person is in possession of a potentially harmful thing.
- (3) If the person is in possession of a potentially harmful thing, the police officer may ask the person to explain why the person is in possession of the thing.
- (4) If the person does not give a reasonable explanation, the police officer may seize the potentially harmful thing.
- (5) It is not a reasonable explanation for subsection (4) that the person is in possession of the potentially harmful thing to inhale it or ingest it.
- (6) On the seizure of the potentially harmful thing, the thing is forfeited to the State.
- (7) Section 380⁹⁹ does not apply to a thing seized under this section.

371B Dealing with persons affected by potentially harmful things

- (1) This section applies to a person at a declared locality if, because of the way the person is behaving and other relevant indicators, a police officer is satisfied the person is affected by the ingestion or inhalation of a potentially harmful thing.

Example of a relevant indicator—

The presence of spray paint cans near the person.

- (2) However, this section applies to the person only if it is appropriate for the person to be taken to a place, other than a police establishment or police station, and the police officer

99 Section 380 (Receipt for seized property)

Police Powers and Responsibilities Act 2000

considers the place is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of the potentially harmful thing (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 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.
 - 3 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.
- (3) It is lawful for the police officer to detain the person for the purpose of taking the person to a place of safety.
- (4) In this section—

declared locality means a locality declared under a regulation for this section.

371C Duties in relation to person detained under s 371B

- (1) It is the duty of the police officer who detains a person under section 371B, at the earliest reasonable opportunity—
- (a) to take the person to a 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.

- (2) Subsection (1) does not apply if the police officer is satisfied—
- (a) a person at a place of safety refuses, or is unable, to provide care for the relevant person; or
 - (b) the relevant 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 a place of safety; or
- (c) the police officer is unable to find a place of safety that is willing to provide care for the relevant person.
- (3) If this section does not apply because of subsection (2), the person must be released.
- (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) 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.
- (6) As soon as practicable after a person is released under subsection (1) or (3), the police officer must enter in a register kept for this section the particulars prescribed under a regulation for this section.

371D No compulsion to stay at place of safety

A person taken to a place of safety can not be compelled to stay there, unless another Act otherwise requires.

371E Review of operation of ss 371B–371D

- (1) The CMC must keep the operation of sections 371B to 371D under review for 9 months after the sections commence.
- (2) The conduct of the review and the preparation of the report is a function of the CMC for the *Crime and Misconduct Act 2001*.
- (3) In the course of preparing the report, the CMC must consult with the Minister.
- (4) The CMC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

371F Expiry of ss 371B–371E

- (1) Sections 371B to 371E and this section expire 1 year after they commence.
- (2) However, a regulation may extend the operation of the provisions and this section for periods of up to 1 year.

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;
 - (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—

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- (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.

372A Police actions after domestic violence order is made

- (1) This section applies if, under the *Weapons Act 1990*, section 29B,¹⁰⁰ 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

¹⁰⁰ *Weapons Act 1990*, section 29B (Arrangements for surrender of suspended or revoked licences and weapons)

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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.
 - 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.

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 82¹⁰¹ 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—

¹⁰¹ *Residential Services (Accommodation) Act 2002*, section 82 (Power to remove resident)

rental premises means premises in which a residential service is being conducted.

residential service see the *Residential Services (Accommodation) Act 2002*, schedule.

service provider means a person conducting a residential service.

373 Assistance in exercising powers

- (1) It is lawful for a police officer exercising a power under this Act or any other Act—
 - (a) to seek the help 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.
 - 3 A police officer may seek the help of a translator to interpret conversations and visual images recorded using a surveillance device.
 - 4 A police officer may seek the help of an investigator authorised under the *Liquor Act 1992*, section 174(1), for exercising powers under section 51 for monitoring or enforcing a liquor provision under that section.
- (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—
 - (a) to arrest a person; or
 - (b) to demand a person's name and address; or

- (c) to exercise a power a police officer has when responding to a CBR emergency under the *Public Safety Preservation Act 1986*, section 23.¹⁰²
- (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.¹⁰³

¹⁰² *Public Safety Preservation Act 1986*, section 23 (CBRE police officers)

¹⁰³ See section 376 (Power to use force against individuals).

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—
 - (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.

377A 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.

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 or coroner 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
 - (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;¹⁰⁴ or

104 Section 39 (Direction may be given to person) or 94 (Powers of direction etc. at crime scene)

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- (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;
 - (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,¹⁰⁵ 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.

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;

¹⁰⁵ 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.

- (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 ACC 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 ACC.

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.¹⁰⁶

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.

¹⁰⁶ 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.

Division 3 Enforcement registers

411 Application of div 3

- (1) This division only applies to enforcement acts.
- (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 ACC 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 ACC

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 ACC.

418 Information to be given to ACC

- (1) A police officer who does a covert act or an enforcement act for the ACC must give information about the covert act or enforcement act to the ACC 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 ACC 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 ACC 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 ACC 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 ACC.

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 impounded under chapter 2, part 6, division 2 or seized under section 60;¹⁰⁷ or
 - (b) a sample or other thing taken or collected from a person under chapter 8A; or
 - (d) a blood or urine sample taken from a person under chapter 8B; or

¹⁰⁷ Chapter 2 (General enforcement powers), part 6 (Powers relating to vehicles, traffic and animals), division 2 (Vehicle impounding powers for prescribed offences) or section 60 (Removal of vehicles and animals from roads and other places)

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- (e) a specimen of blood or urine taken from or provided by a person under the Road Use Management Act, section 80;¹⁰⁸ or
 - (f) a thing seized by a police officer under a property seizure order under the Confiscation Act; or
 - (g) a thing seized under the *Public Safety Preservation Act 1986*, part 3.¹⁰⁹
- (3) However, to the extent this part imposes an obligation on a police officer to keep seized things in a safe place, this part does apply to a thing mentioned in subsection (2)(f) that is reasonably capable of being moved.
- (3) Also, this part, apart from section 441, does not apply to something seized under chapter 9, part 4A¹¹⁰ if a coroner decides the death is a reportable death.
- (4) Also, this part has effect in relation to a dangerous drug subject to the operation of part 4 in relation to the dangerous drug.
- (5) In addition, this part, to the extent it deals with forfeited property, applies to property forfeited to the State under the *Public Safety Preservation Act 1986*, section 42¹¹¹ that is in the possession of the police service.

421 Object of pt 3

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

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

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

109 *Public Safety Preservation Act 1986*, part 3 (Chemical, biological and radiological emergencies)

110 Chapter 9, part 4A (Powers for assisting coroners)

111 *Public Safety Preservation Act 1986*, section 42 (Return etc. of seized property)

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).¹¹²
- (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—

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

- (a) may be evidence in a proceeding started in relation to the thing; or
 - (b) is a thing used in or for manufacturing a dangerous drug; or
 - (c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.
- (6) This section does not apply to a relevant thing that is forfeited to the State under this or any other Act.

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

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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;¹¹³ or
 - (h) it is returned under section 423 or 424.¹¹⁴
- (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.

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

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

- (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—
 - (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 425¹¹⁵ 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;
 - (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.

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

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

Division 3 Dealing with dangerous drugs etc.

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 2.¹¹⁶

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—
 - (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,

¹¹⁶ *Drugs Misuse Act 1986*, part 2 (Drug trafficking)

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;¹¹⁷ and
 - (b) for which an analyst's certificate has been given under the *Drugs Misuse Act 1986*.
- (2) A police officer may give the person from whom a dangerous drug was seized—
 - (a) a written notice in the approved form (***destruction notice***) stating—
 - (i) within 30 days after the notice is given, the person may give the commissioner a written notice requiring the commissioner to make a representative sample of the dangerous drug

¹¹⁷ *Drugs Misuse Act 1986*, section 32 (Forfeiture of dangerous drugs)

- 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.¹¹⁸

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

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

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

- (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

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.

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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 424¹²⁰ 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 division applies to a forfeited thing, other than a thing forfeited under division 6, only after all proceedings relating to the offence or suspected offence for which the thing was forfeited are finally decided.

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

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 4.6,¹²¹ 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.
- (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

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

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 426.¹²²

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.

¹²² Section 426 (Application for order in relation to seized things)

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.

Part 4 Use of dangerous drugs for training

Division 1 Preliminary

443A Object of pt 4

- (1) The object of this part is to ensure training in the police service about dangerous drugs is realistic and effective.
- (2) The object is to be achieved by putting in place arrangements—
 - (a) to allow the police service to have access to dangerous drugs for training purposes; and
 - (b) to ensure dangerous drugs in the possession of the police service for training purposes—
 - (i) are carefully handled to ensure their effectiveness for training purposes is not compromised; and
 - (ii) are subject to strict tracking and accountability requirements.

443B Definitions for pt 4

In this part—

agency arrangement means an arrangement, or series of arrangements, between the commissioner and the chief executive officer, by whatever name known, of a department or other agency of the State or the Commonwealth providing for the following—

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- (a) the transfer of possession of a batch of a dangerous drug from the possession of the department or agency into the possession of the police service;
- (b) that the batch of the dangerous drug is to be used for training in the police service;
- (c) the type and extent of the training for which the batch of the dangerous drug is to be used;
- (d) what is to be done with the batch of the dangerous drug at the end of the training;
- (e) anything else the parties to the arrangement consider appropriate.

Example of an agency arrangement made up of a series of arrangements—

A first arrangement between the commissioner and an agency could establish basic principles to govern the supply of dangerous drugs to the commissioner for training purposes. A second arrangement between the commissioner and the agency could establish particular procedures to be followed for transferring particular types of dangerous drugs between the commissioner and the agency, subject to the basic principles established in the first arrangement. A third arrangement between the commissioner and the agency could provide for the special circumstances applying to a batch of 1 of the particular types of dangerous drugs mentioned in the second arrangement. For the batch mentioned in the third arrangement, the agency arrangement may be ascertained from a reading of all 3 arrangements.

commissioner direction means a direction of the commissioner—

- (a) authorising—
 - (i) the keeping of a batch of a dangerous drug; and
 - (ii) the use of the batch in training in the police service; and
- (b) stating the conditions under which the keeping and use of the batch of the dangerous drug is authorised.

drug control officer means a person holding an appointment under division 2 as a drug control officer.

drug vault means a secure facility suitable for the storage of dangerous drugs in the possession of the police service for

training purposes under the authority of a commissioner direction.

register of dangerous drugs for training means the register of dangerous drugs for training kept under section 443M.

secure facility means a facility that is secure against unauthorised entry.

Division 2 Drug control officers

443C Appointment and qualifications

- (1) The commissioner may appoint a public service officer or a police officer as a drug control officer.
- (2) However, the commissioner may appoint a person as a drug control officer only if—
 - (a) the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; or
 - (b) the person has satisfactorily finished training approved by the commissioner.

443D Appointment conditions

- (1) A drug control officer holds office on any conditions stated in—
 - (a) the drug control officer's instrument of appointment; or
 - (b) a signed notice given to the drug control officer; or
 - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to the drug control officer or a regulation may limit the drug control officer's powers under this part.
- (3) In this section—

signed notice means a notice signed by the commissioner.

443E Issue of identity card

- (1) The commissioner must issue an identity card to each drug control officer.
- (2) The identity card must—
 - (a) contain a recent photo of the drug control officer; and
 - (b) contain a copy of the drug control officer's signature; and
 - (c) identify the person as a drug control officer under this part; and
 - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.

443F Resignation

- (1) A drug control officer may resign by signed notice given to the commissioner.
- (2) However, if holding office as a drug control officer is a condition of the drug control officer holding another office, the drug control officer may not resign as a drug control officer without resigning from the other office.

