



# **Police Service Administration Act 1990**

**Reprinted as in force on 18 June 2007**

**Reprint No. 4A**

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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.

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## Queensland

# Police Service Administration Act 1990

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# **Police Service Administration Act 1990**

[as amended by all amendments that commenced on or before 18 June 2007]

## **An Act to provide for the Queensland Police Service and its administration**

### **Part 1 Preliminary**

#### **1.1 Short title**

This Act may be cited as the *Police Service Administration Act 1990*.

#### **1.2 Commencement**

- (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.
- (2) Except as provided in subsection (1), the provisions of this Act, or such of them as are specified in the proclamation, commence on the day or days appointed by proclamation for commencement of those provisions.

#### **1.3 Objects**

The objects of this Act are to provide for—

- (a) the maintenance of the Queensland Police Service;
- (b) the membership of the service;
- (c) the development and administration of the service.

#### **1.4 Definitions**

In this Act—

**alcohol test**, for part 5A, see section 5A.2.

**approved form** means a form approved by the commissioner for use under this Act.

**assistant commissioner** means the executive officer holding the rank of assistant commissioner.

**authorised person**, for part 5A, see section 5A.2.

**award** has the same meaning as in the *Industrial Relations Act 1999*.

**breach of discipline** means a breach of this Act, the *Police Powers and Responsibilities Act 2000* or a direction of the commissioner given under this Act, but does not include misconduct.

**commissioned officer** means a person who holds a position in the police service as a commissioned officer.

**commissioner** means the commissioner of the police service.

**commissioner for police service reviews** means a commissioner for police service reviews under section 9.2A.

**constable** means a person who holds a position in the police service as a constable.

**conviction**, in a provision of part 5AA, means a finding of guilt, or the acceptance of a plea of guilty, by a court for an offence—

- (a) whether or not a conviction is recorded; and
- (b) whether in Queensland or elsewhere; and
- (c) whether before or after the commencement of part 5AA.

**criminal history**, of a person—

- (a) for part 5AA and the schedule—
  - (i) means the person's convictions in relation to offences committed in Queensland or elsewhere; and
  - (ii) includes information about offences of any kind alleged to have been committed, in Queensland or elsewhere, by the person; or

- (b) for part 10, division 1—has the meaning given by the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

***CrimTrac Agency*** means the CrimTrac Agency established under the *Public Service Act 1999* (Cwlth), section 65.<sup>1</sup>

***critical area***, for part 5A, see section 5A.2.

***critical incident***, for part 5A, see section 5A.2.

***dangerous drug***, for part 5A, see section 5A.2.

***declared law enforcement agency*** has the same meaning as in the *Police Powers and Responsibilities Act 2000*.

***deputy commissioner***, for part 5A, see section 5A.2.

***disciplinary action*** means action taken for misconduct, official misconduct or a breach of discipline.

***engaged by the service*** see section 5AA.3.

***evidence***, for part 5A, see section 5A.2.

***executive officer*** means a person who holds a position in the police service as an executive officer.

***external service provider***, for part 5AA, means a public service employee, or class of public service employee—

- (a) who is employed or engaged in an entity other than the service; and
- (b) whose functions include, or may include, performing direct corporate service support for the service that allows the person access to corporate or operational information in the possession of the commissioner; and
- (c) who is declared by regulation to be an external service provider for this part.

***general alcohol limit***, for part 5A, see section 5A.2.

***handler***, of a police dog, means an officer whose duties include handling a police dog.

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<sup>1</sup> *Public Service Act 1999* (Cwlth), section 65 (Establishment etc. of Executive Agencies)

***industrial agreement*** means—

- (a) an industrial agreement continued in force under the *Industrial Relations Act 1999*; or
- (b) a certified agreement under the *Industrial Relations Act 1999*.

***industrial authority*** means the Industrial Commission or Industrial Court.

***low alcohol limit***, for part 5A, see section 5A.2.

***marked print*** means a print of a photograph, marked in a way that highlights—

- (a) features or aspects of the subject of the print; or
- (b) points of similarity between the subject of the print and the subject of another print.