443G Return of identity card

A person who ceases to be a drug control officer must return the person's identity card to the commissioner within 21 days after ceasing to be a drug control officer unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

443H Function and powers of drug control officer

- (1) A drug control officer has the function of administering and controlling, as required under this part the conditions on which the drug control officer holds office, the following—

- (a) the receiving into the possession of the police service of batches of dangerous drugs to be used for training purposes (the *batches*);
 - (b) the storage of the batches;
 - (c) the movement in and out of storage, for the purposes of training, of the batches or parts of the batches;
 - (d) how the batches leave the possession of the police service.
- (2) A drug control officer has power, within the police service, to do all things necessary to be done for the performance of the drug control officer's function.

Division 3 Keeping and use of dangerous drugs for training

443I Keeping dangerous drug for use in police service training

A batch of a dangerous drug may lawfully be kept in the possession of the police service and used for training in the police service if—

- (a) the keeping of the batch, and its use for training in the police service, is authorised under a commissioner direction; and
- (b) the batch is kept, and used for training, in accordance with the conditions included in the commissioner direction.

443J Making commissioner direction

- (1) The commissioner may make a commissioner direction for a batch of a dangerous drug.
- (2) The commissioner may make a commissioner direction for a batch of a dangerous drug only if the batch—
 - (a) is in the possession of the police service—
 - (i) having been forfeited, or ordered to be forfeited, to the State under this or another Act; or

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- (ii) having been ordered under this Act to be disposed of or destroyed; or
 - (b) comes into the possession of the police service under an agency arrangement.
- (3) The conditions included in the commissioner direction must include the following conditions—
 - (a) a condition that the batch must be used only for the training purposes stated in the condition;
Example of training purposes—
 - Training police dogs to detect the presence of dangerous drugs in various situations.
 - (b) a condition that the training for which the batch is used must be of the type, and of the extent, stated in the condition;
 - (c) a condition that the whole of the batch must at all times—
 - (i) be under the effective control of a drug control officer or 1 or more of the police officers identified in the condition; or
 - (ii) be kept securely in a way stated in the condition;
 - (d) a condition that, as soon as practicable after the batch is used for training purposes for the last time, the batch must be destroyed or disposed of in the way stated in the condition.
- (4) Subsection (3) does not limit the conditions that may be included in the commissioner direction.
- (5) The commissioner must ensure that the police service complies with the conditions included in the commissioner direction.

443K Entering into agency arrangement

- (1) The commissioner may enter into an agency arrangement.
- (2) The commissioner may enter into an agency arrangement only if the department or other agency, whose chief executive officer is the other party to the arrangement, is authorised to

possess the batch of the dangerous drug the subject of the arrangement.

- (3) The commissioner must ensure the police service complies with the agency arrangement.

443L Requirements for keeping of dangerous drugs for training purposes

- (1) The following requirements apply for the police service's possession of dangerous drugs for training purposes—
- (a) each batch of a dangerous drug must be stored in a drug vault;
 - (b) when a batch of a dangerous drug is received into a drug vault for storage for the first time, it must be accompanied by a document certifying, in a way approved by the commissioner, the weight and purity of the batch;
 - (c) a drug vault must not be used for storing a dangerous drug that is in the possession of the police service other than for training purposes;
 - (d) a drug vault must be designed and constructed for ensuring, to the greatest practicable extent, that each batch of a dangerous drug stored in it keeps its level of effectiveness for training purposes;
 - (e) a drug vault must include enough separate storage to ensure that no batch of a dangerous drug stored in the vault can be contaminated by another batch, or can otherwise be made ineffective or less effective for training purposes;
 - (f) the whole of a batch of a dangerous drug must be stored in a drug vault at all times, except to the extent the batch, or a part of the batch, is required to be held somewhere else for training purposes;
 - (g) an audit of each drug vault must be conducted at least once every 3 months by a police officer not otherwise directly associated with the keeping or use of dangerous drugs for training purposes;

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- (h) when a batch of a dangerous drug leaves a drug vault for the last time—
 - (i) it must be accompanied by a document certifying, in a way approved by the commissioner, the weight and purity of the batch; and
 - (ii) a copy of the document mentioned in subparagraph (i) must be kept at the drug vault or at another place the commissioner directs.
- (2) Without limiting the scope of an audit under subsection (1)(g), the audit must include—
 - (a) finding out whether all quantities of dangerous drugs that should be in the drug vault at the time of the audit are in the vault; and
 - (b) finding out whether the drug vault is storing any dangerous drugs, or anything else, that should not be stored in the drug vault; and
 - (c) finding out whether, and to what extent, the purity of any batch of a dangerous drug stored at the drug vault has been adversely affected since it was received into the drug vault; and
 - (d) a review of the register of dangerous drugs for training.
- (3) Without limiting the requirements for an audit under subsection (1)(g), requirements for the audit include the following—
 - (a) the performance of the audit must be supervised by a police officer who is—
 - (i) of at least the rank of inspector; and
 - (ii) not otherwise directly associated with the keeping or use of dangerous drugs for training purposes;
 - (b) all batches of dangerous drugs stored in the drug vault must be the subject of analysis by an analyst under the *Drugs Misuse Act 1986*;
 - (c) the accuracy of the scales used in measuring the weights of batches of dangerous drugs stored in the drug vault must be certified in a way approved by the commissioner.

Division 4 Register of dangerous drugs for training

443M Register of dangerous drugs for training

- (1) The police service must keep a register of dangerous drugs for training.
- (2) The register may form part of another register whether kept under this or another Act.
- (3) The police service—
 - (a) subject to subsection (4), may keep the register of dangerous drugs for training in the way the commissioner considers appropriate; and

Example for paragraph (a)—

The register may be kept on a computer or partly on a computer and partly in written form.

- (b) must ensure the register is kept in a secure place.
- (4) The register of dangerous drugs for training must be kept in a way that, to the greatest practicable extent, enables a drug control officer, or a police officer performing a lawful function associated with the keeping of dangerous drugs in the possession of the police service under this Act, whether or not under this part, to comply with this Act's requirements.
- (5) Unless the commissioner otherwise authorises, an entry in the register of dangerous drugs for training may only be made by a drug control officer who is authorised, under the conditions on which the drug control officer holds office, to make the entry.
- (6) If the commissioner gives a direction under this division restricting access to information included in the register of dangerous drugs for training, a drug control officer authorised to record the information in the register must ensure the information is recorded in a way that, to the greatest practicable extent, stops disclosure of the information to a person not authorised to have access to it.

443N Information to be recorded in the register of dangerous drugs for training

- (1) The following information must be recorded in the register of dangerous drugs for training about each batch of a dangerous drug coming into the possession of the police service to be used for training purposes—
 - (a) the name of the dangerous drug;
 - (b) a description of the batch;
 - (c) the weight, in grams, of the batch;
 - (d) a description of any container or packaging, and of any other item, used for conveying the batch into the possession of the police service;
 - (e) the weight, in grams, of any container or packaging, and of any other item, used for conveying the batch into the possession of the police service;
 - (f) when the batch was received into the possession of the police service;
 - (g) the purity of the batch, and details of the certification of the purity;
 - (h) a description of the circumstances in which the batch came into the possession of the police service.
- (2) The following information must be recorded in the register of dangerous drugs for training about each batch of a dangerous drug in the possession of the police service for training purposes if the batch, or part of the batch, is taken from the drug vault where it is stored because it is to be used for training purposes—
 - (a) when the batch or part leaves the drug vault;
 - (b) the nature of the training for which the batch or part is to be used;
 - (c) the condition of any container or packaging in which the batch or part leaves the drug vault;
 - (d) the weight, in grams, of the batch or part when it leaves the drug vault;

- (e) the weight, in grams, of any container or packaging in which the batch or part leaves the drug vault;
 - (f) the condition of any container or packaging in which the batch or part is returned to the drug vault;
 - (g) the weight, in grams, of the batch or part when it is returned to the drug vault;
 - (h) the weight, in grams, of any container or packaging in which the batch or part is returned to the drug vault.
- (3) The following information must be recorded in the register of dangerous drugs for training when a batch of a dangerous drug leaves a drug vault for the last time to be disposed of or to be returned to an entity under an agency arrangement—
- (a) the weight, in grams, of the batch when it leaves the drug vault;
 - (b) the weight, in grams, of any container or packaging in which the batch leaves the drug vault.
- (4) Recording under subsection (1), (2) or (3) must be performed as close as reasonably practicable to the happening of the event to which the recording relates.

4430 Restriction on release of information from register of dangerous drugs for training

- (1) The commissioner may give a direction restricting access to information recorded in the register of dangerous drugs for training to persons other than—
- (a) a drug control officer who reasonably needs the information for the performance of the officer's function under this part; or
 - (b) a police officer who reasonably needs the information for conducting or supervising, under this part, an audit of a drug vault; or
 - (c) another police officer, if the police officer is performing a function associated with the keeping of dangerous drugs in the possession of the police service under this Act, whether or not under this part, and reasonably

needs the information for the performance of the officer's function; or

- (d) a person stated in the direction.
- (2) A direction under subsection (1) may restrict access to all information recorded in the register or only to information of a type stated in the direction.
- (3) The commissioner must keep a written record of the reasons for giving a direction under subsection (1) in each particular case.
- (4) The commissioner may give a direction under subsection (1), and keep the direction in place, only if the commissioner considers that a failure to give the direction, or to keep the direction in place, may prejudice—
 - (a) the security of a drug vault; or
 - (b) the safety of—
 - (i) a drug control officer; or
 - (ii) another person associated with keeping dangerous drugs in the possession of the police service for training purposes; or
 - (iii) a person associated with a person mentioned in subparagraph (i) or (ii).

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.

- (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, including a requirement or direction contained in a notice 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 16,¹²³ 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

¹²³ 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)

give information if giving the information would tend to incriminate the person.

- (5) It is not a reasonable excuse for a person not to comply with a requirement or direction given by a police officer under chapter 8A¹²⁴ that complying with the requirement or direction would tend to incriminate the person.

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 Service Act 1990* reasonably necessary help.
- (2) In this section—

chemical incident has the meaning given by the *Fire and Rescue Service Act 1990*, section 6.

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

447A Assisting coroner to investigate a death

- (1) It is the duty of police officers to assist coroners in the performance of a function, or exercise of a power, under the *Coroners Act 2003*, including—
- (a) the investigation of deaths; and

124 Chapter 8A (Forensic procedures)

- (b) the conduct of inquests.
- (2) Without limiting subsection (1), it is the duty of police officers to comply with every reasonable and lawful request, or direction, of a coroner.

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, an order mentioned in section 59H(6) or 59HA(6) 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.
- (5) Subsection (1) applies to a forensic procedure order only if the person to whom the application for the order relates is not entitled to be given notice of the application under section 287(2) or the person is dead.

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 exercise of the power 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 120.

- (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) an examination under the *Australian Crime Commission (Queensland) Act 2003*, part 3.

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 the following persons under this Act—
 - (a) police officers;
 - (b) support persons.
- (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 for Police Powers and Responsibilities Act 2000**

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—
 - (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 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*.

Part 3

Transitional provisions for Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003

474 Definitions for pt 3

In this part—

amending Act means the *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003*.

commencement means the commencement of the provision in which the term is used.

pre-amended Act means this Act or a provision of this Act as in force before its amendment by the amending Act and includes another provision relevant to the provision.

475 Identifying particulars

(1) Something—

(a) started under the pre-amended Act, chapter 8, part 2,¹²⁵ and not finished before the commencement may be continued under chapter 8A, part 4,¹²⁶ of this Act; or

(b) done under the pre-amended Act, chapter 8, part 2, has effect as if it was done under chapter 8A, part 4, of this Act.

(2) Without limiting subsection (1)—

(a) an identifying particulars notice given to a person under the pre-amended Act, section 272 has effect as an identifying particulars notice properly given under chapter 8A, part 4 of this Act; and

125 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 2 (Gathering information for identifying suspects)

126 Chapter 8A (Forensic procedures), part 4 (Identifying particulars)

- (b) a court order made under the pre-amended Act, section 273, has effect as a court order made under section 298¹²⁷ of this Act.

476 Medical and dental procedures

- (1) This section applies if, immediately before the commencement, there is in force—
 - (a) a consent to the performance of a medical or dental procedure given under the pre-amended Act, section 285;¹²⁸ or
 - (b) an order of a magistrate authorising the performance of a medical or dental procedure made under the pre-amended Act, section 290.¹²⁹
- (2) The pre-amended Act, chapter 8, part 3,¹³⁰ continues to apply for performing the medical or dental procedure as if the amending Act had not been enacted.
- (3) Anything obtained under the consent or order may be dealt with or used as if it were obtained under a forensic procedure consent or forensic procedure order.

477 DNA procedures

- (1) Subsection (2) applies if, immediately before the commencement, there is in force—
 - (a) a consent to the taking of a DNA sample given under the pre-amended Act, chapter 8, part 4, division 3;¹³¹ or
 - (b) an approval of a commissioned officer given under the pre-amended Act, section 307 for the detention of a

127 Section 298 (Court may order taking of identifying particulars)

128 Pre-amended Act, section 285 (Consent to be recorded)

129 Pre-amended Act, section 290 (Making of order)

130 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 3 (Medical and dental procedures)

131 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 4 (DNA procedures), division 3 (Taking DNA samples with consent)

- person for the time reasonably necessary to take a DNA sample from the person; or
- (c) a DNA sample notice under the pre-amended Act, section 308; or
 - (d) an order of a court made under the pre-amended Act, section 309(2)(b), 310(2)(b) or 312.¹³²
- (2) The pre-amended Act, chapter 8, part 4,¹³³ continues to apply in relation to the consent, approval, notice or order as if the amending Act had not been enacted.
 - (3) An application made to the Childrens Court under the pre-amended Act, section 312 that has not been decided by the court before the commencement has effect and may be dealt with as an application made to the court under section 316¹³⁴ of this Act.

478 Police officers authorised to take DNA samples

A police officer who, immediately before the commencement, is a police officer authorised under the pre-amended Act, section 297(3), by the commissioner to take DNA samples is taken to be authorised by the commissioner under section 303¹³⁵ of this Act.

479 Taking of certain DNA samples

- (1) This section applies in relation to the pre-amended Act, sections 310, 311 and 316.¹³⁶
- (2) Despite the omission of the sections by the amending Act—

132 Pre-amended Act, section 309 (Taking DNA sample from adult before court), 310 (Taking DNA sample after finding of guilt) or 312 (Taking DNA sample from child)

133 Pre-amended Act, chapter 8 (Powers in relation to persons in custody), part 4 (DNA procedures)

134 Section 316 (Taking DNA sample from child)

135 Section 303 (Commissioner may authorise police officers to take DNA samples)

136 Pre-amended Act, sections 310 (Taking DNA sample after finding of guilt), 311 (Taking DNA sample from prisoner) and 316 (When DNA samples and results must be destroyed)

- (a) the declarations in the pre-amended Act, sections 310(4), 311(4) and 316(5) continue to have effect in relation to the offences to which they applied immediately before the commencement; and
- (b) a DNA sample taken as mentioned in the pre-amended Act, section 310(5) or 311(5) continues not to have been unlawfully taken merely because the indictable offence of which the person from whom it was taken was found guilty was dealt with summarily.

480 QDNA

- (1) A database approved by the commissioner under the pre-amended Act, section 317 (*section 317 database*) is taken to be approved under section 318I of this Act.
- (2) Anything lawfully stored in a section 317 database immediately before the commencement may continue to be stored in QDNA or the CrimTrac database and may be used under this Act.

481 Certain arrangements made by Minister

- (1) This section applies if, before the commencement of section 318ZY,¹³⁷ the Minister lawfully made an arrangement with a declared law enforcement agency or a responsible Minister of another jurisdiction relating to a matter mentioned in section 318ZY(1) and the arrangement is of a type that could, after that commencement, be entered into under that section.
- (2) After the commencement of section 318ZY, the arrangement entered into is taken to have been entered into under that section.
- (3) In this section—
responsible Minister has the same meaning as it has in section 318ZY.

137 Section 318ZY (Ministerial arrangements)

482 Provision for ch 11, pt 3

- (1) This section applies to a sample or other thing to which the pre-amended Act, section 420(2)(b), (c) or (d)¹³⁸ applied before the commencement.
- (2) From the commencement—
 - (a) if the pre-amended Act, section 420(2)(b) or (c) applied, the sample or other thing is taken to have been taken or collected under chapter 8A¹³⁹ of this Act; and
 - (b) if the pre-amended Act, section 420(2)(d) applied, the sample is taken to have been taken under chapter 8B¹⁴⁰ of this Act.

138 Pre-amended Act, section 420 (Application of pt 3)

139 Chapter 8A (Forensic procedures)

140 Chapter 8B (Blood and urine testing of persons suspected of committing sexual or other serious assault offences)

Schedule 1 Acts not affected by this Act

section 10

*Australian Crime Commission (Queensland) Act 2003**Bail Act 1980**Child Protection Act 1999**Coroners Act 2003**Corrective Services Act 2000**Crime and Misconduct Act 2001**Disaster Management Act 2003**Domestic and Family Violence Protection Act 1989**Fuel Subsidy Act 1997, section 107(2) and (3)**Juvenile Justice Act 1992, other than to the extent to which section 198(2) 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**Transport Operations (Road Use Management) Act 1995, section 80**Young Offenders (Interstate Transfer) Act 1987*

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 Services (Aborigines) Act 1984*.

ACC means the Australian Crime Commission established under the *Australian Crime Commission Act 2002* (Cwlth), section 7.

adult means a person who is not a child.

agency arrangement, for chapter 11, part 4, see section 443B.

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 468.¹⁴¹
- 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*.

appropriate person for chapter 8A, part 9, see section 318ZN.

141 Criminal Code, section 468 (Injuring animals)

Schedule 4 (continued)

approving officer see section 173(2).

arrest warrant see section 203.¹⁴²

assistant see section 373.¹⁴³

associated domestic violence means associated domestic violence within the meaning of the *Domestic and Family Violence Protection Act 1989*.

at a place, includes in or on the place.

attend, a police station or police establishment under a direction, order or requirement, includes stay at the police station or police establishment for the time reasonably necessary for the purpose for which the attendance is directed, ordered or required.

authorised assistant means an assistant authorised under the responsibilities code for this Act.

authorised examiner means a police officer authorised by the commissioner under section 318O.

authorised person, for chapter 9, part 2, means a person appointed as an authorised person under section 345.¹⁴⁴

authorised police officer, for chapter 8A, part 6, see section 318N.

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.

burn out, for a vehicle, means wilfully drive the vehicle in a way that causes the tyres or a substance poured onto the road surface, or both, to smoke when the drive wheels lose traction with the road surface.

142 Section 203 (Arrest warrant application)

143 Section 373 (Assistance in exercising powers)

144 Section 345 (Appointment of authorised persons)

Schedule 4 (continued)

Example—

Oil may be poured on the road surface and a vehicle driven on the oily surface in a way that causes the tyres to spin and the tyres or oil to smoke.

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*.

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.

Schedule 4 (continued)

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.

commissioner means the commissioner of the police service.

commissioner direction, for chapter 11, part 4, see section 443B.

committee, for chapter 5, means the controlled operations committee.

Confiscation Act means the *Criminal Proceeds Confiscation Act 2002*.

confiscation offence means either of the following under the Confiscation Act—

- (a) a confiscation offence;
- (b) an interstate confiscation offence.

confiscation order means a confiscation order under the Confiscation Act.

confiscation related activity means an activity for which a confiscation order may be sought under the Confiscation Act.

confiscation related evidence means a thing or evidence of an activity that may be or provide evidence of something for which a proceeding, other than a proceeding for an offence, may be started under the Confiscation Act, chapter 2 or chapter 3, and includes—

- (a) a thing in which a person has an interest that is serious crime derived property; and
- (b) a thing in which a person has an interest that is illegally acquired property of a person reasonably suspected of having been engaged in a serious crime related activity; and

Schedule 4 (continued)

- (c) evidence of a serious crime related activity; and
- (d) evidence of illegal activity of a person reasonably suspected of having engaged in a serious crime related activity; and
- (e) property that is restrained under an assets restraining order under the Confiscation Act.

controlled activity see sections 190 and 191.

controlled operation see section 173.

controlled operations committee means the controlled operations committee established under section 167.

coroner means a coroner under the *Coroners Act 2003*.

corrective services facility see the *Corrective Services Act 2000*, schedule 3.

corresponding forensic procedure orders see section 318ZO.

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.

court includes anyone conducting a committal proceeding.

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).¹⁴⁵

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 155.¹⁴⁶

145 Section 146 (Disclosure of information obtained using surveillance warrant)

146 Section 155 (Powers under covert search warrant)

Schedule 4 (continued)

covert search warrant see section 148.¹⁴⁷

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.¹⁴⁸

crime scene warrant see section 87.¹⁴⁹

CrimTrac means the CrimTrac Agency established under the *Public Service Act 1999* (Cwlth), section 65.¹⁵⁰

CrimTrac database means a database kept by the CrimTrac Agency containing information about the results of DNA analyses.

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*, schedule 4.

detention order see the *Juvenile Justice Act 1992*, schedule 4.

detention period has the meaning given under section 234(4) and includes any period for which detention is extended under section 237.¹⁵¹

disease test order see section 322.

DNA sample means—

147 Section 148 (Covert search warrant applications)

148 See section 93 (Powers at crime scene) and 94 (Powers of direction etc. at crime scene).

149 Section 87 (Application for crime scene warrant)

150 *Public Service Act 1999* (Cwlth), section 65 (Establishment etc. of Executive Agencies)

151 Section 234 (Initial period of detention for investigation or questioning), section 237 (When detention period may be extended)

Schedule 4 (continued)

- (a) a sample of a person's hair, including roots of the hair, other than hair from—
 - (i) the genital or anal area; or
 - (ii) the buttocks; or
 - (iii) if the person is a female—the breasts; or
- (b) a sample obtained by swabbing a person's mouth.

DNA sample notice see section 309(2).

DNA sampler means—

- (a) a police officer authorised under section 303 to take DNA samples; or
- (b) a doctor; or
- (c) a nurse.

domestic violence see the *Domestic and Family Violence Protection Act 1989*, section 11(1).

domestic violence order see *Domestic and Family Violence Protection Act 1989*, section 13(2).

driver see the Road Use Management Act, schedule 4.

driver licence see the Road Use Management Act, schedule 4.

drug control officer, for chapter 11, part 4, see section 443B.

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

drug vault, for chapter 11, part 4, see section 443B.

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.