***medical examination***, for part 5A, see section 5A.2.

***member of the service*** see section 2.2.

***misconduct*** means conduct that—

- (a) is disgraceful, improper or unbecoming an officer; or
- (b) shows unfitness to be or continue as an officer; or
- (c) does not meet the standard of conduct the community reasonably expects of a police officer.

***no alcohol limit***, for part 5A, see section 5A.2.

***noncommissioned officer*** means a person who holds a position in the police service as a noncommissioned officer.

***officer*** means a police officer.

***official misconduct*** see the *Crime and Misconduct Act 2001*, section 15.

***operative*** see section 5A.2.

***over the limit***, for part 5A, see section 5A.2.

***place*** means any, or any part of any, land, water, building, structure, vehicle, vessel, aircraft or carriage.

***police dog*** means a dog kept by the commissioner for helping police officers perform the duties of police officers.

*Example—*

a dog trained as a sniffer dog to help find illegal drugs

***police horse*** means a horse kept by the commissioner for use by officers when performing the duties of police officers.

***police officer*** means a person declared under section 2.2(2) to be a police officer.

***police recruit*** means a person who holds a position in the police service as a police recruit.

***prescribed person*** see section 5A.21A.

***prescribed responsibility*** means the commissioner's responsibility under section 4.8.

***print*** means a print of a photograph or part of a photograph, and includes a marked print and an audio recording of an interview.

***QPS database***, for the schedule, means any of the following kept by the commissioner—

- (a) the database known as QPRIME;
- (b) the prosecutions index;
- (c) the register of enforcement acts kept under the *Police Powers and Responsibilities Act 2000*.

***random alcohol test***, for part 5A, see section 5A.2.

***recruit*** means a police recruit.

***relevant information***, about a person, for part 5AA, means information about the person of a kind mentioned in the schedule for the person.

***relevant member***, for part 5A, see section 5A.2.

***service*** means the police service.

***special constable*** means a person who holds a position as a special constable.

***staff member*** means a person who is a staff member of the police service under section 2.5(1).

***targeted substance***, for part 5A, see section 5A.2.

***targeted substance test***, for part 5A, see section 5A.2.

*transfer* of a police officer to a position has the meaning given by section 5.2(1).

*watch-house officer* see section 4.9(6).

### **1.5 Meaning of *tenure not limited by time***

A person is appointed to a position on a *tenure not limited by time* if the appointment does not specify an appointment period.

### **1.6 Notes in text**

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

## **Part 2 Queensland Police Service**

### **2.1 Maintenance of service**

There is to be maintained at all times in the State a body of persons under the name and style ‘Queensland Police Service’.

### **2.2 Membership of service**

- (1) The Queensland Police Service consists of police officers, police recruits and staff members.
- (2) Police officers are—
  - (a) the commissioner of the police service;
  - (b) the persons holding appointment as an executive police officer;
  - (c) the persons holding appointment as a commissioned police officer;
  - (d) the persons holding appointment as a noncommissioned police officer;
  - (e) the persons holding appointment as a constable.

## **2.3 Functions of service**

The functions of the police service are—

- (a) the preservation of peace and good order—
  - (i) in all areas of the State; and
  - (ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;
- (b) the protection of all communities in the State and all members thereof—
  - (i) from unlawful disruption of peace and good order that results, or is likely to result, from—
    - (A) actions of criminal offenders;
    - (B) actions or omissions of other persons;
  - (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;
- (f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of—
  - (i) the provisions of the Criminal Code;
  - (ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the service;
  - (iii) the powers, duties and discretions prescribed for officers by any Act;
- (g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are—
  - (i) required of officers under any Act or law or the reasonable expectations of the community; or

- (ii) reasonably sought of officers by members of the community.

### **2.3A Presence of police officers at fire or chemical incident**

- (1) On receiving information of the occurrence of an incident requiring the attendance of fire authority officers, the commissioner or the police officer in charge, at the time, of the police station nearest to the location of the incident must immediately send as many police officers as are considered necessary to preserve order and to help at the incident.

- (2) In this section—

*fire authority officer* means a fire service officer under the *Fire and Rescue Service Act 1990*.