Schedule 4 (continued)

- 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.

electronic screening, of a person or a person's belongings, means, for section 332 or 349,¹⁵² 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;¹⁵³
- (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 270(3);¹⁵⁴
- (e) the arrest of a person;
- (f) the detention of a person for investigations or questioning under chapter 7;¹⁵⁵

152 Section 332 (Use of electronic screening devices in state buildings) or 349 (Use of electronic screening devices at special event site)

153 Chapter 9 (Other powers), part 2 (Preserving safety for special events)

154 Section 270 (Police officer may search person in custody)

155 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

Schedule 4 (continued)

- (g) the questioning of a person to whom chapter 7, part 3 applies;¹⁵⁶
- (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;¹⁵⁷
- (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;
- (l) the entry of a place under section 371AA¹⁵⁸ to find out whether someone in the place is dead or in need of urgent medical treatment.

enter a place, includes re-enter the place.

entity, in chapter 5 and in chapter 11, part 2,¹⁵⁹ 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

156 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)

157 Section 39 (Direction may be given to person)

158 Section 371AA (Entry of place on suspicion of death or injury)

159 Chapter 11 (Administration), part 2 (Registers)

Schedule 4 (continued)

- (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 2.¹⁶⁰

final nuisance direction see section 371.¹⁶¹

financial institution includes cash dealer.

forensic procedure means—

- (a) an intimate forensic procedure; or
- (b) a non-intimate forensic procedure.

forensic procedure consent see section 274(1)(a).

forensic procedure order see section 285(1).

forfeiture order see section 59HA.¹⁶²

forfeiture proceeding means—

- (a) a proceeding for a forfeiture order or a restraining order under the Confiscation Act; or

160 *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).

161 Section 371 (Direction to leave park)

162 Section 59HA (Application for forfeiture order)

Schedule 4 (continued)

- (b) a proceeding for an order forfeiting or restraining the use of property under another Act.

found guilty, of an offence, means there is a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

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.

function of the police service includes an investigation conducted by a police officer for a declared law enforcement agency.

government entity means a government entity under the *Public Service Act 1996*, section 21, other than subsection (1)(d), (e) and (f).

guardian, of a person who is an adult, means a guardian appointed under the *Guardianship and Administration Act 2000* for the adult.

hand held scanner means a device that may be passed over or around a person or the person's belongings to detect 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.

holding yard means—

- (a) for a person licensed under the *Tow Truck Act 1973* to tow motor vehicles—the place used by the licensee as a holding yard for the storage of—
- (i) a motor vehicle towed under the licence; and
- (ii) any moveable property found in the motor vehicle;
- or

Schedule 4 (continued)

- (b) for a person exempted under a regulation under the *Tow Truck Act 1973* from holding a licence under that Act—the place used by the person as a holding yard for the storage of—
 - (i) a motor vehicle towed by the person; and
 - (ii) any moveable property found in the motor vehicle; or
- (c) otherwise—
 - (i) a yard at a police establishment; or
 - (ii) a place the commissioner decides is to be a holding yard.

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.
- (g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks or, for a female, breasts.

identifying particulars notice see section 297(1).

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—

Schedule 4 (continued)

- *Explosives Act 1999*
- *Police Service Administration Act 1990*, section 10.19 or 10.20
- *Regulatory Offences Act 1985*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *State Buildings Protective Security Act 1983*
- *Vagrants, Gaming and Other Offences Act 1931*
- *Weapons Act 1990*.

illegally acquired property means property that is illegally acquired property under the Confiscation Act.

impounding order see section 59H.¹⁶³

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

independent person, for chapter 8A, part 7, see section 318U(b).

indictable offence, in relation to a reference to that term as including an indictable offence dealt with summarily, includes an indictable offence dealt with summarily whether or not the Criminal Code, section 659¹⁶⁴ applies to the indictable offence.

initial nuisance direction see section 370.¹⁶⁵

initiating application charges for an application for an impounding order—see section 59I.¹⁶⁶

initiating impoundment see section 59G.¹⁶⁷

initiating impoundment offence see section 59G.

163 Section 59H (Application for impounding order)

164 Criminal Code, section 659 (Effect of summary conviction for indictable offences)

165 Section 370 (Initial direction about serious nuisance)

166 Section 59I (Orders on application for impounding order if relevant offence not decided)

167 Section 59G (Content of notice for second or subsequent offence)

Schedule 4 (continued)

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.

intimate forensic procedure means all or any of the following procedures—

- (a) a procedure performed on a person's external genital or anal area, buttocks or, for a female, breasts, that involves—
 - (i) an external examination of the relevant part of the body; or
 - (ii) taking a sample from the relevant part of the body, by swab, washing, vacuum suction, scraping, or by lifting by tape; or
 - (iii) photographing the relevant part of the body; or
 - (iv) making an impression or cast from the relevant part of the body; or
 - (v) measuring the relevant part of the body;
- (b) a procedure performed on a person that involves—
 - (i) an internal examination of a body cavity; or
 - (ii) taking a sample of the person's hair from—
 - (A) the genital or anal area; or
 - (B) the buttocks; or
 - (C) if the person is a female—the breasts; or
 - (iii) taking a sample, by swab or washing, from a body cavity other than the mouth; or
 - (iv) removing a substance or thing from a body cavity other than the mouth; or
 - (v) taking an X-ray of a part of the person's body; or
 - (vi) taking a dental impression; or
 - (vii) taking a sample of the person's blood or urine.

Schedule 4 (continued)

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.

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 267.¹⁶⁸

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—

168 Section 267 (List of support persons and interpreters)

Schedule 4 (continued)

- (a) a mall established under the *Local Government Act 1993*;
- (b) the Chinatown Mall within the meaning of the *Local Government (Chinatown and the Valley Malls) Act 1984*;
- (c) the Queen Street Mall within the meaning of the *Local Government (Queen Street Mall) Act 1981*;
- (d) the Valley Mall within the meaning of the *Local Government (Chinatown and the Valley Malls) Act 1984*.

methylated spirits has the same meaning as in the *Spirits Act 1906* (Cwlth).

minor drugs offence—

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

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

- (a) official misconduct under the *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

Schedule 4 (continued)

(b) a deputy public interest monitor.¹⁶⁹

monitoring order see section 116.¹⁷⁰

motor vehicle see the Road Use Management Act, schedule 4.

moveable dwelling park, see the *Residential Tenancies Act 1994*, schedule 3.

noise abatement direction see section 360.¹⁷¹

non-intimate forensic procedure means a procedure performed on a person, other than an intimate forensic procedure, that involves all or any of the following—

- (a) an examination of an external part of the person's body, that requires clothing to be removed or contact with the person's body;
- (b) taking a sample from a part of the person's body, by swab, washing, vacuum suction, scraping, or by lifting by tape;
- (c) photographing a part of the person's body;
- (d) making an impression or cast of a part of the person's body;
- (e) taking a DNA sample;
- (f) taking a sample of saliva;
- (g) taking a sample from, or from under, a fingernail or toenail;
- (h) taking identifying particulars.

non-medical examination means a non-intimate forensic procedure, other than taking a DNA sample or palm prints, fingerprints, handwriting, voiceprints or footprints.

169 Section 157 (Public interest monitor)

170 Section 116 (Monitoring order applications)

171 Section 360 (Powers of police officers on investigation of excessive noise)

Schedule 4 (continued)

non-medical examination notice see section 318Q(2).

notice to appear see section 214(2).¹⁷²

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.

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.

owner, of a vehicle, for chapter 2, part 6, division 2, includes—

- (a) a person in whose name the vehicle is registered under a transport Act or a corresponding law of another State; and
- (b) a holder of a security interest registered for the vehicle under the *Motor Vehicles and Boats Securities Act 1986*.

pain, for an animal, includes distress and mental or physical suffering.

parent, of a person, for chapter 8A, means a parent or guardian of the person and includes—

172 Section 214 (Notice to appear may be issued for offence)

Schedule 4 (continued)

- (a) for an Aboriginal person, a person, who under Aboriginal tradition, is regarded as a parent of the person; or
- (b) for a Torres Strait Islander person, a person, who under Island custom, is regarded as a parent of the person;

but does not include an approved foster carer of the person under the *Child Protection Act 1999*.

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—

Schedule 4 (continued)

- (a) the photograph of the licensee or, if the licensee is an incorporated or unincorporated body, the licensee's representative;
- (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—

- (a) for chapter 6, part 4—see section 210;¹⁷³ or
- (b) for chapter 9, part 5—see section 371B.¹⁷⁴

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

¹⁷³ Chapter 6 (Arrest and custody powers), part 4 (Discontinuing arrest)

¹⁷⁴ Chapter 9 (Other powers), part 5 (Miscellaneous powers)

Schedule 4 (continued)

- (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.

post-prison community based release order, for chapter 8A, part 5, division 4, see section 318.

potentially harmful thing—

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

Example—

- 1 Glue.
- 2 Paint.
- 3 A solvent.

- (b) includes methylated spirits; and
- (c) does not include a thing intended by its manufacturer to be inhaled or ingested by a person using it.

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

Schedule 4 (continued)

(f) premises held under 2 or more titles or owners.

prescribed authority see section 451.¹⁷⁵

prescribed indictable offence, for chapter 8A, part 5, division 4, see section 318.

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

prescribed offence, for chapter 2, part 6, division 2 means any of the following offences committed in circumstances that involve a speed trial, a race between vehicles, or a burn out—

- (a) an offence against the Criminal Code, section 328A¹⁷⁶ committed on a road or in a public place; or
- (b) an offence against the Road Use Management Act, section 83;¹⁷⁷ or
- (c) an offence against the Road Use Management Act, section 85;¹⁷⁸ or
- (d) an offence against the Road Use Management Act involving wilfully starting a vehicle, or driving a vehicle, in a way that makes unnecessary noise or smoke.

Note—

At the enactment of this definition, a relevant offence for paragraph (d) was an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 1999*, section 291(1)(b).

prescribed place—

- (a) for chapter 2, part 4,¹⁷⁹ in relation to soliciting for prostitution, means any public place to which the public has access, whether on payment of a fee or otherwise,

175 Section 451 (Obtaining warrants, orders and authorities, etc., by telephone or similar facility)

176 Criminal Code, section 328A (Dangerous operation of a vehicle)

177 Road Use Management Act, section 83 (Careless driving of motor vehicles)

178 Road Use Management Act, section 85 (Racing and speed trials on roads)

179 Chapter 2 (General enforcement powers), part 4 (Directions to move-on)

Schedule 4 (continued)

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
 - (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 licensed venue under the *Racing Act 2002*; or
 - (x) an automatic teller machine; or
 - (xi) a war memorial; or
 - (xii) a place declared under section 41¹⁸⁰ 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—

180 Section 41 (Declaration of notified areas)

Schedule 4 (continued)

- (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.

production notice see section 97.¹⁸¹

production order see section 106.¹⁸²

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.

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) a document relevant to identifying, locating or quantifying—

181 Section 97 (Production notices)

182 Section 106 (Production order applications)

Schedule 4 (continued)

- (i) property of a person who committed a confiscation offence; or
 - (ii) property of a person a police officer reasonably suspects committed a confiscation offence; or
 - (iii) tainted property in relation to a confiscation offence; or
 - (iv) property of a person a police officer reasonably suspects is or has engaged in a serious crime related activity; or
 - (v) property a police officer reasonably suspects is serious crime derived property; or
- (b) a document relevant to identifying or locating a document necessary for the transfer of—
- (i) property of a person who committed a confiscation offence; or
 - (ii) property of a person that a police officer reasonably suspects committed a confiscation offence; or
 - (iii) tainted property in relation to a confiscation offence; or
 - (iv) property of a person a police officer reasonably suspects is or has been engaged in a serious crime related activity; or
 - (v) property a police officer reasonably suspects is illegally acquired property derived from a serious crime related activity.

proscribed thing means proscribed matter under the *State Buildings Protective Security Act 1983*.

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

Schedule 4 (continued)

- (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 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.¹⁸³

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.

¹⁸³ See, for example, the *Vagrants, Gaming and Other Offences Act 1931*, section 2, definition *public place*.

Schedule 4 (continued)

- 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 the *Public Records Act 2002*.

QDNA see section 318I(1).

QDNA index means an index of a kind prescribed under a regulation containing information derived from, or relating to, the results of DNA analyses.

qualified person, in relation to a forensic procedure, see section 272.

question, for chapter 7,¹⁸⁴ 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 dangerous drugs for training, for chapter 11, part 4, see section 443B.

register of enforcement acts means the register of enforcement acts kept under section 412.

registered corresponding foreign procedure order means a corresponding foreign procedure order registered under section 318ZP.

184 Chapter 7 (Powers and responsibilities relating to investigations and questioning for indictable offences)

Schedule 4 (continued)

registrar-general means the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

relevant act means conduct of a kind mentioned in section 37 or 38.¹⁸⁵

relevant court see section 59J.

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 1.¹⁸⁶

relevant offences, for chapter 8, part 5, see section 320.

relevant period, for chapter 2, part 6, division 2—see section 596.¹⁸⁷

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
- (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 8A—see section 274(2).

relevant place, in relation to an application to a judge for a surveillance warrant, see section 124.

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

185 Section 37 (When power applies to behaviour) or 38 (When power applies to a person's presence)

186 Chapter 2 (General enforcement powers), part 1 (Entry, inquiries and inspection)

187 Chapter 2 (General enforcement powers), part 6 (Powers relating to vehicles, traffic and animals), division 2 (Vehicle impounding powers for prescribed offences)
Ed. note: This Act does not have a section number 596. See section 59G.

Schedule 4 (continued)

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 230.¹⁸⁸

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 82.¹⁸⁹

responsible Minister, for chapter 8A, part 9, see section 318ZN.

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.

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

188 Section 230 (Application for removal of person from lawful custody)

189 Section 82 (Initial establishment of crime scene)

Schedule 4 (continued)

riot see the Criminal Code, section 61(4).¹⁹⁰

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 or 371AD.¹⁹¹

search warrant powers see section 74.¹⁹²

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.

secure facility, for chapter 11, part 4, see section 443B.

seize includes retain, but does not include impound.

serious crime derived property see Confiscation Act, section 23.¹⁹³

serious crime related activity see the Confiscation Act, section 16.¹⁹⁴

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;

190 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**.

191 Section 68 (Search warrant application) or 371AD (Coroner's search warrant)

192 Section 74 (Power under search warrants)

193 Confiscation Act, section 23 (Meaning of *serious crime derived property*)

194 Confiscation Act, section 16 (Meaning of *serious crime related activity*)

Schedule 4 (continued)

- (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;
- (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;
- (l) an offence against the *Weapons Act 1990* involving the trafficking of weapons or explosives or the unlawful supply or unlawful manufacture of weapons.

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.¹⁹⁵

special event site means a site described in a declaration of a special event as a special event site.

speed trial means—

195 Chapter 9 (Other powers), part 2 (Preserving safety for special events)

Schedule 4 (continued)

- (a) any attempt to establish or break any vehicle speed record of any description on a road; or
- (b) any trial of any description of the speed of a vehicle on a road; or
- (c) any competitive trial of any description designed to test the skill of any vehicle or driver or the reliability or mechanical condition of any vehicle on any road.

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—

- (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) 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

Schedule 4 (continued)

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).

surveillance powers means powers a police officer may exercise under a surveillance warrant.¹⁹⁶

surveillance warrant see sections 124 and 138.¹⁹⁷

suspension order see section 121A.¹⁹⁸

tainted property see the Confiscation Act, section 104.¹⁹⁹

take, for chapters 8, 8A and 8B, includes collect.

term of imprisonment see *Penalties and Sentences Act 1992*.

terrorism, for chapter 4, part 2, division 6, see section 147A(4).

196 Section 131 (Power under surveillance warrants)

197 Sections 124 (Surveillance warrant applications) and 138 (Surveillance warrant applications)

198 Section 121A (Suspension order application)

199 Confiscation Act, section 104 (Meaning of *tainted property*)

Schedule 4 (continued)

terrorist act, for chapter 4, part 2, division 6, see section 147A.

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
- (k) to allow for—
 - (i) an examination of the person under this Act by a doctor or dentist; or
 - (ii) the performance of a forensic procedure; or
 - (iii) the taking of a blood or urine sample under chapter 8B by a doctor or nurse; and
- (l) to allow for witnesses to be interviewed; and

Schedule 4 (continued)

- (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.

unlawfully means without authorisation, justification or excuse by law.

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.

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

Schedule 4 (continued)

(b) otherwise—see *Weapons Act 1990*, section 5.²⁰⁰

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.

200 *Weapons Act 1990*, section 5—

weapon means—

- (a) a firearm; or
- (b) another thing prescribed under a regulation to be a weapon or within a category of weapon; or
- (c) a thing that would be a weapon mentioned in paragraph (a) or (b), if it were not temporarily inoperable or incomplete.

Endnotes

1 Index to endnotes

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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 1 December 2004. 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)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	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.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Reprint date
1	to 2000 Act No. 22	1 July 2000	1 July 2000
1A	to 2000 Act No. 46	25 October 2000	8 November 2000
1B	to 2000 Act No. 63	25 October 2000	21 December 2000
2	to 2001 Act No. 22	1 July 2001	7 September 2001
2A	to 2001 Act No. 81	1 January 2002	15 January 2002
2B rv	to 2001 Act No. 81	28 February 2002	1 March 2002
2C rv	to 2002 Act No. 6	1 March 2002	15 March 2002
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Police Powers and Responsibilities Act 2000

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2J rv	to 2002 Act No. 49	24 September 2002	
2K rv	to 2002 Act No. 49	27 September 2002	
2L rv	to 2002 Act No. 49	4 November 2002	
2M rv	to 2002 Act No. 49	30 December 2002	
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3 rv	to 2003 Act No. 5	10 March 2003	
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3B 2rv	to 2003 Act No. 37	1 July 2003	
3C rv	to 2003 Act No. 37	2 July 2003	prov exp 1 July 2003
3D rv	to 2003 Act No. 46	27 August 2003	
3E rv	to 2003 Act No. 48	1 October 2003	
3F rv	to 2003 Act No. 82	6 November 2003	
3G rv	to 2003 Act No. 82	1 December 2003	
3H rv	to 2003 Act No. 92	3 December 2003	
3I	to 2003 Act No. 92	1 February 2004	
3J	to 2003 Act No. 92	2 February 2004	
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3N	to 2004 Act No. 10	5 July 2004	
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3R	to 2004 Act No. 27	7 November 2004	
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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, 225–9

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 commenced 10 March 2003 (2003 SL No. 17)

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 commenced 1 July 2003 (2003 SL No. 116) (provisions were to commence 25 April 2004 (automatic commencement under AIA s 15DA(2) (2003 SL No. 58 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 commenced 23 August 2002 (2002 SL No. 203)

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 commenced 19 July 2002 (2002 SL No. 157)

Police Powers and Responsibilities (DNA) Amendment Act 2002 No. 26

date of assent 21 June 2002
 commenced on date of assent

**Police Powers and Responsibilities and Another Act Amendment Act 2002 No. 33
 pts 1–2**

date of assent 16 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 4 November 2002 (2002 SL No. 284)

Drugs Misuse Amendment Act 2002 No. 35 ss 1–2, 13 sch

date of assent 16 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 27 September 2002 (2002 SL No. 253)

Juvenile Justice Amendment Act 2002 No. 39 pts 1, 14

date of assent 29 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2002 SL No. 350)

**Juvenile Justice Act 1992 No. 44 s 341(3) (prev 262(3)) sch 3 (this Act is amended, see
 amending legislation below)**

amending legislation—

**Juvenile Justice Amendment Act 2002 No. 39 ss 1–2, 115, 118 (amends 1992
 No. 44 above)**

date of assent 29 August 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2002 SL No. 350)

Indigenous Communities Liquor Licences Act 2002 No. 47 ss 1–2(1), pt 7

date of assent 24 September 2002
 ss 1–2 commenced on date of assent
 ss 89, 91 commenced 30 December 2002 (see s 2(1) and 2002 SL No. 380)
 remaining provisions commenced on date of assent

Primary Industries Legislation Amendment Act 2002 No. 49 ss 1, 37 sch

date of assent 24 September 2002
 commenced on date of assent

Racing Act 2002 No. 58 ss 1–2(1), 398(1) sch 2 pt 1

date of assent 14 November 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 July 2003 (2003 SL No. 141)

Criminal Proceeds Confiscation Act 2002 No. 68 ss 1–2(1), ch 12 pt 7

date of assent 29 November 2002
 ss 1–2 commenced on date of assent
 remaining provisions commenced 1 January 2003 (see s 2(1))

Weapons and Another Act Amendment Act 2003 No. 5 pts 1, 3

date of assent 4 March 2003
 commenced on date of assent

Coroners Act 2003 No. 13 ss 1, 2(2), 106 sch 1

date of assent 9 April 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2003 (2003 SL No. 296)

Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1, 3 sch

date of assent 9 May 2003

commenced on date of assent

Motor Vehicles Securities and Other Acts Amendment Act 2003 No. 22 ss 1–2, 30 sch

date of assent 9 May 2003

ss 1–2, 30 commenced on date of assent (see s 2(1))

remaining provisions commenced 1 July 2003 (2003 SL No. 115)

Births, Deaths and Marriages Registration Act 2003 No. 31 ss 1–2, 59 sch 1

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 2004 (2003 SL No. 360)

Weapons (Handguns and Trafficking) Amendment Act 2003 No. 37 ss 1–2(1), pt 5

date of assent 2 June 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (2003 SL No. 132)

Chemical, Biological and Radiological Emergency Powers Amendment Act 2003 No. 46 ss 1, 19 sch

date of assent 27 August 2003

commenced on date of assent

Corrective Services Amendment Act 2003 No. 48 pts 1, 3

date of assent 27 August 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 2003 (2003 SL No. 228)

Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003 No. 49 pts 1–2 (this Act is amended, see amending legislation below)

date of assent 27 August 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2004 (2003 SL No. 353)

amending legislation—

Police Powers and Responsibilities and Other Legislation Amendment Act 2003 No. 92 s 1, pt 8A (amends 2003 No. 49 above)

date of assent 3 December 2003

commenced on date of assent

Second-hand Dealers and Pawnbrokers Act 2003 No. 73 ss 1–2, 117 sch 2

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 5 July 2004 (2004 SL No. 118)

Primary Industries and Other Legislation Amendment Act 2003 No. 82 ss 1–2(1)(a), 88 sch

date of assent 6 November 2003

commenced on date of assent (see s 2(1)(a))

Australian Crime Commission (Queensland) Act 2003 No. 83 ss 1–2, 68 sch 1

date of assent 6 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 7 November 2004 (automatic commencement under AIA s 15DA(2))

Disaster Management Act 2003 No. 91 ss 1–2, 175 sch 1

date of assent 18 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 31 March 2004 (2004 SL No. 24)

Police Powers and Responsibilities and Other Legislation Amendment Act 2003**No. 92 ss 1, 2(2), pt 2, s 3 sch**

date of assent 3 December 2003

s 13 commenced 1 July 2004 (2004 SL No. 93)

remaining provisions commenced on date of assent

Terrorism (Community Safety) Amendment Act 2004 No. 8 pts 1, 6

date of assent 20 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 6 August 2004 (2004 SL No. 147)