*incident* means—

- (a) a fire; or
- (b) a chemical incident under the *Fire and Rescue Service Act 1990*.

### **2.4 Community responsibility preserved**

- (1) The prescription of any function as one of the functions of the police service does not relieve or derogate from the responsibility and functions appropriately had by the community at large and the members thereof in relation to—

- (a) the preservation of peace and good order; and
- (b) the prevention, detection and punishment of breaches of the law.

- (2) In performance of the functions of the police service, members of the service are to act in partnership with the community at large to the extent compatible with efficient and proper performance of those functions.

### **2.5 Administration of staff members**

- (1) Staff members are—



- (a) officers of the public service assigned to perform duties in the police service; and
  - (b) persons appointed as staff members by the commissioner under—
    - (i) section 8.3(5); or
    - (ii) the *Public Service Act 1996*, part 9.<sup>2</sup>
- (2) While performing duties in the service, a staff member is subject to the commissioner's directions.

### **2.5A Officers etc. employed under this Act**

The following persons are to be employed under this Act, and not under the *Public Service Act 1996*—

- (a) a police officer, police recruit or special constable; or
- (b) a staff member mentioned in section 8.3(5).

## **Part 3                      Police officers' powers and duties related to those of constable**

### **3.1 Meaning of *officer* in part**

In this part—

*officer* includes a special constable.

### **3.2 Relation to office of constable**

- (1) Subject to section 7.1 where it applies, in performance of the duties of office, an officer is subject to the directions and orders of the commissioner and to the orders of any superior officer.

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<sup>2</sup> *Public Service Act 1996*, part 9 (General and temporary employees)

- (2) A noncommissioned officer or a constable has and may exercise the powers, and has and is to perform the duties of a constable at common law or under any other Act or law.
- (3) An officer other than one referred to in subsection (2) has and may exercise the powers of a constable at common law or under any other Act or law.
- (4) Except as prescribed by this section and section 6.4, this Act does not, in relation to any officer, derogate from the powers, obligations and liabilities of a constable at common law or under any other Act or law.

### **3.3 Oath of office**

Before a person begins to perform duty as an officer, the person is to take, or make, and subscribe the oath or affirmation prescribed by regulation.

### **3.4 Proof of office**

If a question arises as to a person's identity as an officer, or to a person's entitlement to exercise the powers or to perform the duties of an officer—

- (a) the general reputation of a person, who is an officer, as being an officer is evidence of that identity and entitlement; and
- (b) the absence of, or failure to produce, any written appointment or other documentary proof to establish that identity or entitlement does not prejudice or otherwise affect the exercise of the powers or the performance of the duties by a person who is an officer.

### **3.7 Termination of powers**

Powers had by a person as an officer terminate immediately on the person ceasing, by whatever means, to be an officer.

## **Part 4**

# **Commissioner of the Queensland Police Service**

### **4.1 Establishment of office**

There is hereby established the office of the commissioner of the police service.

### **4.2 Appointment**

- (1) The Governor in Council may, on a recommendation agreed to by the chairperson of the Crime and Misconduct Commission, appoint an appropriate person as commissioner of the police service.
- (2) The appointment is to be made by gazette notice.

### **4.3 Conditions of appointment**

- (1) The conditions on which an appointment as commissioner is held—
  - (a) are such as are for the time being agreed by the Minister and the chairperson of the Crime and Misconduct Commission, approved by the Governor in Council, and accepted by the person who is to be, or is, the commissioner; and
  - (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the commissioner; and
  - (c) are not subject to any award or industrial agreement, or any determination or rule of an industrial authority.
- (2) If an offer of a contract of employment as commissioner on conditions in writing agreed to by the chairperson of the Crime and Misconduct Commission and approved by the Governor in Council in relation to the appointment, is made to a person before that person's appointment as commissioner, the person, on accepting appointment as commissioner, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that

accords with the contract last offered to the person before the appointment was made.

#### **4.4 Term of appointment**

The commissioner is to be appointed for a term not less than 3 years or more than 5 years.