Residential Services and Other Legislation Amendment Act 2004 No. 10 ss 1, 8 sch

date of assent 31 May 2004

commenced on date of assent

Child Safety Legislation Amendment Act 2004 No. 13 ss 1–2(1), 102 sch 2 pt 2

date of assent 24 June 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 August 2004 (2004 SL No. 141)

Gambling Legislation Amendment Act 2004 No. 21 ss 1–2, 123 sch

date of assent 13 September 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2004 (2004 SL No. 252)

Primary Industries and Fisheries Legislation Amendment Act 2004 No. 27 ss 1, 2(3), pt 6

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced on date of assent (see s 2(3))

Local Government (Community Government Areas) Act 2004 No. 37 ss 1–2, 86 sch 1

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)

Community Services and Other Legislation Amendment Act 2004 No. 38 pts 1, 4

date of assent 27 October 2004

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004

commenced on date of assent

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s 214 (prev s 177) renum 2000 No. 22 s 11
amd 2002 No. 39 s 169

Notice to appear must be served discreetly on a child

s 214A ins 2002 No. 39 s 170

Notice to appear form

s 215 (prev s 178) renum 2000 No. 22 s 11
amd 2002 No. 39 s 171

Filing of notice to appear

s 216 (prev s 179) renum 2000 No. 22 s 11
sub 2002 No. 39 s 172

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
amd 2002 No. 39 s 173

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; 2002 No. 39 s 174; 2003 No. 19 s 3 sch

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
amd 2002 No. 39 s 175; 1992 No. 44 s 341 sch 3 (amd 2002 No. 39 ss 115,
118)

Court must strike out notice to appear if service insufficient

s 221 (prev s 184) renum 2000 No. 22 s 11
amd 2002 No. 39 s 176

PART 6—DUTIES AFTER ARREST

pt hdg (prev ch 6 pt 1 div 6 hdg) renum 2003 No. 19 s 3 sch

Information to be given to arrested person

s 222 (prev s 185) renum 2000 No. 22 s 11

Parent and chief executive to be advised of arrest or service of notice to appear

s 223 (prev s 186) amd 2000 No. 22 s 3 sch
renum 2000 No. 22 s 11
sub 2002 No. 39 s 177

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; 2003 No. 19 s 3 sch

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; 2002 No. 39 s 178

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 hdg) 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 3—SAFEGUARDS ENSURING RIGHTS OF AND FAIRNESS TO PERSONS QUESTIONED FOR INDICTABLE OFFENCES**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
amd 2002 No. 39 s 179

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

Division 5—Cautioning and rights of persons

div hdg ins 2003 No. 19 s 3 sch

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

Division 6—Recording of questioning

div hdg (prev ch 7 pt 3 div 5 hdg) renum 2003 No. 19 s 3 sch

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**Division 7—General**

div hdg (prev ch 7 pt 3 div 6 hdg) renum 2003 No. 19 s 3 sch

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—SEARCH POWERS FOR PERSONS IN CUSTODY**ch hdg (prev ch 7 hdg) renum 2000 No. 22 s 7
sub 2003 No. 49 s 9**PART 1—SEARCH OF PERSONS IN CUSTODY**

pt hdg orig ch 8 pt 1 hdg om 2003 No. 49 s 9

Application of ch 8s 269 (prev s 232) amd 2000 No. 22 s 14(1)
renum 2000 No. 22 s 14(2)
sub 2003 No. 49 s 9

PART 2—GATHERING INFORMATION FOR IDENTIFYING SUSPECTS**pt hdg** orig ch 8 pt 2 hdg om 2003 No. 49 s 10**Division 1—Taking identifying particulars****div hdg** orig ch 8 pt 2 div 1 hdg om 2003 No. 49 s 10**Police officer may search person in custody****s 270** (prev s 233) renum 2000 No. 22 s 15
sub 2003 No. 49 s 9**Powers relating to thing taken from person taken to place of safety****s 271** (prev s 234) renum 2000 No. 22 s 15
sub 2003 No. 49 s 9**Division 2—Identifying suspects****div hdg** orig ch 8 pt 2 div 2 hdg om 2003 No. 49 s 10**PART 3—MEDICAL AND DENTAL PROCEDURES****pt hdg** orig ch 8 pt 3 hdg om 2003 No. 49 s 10**Division 1—Preliminary****div hdg** orig ch 8 pt 3 div 1 hdg om 2003 No. 49 s 10**Division 2—Performing medical or dental procedures with consent****div hdg** orig ch 8 pt 3 div 2 hdg om 2003 No. 49 s 10**Division 3—Performing medical or dental procedures without consent****div hdg** orig ch 8 pt 3 div 3 hdg om 2003 No. 49 s 10**Division 4—Miscellaneous****div hdg** orig ch 8 pt 3 div 4 hdg om 2003 No. 49 s 10**PART 4—DNA PROCEDURES****pt hdg** orig ch 8 pt 4 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10**Division 1—Application and purpose of pt 4****div hdg** orig ch 8 pt 4 div 1 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10**Division 2—Preliminary provisions about taking DNA samples for DNA analysis****div hdg** orig ch 8 pt 4 div 2 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10**Division 3—Taking DNA samples with consent****div hdg** orig ch 8 pt 4 div 3 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10**Division 4—Taking DNA samples without consent****div hdg** orig ch 8 pt 4 div 4 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10**Division 5—General requirements about taking DNA samples****div hdg** orig ch 8 pt 4 div 5 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10

Division 6—General

div hdg orig ch 8 pt 4 div 6 hdg ins 2000 No. 22 s 18
om 2003 No. 49 s 10

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

pt hdg orig ch 8 pt 5 hdg om 2003 No. 49 s 10

CHAPTER 8A—FORENSIC PROCEDURES

ch hdg ins 2003 No. 49 s 10

PART 1—QUALIFIED PERSONS AND AUTHORISING FORENSIC PROCEDURES

pt hdg ins 2003 No. 49 s 10

Who are qualified persons

s 272 (prev s 235) amd 2000 No. 22 s 16(1)
renum 2000 No. 22 s 16(2)
sub 2003 No. 49 s 10

Limitation on forensic procedures that dentist may perform

s 273 (prev s 236) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

When forensic procedures are authorised

s 274 (prev s 237) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

PART 2—OBTAINING CONSENT FOR FORENSIC PROCEDURE

pt hdg ins 2003 No. 49 s 10

What pt 2 provides

s 275 sub 2003 No. 49 s 10

General rules about asking for consent

s 276 (prev s 239) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Special requirement for child of at least 14

s 277 (prev s 240) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Special requirement for child under 14

s 278 (prev s 241) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Special requirement for person with impaired capacity

s 279 (prev s 242) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Consent must be informed consent

s 280 (prev s 243) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

General requirements for giving informed forensic procedure consent

s 281 (prev s 244) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Recording consent

s 282 (prev s 245) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Qualified person may perform forensic procedure

s 283 (prev s 246) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

PART 3—FORENSIC PROCEDURE ORDERS

pt hdg ins 2003 No. 49 s 10

Application of pt 3

s 284 (prev s 247) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Application for forensic procedure order

s 285 (prev s 248) renum 2000 No. 22 s 17
amd 2003 No. 19 s 3 sch
sub 2003 No. 49 s 10

Notice of application must ordinarily be given

s 286 (prev s 249) renum 2000 No. 22 s 17
amd 2003 No. 19 s 3 sch
sub 2003 No. 49 s 10

When notice of application need not be given etc

s 287 (prev s 250) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Making forensic procedure order

s 288 (prev s 251) amd 2000 No. 22 s 3 sch
renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

What forensic procedure order must state

s 289 (prev s 252) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

When forensic procedure order ends

s 290 (prev s 253) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Powers for enforcing forensic procedure order

s 291 (prev s 254) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Order must be given before forensic procedure is performed

s 292 (prev s 255) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Qualified person may perform forensic procedure

s 293 (prev s 256) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

PART 4—IDENTIFYING PARTICULARS

pt hdg ins 2003 No. 49 s 10

Division 1—Particular provisions about taking identifying particulars

div hdg ins 2003 No. 49 s 10

Taking identifying particulars of person in custody

s 294 (prev s 257) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

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

s 295 (prev s 258) renum 2000 No. 22 s 17
sub 2003 No. 49 s 10

Division 2—Taking identifying particulars under identifying particulars notice

div hdg ins 2003 No. 49 s 10

Application of div 2

s 296 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Identifying particulars notice may be given

s 297 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Division 3—Taking identifying particulars under court order

div hdg ins 2003 No. 49 s 10

Court may order taking of identifying particulars

s 298 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Detention for taking identifying particulars

s 299 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Who may take identifying particulars

s 300 ins 2000 No. 22 s 18
amd 2003 No. 19 s 3 sch
sub 2003 No. 49 s 10

Division 4—Destruction of identifying particulars

div hdg ins 2003 No. 49 s 10

Destruction of identifying particulars

s 301 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

PART 5—DNA PROCEDURES

pt hdg ins 2003 No. 49 s 10

Division 1—Preliminary provisions about DNA sampling and DNA analysis**div hdg** ins 2003 No. 49 s 10**Taking DNA sample by doctor or nurse****s 302** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**Commissioner may authorise police officers to take DNA samples****s 303** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**Where DNA sample may be taken****s 304** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**How DNA samples may be taken****s 305** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**Division 2—Taking DNA sample from particular persons with consent****div hdg** ins 2003 No. 49 s 10**Use of DNA analysis of DNA sample taken from child under 14****s 306** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**Taking DNA sample from person with impaired capacity****s 307** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**Division 3—Taking DNA samples after proceedings commenced and from certain prisoners****div hdg** ins 2003 No. 49 s 10**Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.****s 308** ins 2000 No. 22 s 18
sub 2003 No. 49 s 10**DNA sample notice****s 309** ins 2000 No. 22 s 18
amd 2003 No. 19 s 3 sch
sub 2003 No. 49 s 10**Requirements for DNA sample notice****prov hdg** amd 2002 No. 26 s 3(1)
s 310 prev s 310 om 2000 No. 22 s 21
pres s 310 ins 2000 No. 22 s 18
amd 2002 No. 26 s 3(2)
sub 2003 No. 49 s 10**Taking DNA sample from adult before court****s 311** orig s 311 om 2000 No. 22 s 21
prev s 311 ins 2000 No. 22 s 18
amd 2000 No. 63 s 276 sch 2; 2002 No. 26 s 4

exp 1 July 2003 (see s 311(6))
pres s 311 ins 2003 No. 49 s 10

Taking DNA sample after finding of guilt
s 312 prev s 312 om 2000 No. 22 s 21
pres s 312 ins 2000 No. 22 s 18
amd 2002 No. 39 s 180
sub 2003 No. 49 s 10

Detention for taking DNA sample
s 313 prev s 313 om 2000 No. 22 s 21
pres s 313 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Taking DNA sample from prisoner in corrective services facility
s 314 prev s 314 om 2000 No. 22 s 21
pres s 314 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10
exp 2 February 2005 (see s 314(4))

Taking DNA sample from transferred prisoner
s 315 prev s 315 om 2000 No. 22 s 21
pres s 315 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10

Taking DNA sample from child
s 316 prev s 316 om 2000 No. 22 s 21
pres s 316 ins 2000 No. 22 s 18
amd 2002 No. 26 s 5
sub 2003 No. 49 s 10

**Division 4—Taking DNA samples from prisoners released under post-prison
community based release orders**

div hdg ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Application of div 4 and non-application of pt 2
s 317 prev s 317 om 2000 No. 22 s 21
pres s 317 ins 2000 No. 22 s 18
sub 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Definitions for div 4
s 318 ins 2000 No. 22 s 18
amd 2003 No. 19 s 3 sch
sub 2003 No. 49 s 10
amd 2004 No. 53 s 2 sch
exp 2 February 2005 (see s 318F)

Prisoner serving term of imprisonment for prescribed indictable offence
s 318A ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Prisoner serving term of imprisonment for other indictable offences

s 318B ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

General requirements for giving informed consent

s 318C ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Application to court under s 312 for order

s 318D ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Court make order despite time that has elapsed since finding of guilt

s 318E ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Expiry of div 4

s 318F ins 2003 No. 49 s 10
exp 2 February 2005 (see s 318F)

Division 5—Analysis and use of DNA samples

div hdg ins 2003 No. 49 s 10

Power to analyse etc. DNA samples

s 318G ins 2003 No. 49 s 10

When DNA sample taken from suspected person and results must be destroyed

s 318H ins 2003 No. 49 s 10

Division 6—DNA databases

div hdg ins 2003 No. 49 s 10

State DNA database

s 318I ins 2003 No. 49 s 10
 amd 2004 No. 53 s 2 sch

Transmitting information to CrimTrac

s 318J ins 2003 No. 49 s 10

Use of QDNA or CrimTrac database

s 318K ins 2003 No. 49 s 10

Limitation on use of results of DNA analysis

s 318L ins 2003 No. 49 s 10

PART 6—NON-MEDICAL EXAMINATIONS

pt 6 (ss 318M–318R) ins 2003 No. 49 s 10

PART 7—FORENSIC PROCEDURES PERFORMED BY DOCTORS AND DENTISTS

pt 7 (ss 318S–318ZC) ins 2003 No. 49 s 10

PART 8—MATTERS RELATING TO PERFORMING FORENSIC PROCEDURES

pt hdg ins 2003 No. 49 s 10

Right to interpreter

s 318ZD ins 2003 No. 49 s 10

Power to analyse samples

s 318ZE ins 2003 No. 49 s 10

Order for person who fails to comply with reporting notice

s 318ZF ins 2003 No. 49 s 10 (amd 2003 No. 92 s 28B)

Detention for performing forensic procedure

s 318ZG ins 2003 No. 49 s 10

General power for performing forensic procedure

s 318ZH ins 2003 No. 49 s 10

Help with, and use of force for, performing forensic procedure

s 318ZI ins 2003 No. 49 s 10

General power to require further attendance

s 318ZJ ins 2003 No. 49 s 10

Protecting the dignity of person in performing a non-intimate forensic procedure

s 318ZK ins 2003 No. 49 s 10

Effect of withdrawal of consent

s 318ZL ins 2003 No. 49 s 10

Powers under this part are additional to other powers

s 318ZM ins 2003 No. 49 s 10

PART 9—CORRESPONDING FORENSIC PROCEDURE ORDERS

pt 9 (ss 318ZN–318ZQ) ins 2003 No. 49 s 10

PART 10—OFFENCES

pt 10 (ss 318ZR–318ZX) ins 2003 No. 49 s 10

PART 11—OTHER PROVISIONS

pt 11 (ss 318ZY–318ZB) ins 2003 No. 49 s 10

**CHAPTER 8B—BLOOD AND URINE TESTING OF PERSONS SUSPECTED OF
COMMITTING SEXUAL OR OTHER SERIOUS ASSAULT OFFENCES**

ch hdg ins 2003 No. 49 s 10

PART 1—PRELIMINARYpt hdg prev ch 8 pt 5 div 1 hdg ins 2000 No. 22 s 18
sub 2003 No. 49 s 11**Purpose of ch 8B**

prov hdg amd 2003 No. 49 s 12(1)

s 319 ins 2000 No. 22 s 18
amd 2003 No. 49 s 12(2)**Application of ch 8B**

prov hdg amd 2003 No. 49 s 13(1)

s 320 ins 2000 No. 22 s 18
amd 2003 No. 49 s 13(2)

Certain Acts do not apply to this chapter

prov hdg amd 2003 No. 49 s 14
s 321 ins 2000 No. 22 s 18
 amd 2003 No. 49 s 14

PART 2—TAKING BLOOD AND URINE SAMPLES

pt hdg prev ch 8 pt 5 div 2 hdg ins 2000 No. 22 s 18
 sub 2003 No. 49 s 15

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

PART 3—GENERAL

div hdg prev ch 8 pt 5 div 3 hdg ins 2000 No. 22 s 18
 sub 2003 No. 49 s 16

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
 amd 2003 No. 49 s 17

Certain evidence inadmissible

s 330 ins 2000 No. 22 s 18
 amd 2003 No. 49 s 18

CHAPTER 9—OTHER POWERS

ch hdg (prev ch 8 hdg) 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 sch
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 3s 358 (prev s 286) renum 2000 No. 22 s 19
amd 2002 No. 33 s 8**Complaint about noise**s 359 (prev s 287) renum 2000 No. 22 s 19
amd 2002 No. 33 s 9**Powers of police officers on investigation of excessive noise**prov hdg amd 2002 No. 33 s 10(1)
s 360 (prev s 288) renum 2000 No. 22 s 19
amd 2002 No. 33 s 10(2)–(7)**Compliance with noise abatement direction**

s 361 (prev s 289) renum 2000 No. 22 s 19

Additional powers of police officers on later investigations 362 (prev s 290) amd 2000 No. 22 s 3 sch
renum 2000 No. 22 s 19
amd 2004 No. 53 s 2 sch**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
amd 2003 No. 19 s 3 sch

PART 4A—POWERS FOR ASSISTING CORONERS

pt 4A (ss 371AA–371AG) ins 2003 No. 13 s 106 sch 1

Power to seize potentially harmful things

s 371A ins 2000 No. 22 s 20
sub 2003 No. 92 s 13

Dealing with persons affected by potentially harmful things

s 371B ins 2003 No. 92 s 13
exp 1 July 2005 (see s 371F(1))

Duties in relation to person detained under s 371B

s 371C ins 2003 No. 92 s 13
exp 1 July 2005 (see s 371F(1))

No compulsion to stay at place of safety

s 371D ins 2003 No. 92 s 13
exp 1 July 2005 (see s 371F(1))

Review of operation of ss 371B–371D

s 371E ins 2003 No. 92 s 13
exp 1 July 2005 (see s 371F(1))

Expiry of ss 371B–371E

s 371F ins 2003 No. 92 s 13
exp 1 July 2005 (see s 371F(1))

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
amd 2004 No. 10 s 8 sch

Assistance in exercising powers

prov hdg sub 2002 No. 47 s 95(1)
s 373 (prev s 301) renum 2000 No. 22 s 19
amd 2002 No. 47 s 95(2)–(3); 2003 No. 46 s 19 sch

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

Identification of suspectss 377A (prev s 275 (orig s 238)) renum 2000 No. 22 s 17
renum and reloc 2003 No. 49 s 8**CHAPTER 10—OTHER STANDARD SAFEGUARDS**

ch hdg (prev ch 9 hdg) renum 2000 No. 22 s 7

Chapter does not apply to covert operations

s 378 (prev s 306) renum 2000 No. 22 s 19

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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 documentss 381 (prev s 309) renum 2000 No. 22 s 19
amd 2003 No. 13 s 106 sch 1**Division 3—Return of seized things**

div hdg orig ch 10 pt 2 div 3 hdg om 2000 No. 22 s 21

Division 4—Disposal of seized things

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Division 5—Ministerial arrangements

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s 382 (prev s 318) renum 2000 No. 22 s 22

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s 383 (prev s 319) renum 2000 No. 22 s 22

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s 384 (prev s 320) renum 2000 No. 22 s 22

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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 searchs 387 (prev s 323) amd 2000 No. 22 s 3 sch
renum 2000 No. 22 s 22**Protecting the dignity of persons during search**

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s 389 (prev s 325) renum 2000 No. 22 s 22

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s 390 (prev s 326) renum 2000 No. 22 s 22

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s 391 (prev s 327) renum 2000 No. 22 s 22

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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

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s 394 (prev s 330) renum 2000 No. 22 s 22

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s 395 (prev s 331) renum 2000 No. 22 s 22

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s 396 (prev s 332) renum 2000 No. 22 s 22

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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; 2003 No. 83 s 68 sch 1**Purpose and explanation of pt 2**

s 399 (prev s 335) renum 2000 No. 22 s 22

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s 400 (prev s 336) renum 2000 No. 22 s 22

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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

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renum 2000 No. 22 s 24

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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

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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

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s 410 (prev s 346) renum 2000 No. 22 s 24

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s 411 (prev s 347) renum 2000 No. 22 s 24

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s 412 (prev s 348) renum 2000 No. 22 s 24
amd 2001 No. 69 s 378 sch 1

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s 413 (prev s 349) renum 2000 No. 22 s 24

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s 414 (prev s 350) renum 2000 No. 22 s 24
amd 2001 No. 69 s 378 sch 1; 2003 No. 83 s 68 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

Division 4—Provisions about covert acts and enforcement acts done for the ACC

div hdg amd 2003 No. 83 s 68 sch 1

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s 417 (prev s 353) renum 2000 No. 22 s 24
amd 2003 No. 83 s 68 sch 1

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prov hdg amd 2003 No. 83 s 68 sch 1
s 418 (prev s 354) amd 2000 No. 22 s 3 sch

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amd 2003 No. 83 s 68 sch 1

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s 419 (prev s 355) amd 2000 No. 22 s 3 sch
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amd 2002 No. 33 s 11; 2002 No. 68 s 337; 2003 No. 5 s 24; 2003 No. 46
s 19 sch; 2003 No. 13 s 106 sch 1; 2003 No. 49 s 19

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s 421 ins 2000 No. 22 s 25

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s 422 ins 2000 No. 22 s 25

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div hdg ins 2000 No. 22 s 25

Return of seized things

s 423 ins 2000 No. 22 s 25

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s 424 ins 2000 No. 22 s 25

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s 425 ins 2000 No. 22 s 25

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s 426 ins 2000 No. 22 s 25

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s 427 ins 2000 No. 22 s 25

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s 428 ins 2000 No. 22 s 25

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Division 3—Dealing with dangerous drugs etc.

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s 430 ins 2000 No. 22 s 25

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s 431 ins 2000 No. 22 s 25

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s 432 ins 2000 No. 22 s 25

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s 433 ins 2000 No. 22 s 25

Division 4—Dealing with weapons

div hdg ins 2000 No. 22 s 25

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s 435 ins 2000 No. 22 s 25

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amd 2002 No. 47 s 96**Dealing with forfeited things**

s 441 ins 2000 No. 22 s 25

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div hdg ins 2000 No. 22 s 25

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s 442 ins 2000 No. 22 s 25

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s 443 ins 2000 No. 22 s 25

PART 4—USE OF DANGEROUS DRUGS FOR TRAINING

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CHAPTER 12—GENERAL

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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 officers 445 (prev s 357) renum 2000 No. 22 s 26
amd 2003 No. 49 s 20**Performance of duty**

s 446 (prev s 358) renum 2000 No. 22 s 26

Assistance at fire or chemical incidentss 447 (prev s 359) renum 2000 No. 22 s 26
amd 2003 No. 19 s 3 sch**Assisting coroner to investigate a death**

s 447A ins 2003 No. 13 s 106 sch 1

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s 448 (prev s 360) renum 2000 No. 22 s 26

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s 449 (prev s 361) renum 2000 No. 22 s 26

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s 450 (prev s 362) renum 2000 No. 22 s 26

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amd 2002 No. 33 s 12; 2003 No. 92 s 3 sch; 2003 No. 49 s 21(2) (2003 No. 49
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amd 2003 No. 49 s 22**Protection of methodologies**s 454 (prev s 366) renum 2000 No. 22 s 26
amd 2001 No. 69 s 378 sch 1; 2002 No. 35 s 13 sch; 2003 No. 83 s 68 sch 1**Compensation**

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s 456 (prev s 368) renum 2000 No. 22 s 26

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s 457 (prev s 369) renum 2000 No. 22 s 26

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s 458 (prev s 370) renum 2000 No. 22 s 26

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CHAPTER 13—REPEALS, TRANSITIONAL PROVISIONS AND AMENDMENTS**ch hdg** (prev ch 12 hdg) renum 2000 No. 22 s 7**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
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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

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s 475 prev s 475 (prev s 387) renum 2000 No. 22 s 26
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s 476 prev s 476 (prev s 388) renum 2000 No. 22 s 26
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DNA procedures

s 477 prev s 477 (prev s 389) renum 2000 No. 22 s 26
om R1 (see RA s 40)
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Police officers authorised to take DNA samples

s 478 prev s 478 (prev s 390) renum 2000 No. 22 s 26
om R1 (see RA s 40)
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Taking of certain DNA samples

s 479 prev s 479 (prev s 391) renum 2000 No. 22 s 26
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s 480 prev s 480 (prev s 392) renum 2000 No. 22 s 26
om R1 (see RA s 40)
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Certain arrangements made by Minister

s 481 prev s 481 (prev s 393) renum 2000 No. 22 s 26
om R1 (see RA s 40)
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s 482 ins 2003 No. 49 s 24

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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; 2002 No. 39 s 182; 2003 No. 19 s 3 sch; 2003 No. 13 s 106 sch 1; 2003 No. 91 s 175 sch 1; 2003 No. 83 s 68 sch 1; 2004 No. 53 s 2 sch

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 (amd 2002 No. 13 s 113)
om R1 (see RA s 40)

SCHEDULE 4—DICTIONARY

def “**ACC**” ins 2003 No. 83 s 68 sch 1
def “**agency arrangement**” ins 2003 No. 5 s 26
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 “**appropriate person**” ins 2003 No. 49 s 25(2)
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 “**attend**” ins 2003 No. 49 s 25(2)
def “**authorised examiner**” ins 2003 No. 49 s 25(2)
def “**authorised person**” amd 2000 No. 22 s 3 sch
def “**authorised police officer**” ins 2003 No. 49 s 25(2)
def “**burn out**” ins 2002 No. 33 s 13(2)
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)
om 2003 No. 49 s 25(1)
def “**commissioner direction**” ins 2003 No. 5 s 26
def “**committee**” ins 2000 No. 22 s 29(2)
def “**Confiscation Act**” ins 2000 No. 22 s 29(2)
sub 2002 No. 68 s 338
def “**confiscation offence**” ins 2002 No. 68 s 338(2)
def “**confiscation order**” ins 2002 No. 68 s 338(2)
def “**confiscation related activity**” ins 2002 No. 68 s 338(2)
def “**confiscation related evidence**” ins 2002 No. 68 s 338(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 “**coroner**” ins 2003 No. 13 s 106 sch 1
 def “**corrective services facility**” ins 2000 No. 63 s 276 sch 2
 def “**corresponding forensic procedure orders**” ins 2003 No. 49 s 25(2)
 def “**covert operative**” ins 2000 No. 22 s 29(2)
 def “**CrimTrac**” ins 2003 No. 49 s 25(2)
 def “**CrimTac database**” ins 2003 No. 49 s 25(2)
 def “**detention centre**” amd 1992 No. 44 s 341 sch 3 (amd 2002 No. 39 ss 115, 118)
 def “**detention order**” amd 1992 No. 44 s 341 sch 3 (amd 2002 No. 39 ss 115, 118)
 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)
 om 2003 No. 49 s 25(1)
 def “**DNA sample**” ins 2000 No. 22 s 29(2)
 sub 2003 No. 49 s 25(1)–(2)
 def “**DNA sample notice**” ins 2000 No. 22 s 29(2)
 sub 2003 No. 49 s 25(1)–(2)
 def “**DNA sampler**” ins 2000 No. 22 s 29(2)
 sub 2003 No. 49 s 25(1)–(2)
 def “**domestic violence**” amd 2002 No. 6 s 43(2)
 def “**domestic violence order**” ins 2002 No. 6 s 43(1)
 def “**driver**” sub 2003 No. 19 s 3 sch
 def “**driver licence**” ins 2003 No. 19 s 3 sch
 def “**drug control officer**” ins 2003 No. 5 s 26
 def “**drug diversion assessment program**” ins 2000 No. 22 s 29(2)
 def “**drug vault**” ins 2003 No. 5 s 26
 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;
 2003 No. 13 s 106 sch 1; 2003 No. 49 s 25(3)
 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 “**forensic procedure**” ins 2003 No. 49 s 25(2)
 def “**forensic procedure consent**” ins 2003 No. 49 s 25(2)
 def “**forensic procedure order**” ins 2003 No. 49 s 25(2)
 def “**forfeiture order**” ins 2003 No. 92 s 14(2)
 def “**forfeiture proceeding**” sub 2002 No. 68 s 338
 def “**found guilty**” ins 2003 No. 92 s 14(2)
 def “**function of the police service**” ins 2003 No. 49 s 25(2)
 def “**guardian**” ins 2003 No. 49 s 25(2)
 def “**hand held scanner**” amd 2003 No. 19 s 3 sch
 def “**health department**” ins 2000 No. 22 s 29(2)
 def “**holding yard**” ins 2002 No. 33 s 13(2)
 def “**identifying particulars**” amd 2003 No. 49 s 25(4)
 def “**identifying particulars notice**” amd 2000 No. 22 s 3 sch; 2003 No. 49 s 25(5)
 def “**identifying particulars offence**” amd 2002 No. 13 s 124 sch;
 2003 No. 73 s 117 sch 2

- def “**illegally acquired property**” ins 2002 No. 68 s 338(2)
- def “**impounding order**” ins 2003 No. 92 s 14(2)
- def “**independent member**” ins 2000 No. 22 s 29(2)
- def “**independent person**” ins 2003 No. 49 s 25(2)
- def “**indictable offence**” ins 2003 No. 49 s 25(2)
- def “**initial nuisance direction**” amd 2000 No. 22 s 3 sch
- def “**initiating application charges**” ins 2003 No. 92 s 14(2)
- def “**initiating impoundment**” ins 2003 No. 92 s 14(2)
- def “**initiating impoundment offence**” ins 2003 No. 92 s 14(2)
- def “**interstate domestic violence order**” ins 2002 No. 6 s 43(1)
- def “**intimate forensic procedure**” ins 2003 No. 49 s 25(2)
- 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 “**mall**” amd 2004 No. 53 s 2 sch
- def “**methylated spirits**” ins 2003 No. 92 s 14(2)
- 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 “**NCA**” om 2003 No. 83 s 68 sch 1
- def “**noise abatement direction**” amd 2000 No. 22 s 3 sch
- def “**non-intimate forensic procedure**” ins 2003 No. 49 s 25(2)
- def “**non-medical examination**” ins 2003 No. 49 s 25(2)
- def “**non-medical examination notice**” ins 2003 No. 49 s 25(2)
- 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 “**owner**” ins 2002 No. 33 s 13(2)
amd 2003 No. 22 s 30 sch
- def “**pain**” ins 2001 No. 64 s 229
- def “**parent**” ins 2003 No. 49 s 25(2)
- 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)
sub 2003 No. 92 s 14
- def “**police officer**” sub 2000 No. 22 s 29(1)–(2)
- def “**post-prison community based release order**” ins 2003 No. 49 s 25(2)
- def “**potentially harmful thing**” ins 2003 No. 92 s 14(2)
- def “**prescribed authority**” amd 2000 No. 22 s 3 sch
- def “**prescribed indictable offence**” ins 2003 No. 49 s 25(2)
- def “**prescribed nurse**” ins 2000 No. 22 s 29(2)
- def “**prescribed offence**” ins 2002 No. 33 s 13(2)
- def “**prescribed place**” amd 2000 No. 22 s 29(5)–(6); 2003 No. 19 s 3 sch;
2004 No. 21 s 123 sch
- 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 “**property tracking document**” sub 2002 No. 68 s 338

- def **“Public Records Act”** ins 2000 No. 22 s 29(2)
sub 2003 No. 19 s 3 sch
- def **“QCC”** om 2001 No. 69 s 378 sch 1
- def **“QCC officer”** om 2001 No. 69 s 378 sch 1
- def **“QDNA”** ins 2003 No. 49 s 25(2)
- def **“QDNA index”** ins 2003 No. 49 s 25(2)
- def **“qualified person”** ins 2003 No. 49 s 25(2)
- def **“question”** amd 2000 No. 22 s 3 sch
- def **“registered corresponding foreign procedure order”** ins 2003 No. 49 s 25(2)
- def **“register of covert acts”** amd 2000 No. 22 s 3 sch
- def **“register of dangerous drugs for training”** ins 2003 No. 5 s 26
- def **“register of enforcement acts”** amd 2000 No. 22 s 3 sch
- def **“registrar-general”** ins 2000 No. 22 s 29(2)
sub 2003 No. 31 s 59 sch 1
- def **“relevant act”** amd 2000 No. 46 s 3 sch
- def **“relevant court”** ins 2002 No. 33 s 13(2)
- def **“relevant criminal activity”** om 2001 No. 69 s 378 sch 1
- def **“relevant disease”** ins 2000 No. 22 s 29(2)
- def **“relevant offences”** ins 2003 No. 19 s 3 sch
- def **“relevant period”** ins 2003 No. 92 s 14(2)
- def **“relevant person”** amd 2000 No. 22 s 3 sch; 2003 No. 49 s 25(6)
- def **“relevant place”** ins 2004 No. 8 s 38
- def **“relevant thing”** ins 2000 No. 22 s 29(2)
- def **“removal order”** amd 2000 No. 22 s 3 sch
- def **“responsible Minister”** ins 2003 No. 49 s 25(2)
- def **“restricted item”** ins 2000 No. 22 s 29(2)
- def **“search warrant”** sub 2003 No. 13 s 106 sch 1
- def **“secure facility”** ins 2003 No. 5 s 26
- def **“seize”** sub 2002 No. 33 s 13
- def **“serious crime derived property”** ins 2002 No. 68 s 338(2)
- def **“serious crime related activity”** ins 2002 No. 68 s 338(2)
- def **“serious indictable offence”** amd 2003 No. 37 s 86
- def **“serious offence”** om 2002 No. 68 s 338(1)
- def **“special event”** amd 2000 No. 22 s 3 sch
- def **“speed trial”** ins 2002 No. 33 s 13(2)
- def **“support person”** amd 2002 No. 39 s 183
- def **“suspension order”** ins 2002 No. 68 s 338(2)
- def **“tainted property”** sub 2002 No. 68 s 338
- def **“take”** ins 2000 No. 22 s 29(2)
sub 2003 No. 49 s 25(1)–(2)
- def **“terrorism”** ins 2004 No. 8 s 38
- def **“terrorist act”** ins 2004 No. 8 s 38
- def **“time out”** amd 2000 No. 22 ss 29(7), 3 sch; 2003 No. 49 s 25(7)
- def **“unlawfully”** ins 2003 No. 49 s 25(2)
- 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 notified or published in the gazette

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)

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Form 9 Version 1—1 July 2000—Application for Search Warrant

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Form 10 Version 1—1 July 2000—Search Warrant

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Form 12 Version 1—1 July 2000—Application for Post-Search Approval Order
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