#### **4.5 Removal and suspension of commissioner**

- (1) The office of the commissioner becomes vacant if the commissioner—
  - (a) dies; or
  - (b) resigns the office by writing signed by the commissioner and accepted by the Governor in Council; or
  - (c) is removed from office in accordance with this section.
- (2) The commissioner may be removed from office pursuant to the contract that governs the commissioner's employment or if the commissioner has breached the contract of employment.
- (3) Additional grounds on which the commissioner may be removed from office are—
  - (a) incapacity, because of physical or mental infirmity, to properly perform the duties of office, or other unfitness to hold office;
  - (b) incompetence in performing, or neglect of the duties of office;
  - (c) being found guilty of official misconduct by a Misconduct Tribunal under the *Misconduct Tribunals Act 1997* if the tribunal orders the commissioner's dismissal;
  - (d) conviction in the State of an indictable offence (whether on indictment or summarily);
  - (e) imprisonment for any offence.
- (4) If 1 or more of the grounds prescribed by subsection (3) exists, the commissioner may be removed from office by—

- (a) the Governor in Council, on a recommendation in which the chairperson of the Crime and Misconduct Commission concurs; or
  - (b) in default of exercise of the authority conferred by paragraph (a), by the Governor, on an address from the Legislative Assembly praying for the commissioner's removal from office.
- (5) If satisfied that 1 or more of the grounds prescribed by subsection (3) exists, or that the commissioner is charged with official misconduct or an offence referred to in subsection (3)(d), the Governor in Council may suspend the commissioner from office.
- (6) If the commissioner is suspended from office, the commissioner is entitled to be reinstated in office, unless, upon action taken forthwith following the suspension and pursued diligently to its conclusion, the commissioner is removed from office in accordance with subsection (4).

#### **4.6 Communications between Minister and commissioner**

- (1) The commissioner—
- (a) is to furnish to the Minister reports and recommendations in relation to the administration and functioning of the police service, when required by the Minister to do so; and
  - (b) may at any time furnish to the Minister such reports and recommendations as the commissioner thinks fit with a view to the efficient and proper administration, management and functioning of the police service.
- (2) The Minister, having regard to advice of the commissioner first obtained, may give, in writing, directions to the commissioner concerning—
- (a) the overall administration, management, and superintendence of, or in the police service; and
  - (b) policy and priorities to be pursued in performing the functions of the police service; and

- (c) the number and deployment of officers and staff members and the number and location of police establishments and police stations.
- (3) The commissioner is to comply with all directions duly given under subsection (2).

#### **4.7 Recording and publication of communications**

- (1) The commissioner is to keep a register in which are to be recorded—
- (a) all reports and recommendations made to the Minister under section 4.6(1)(a); and
  - (b) all directions given in writing to the commissioner under section 4.6(2); and
  - (c) all reasons tabled by the Minister under the *Crime and Misconduct Act 2001*, section 64.
- (2) Within 28 days following 31 December in each year, the commissioner is to have prepared a copy of the register, which copy, being certified by the commissioner as a true copy of the register is to be furnished forthwith to the chairperson of the Crime and Misconduct Commission, with or without comment of the commissioner.
- (3) Within 28 days following receipt of the certified copy of the register, the chairperson is to give the copy together with comments of the commissioner relating thereto, and with or without further comment of the chairperson, to the chairperson of the Parliamentary Crime and Misconduct Committee of the Legislative Assembly.
- (4) The chairperson of the Parliamentary Crime and Misconduct Committee of the Legislative Assembly is to table in the Legislative Assembly—
- (a) the certified copy of the register; and
  - (b) all comment relating thereto;
- within 14 sitting days after the chairperson's receipt thereof.

**4.8 Commissioner's responsibility**

- (1) The commissioner is responsible for the efficient and proper administration, management and functioning of the police service in accordance with law.
- (2) Without limiting the extent of the prescribed responsibility, that responsibility includes responsibility for the following matters—
  - (a) determination of priorities;
  - (b) determination of the appropriate organisational structure of the department;
  - (c) designation and redesignation of offices;
  - (d) control of the human, financial and other resources of the department;
  - (e) selection of persons as officers and police recruits;
  - (f) determination of the number and deployment of officers and staff members;
  - (g) determination of the number and location of police establishments and police stations;
  - (h) determination of levels of salaries or wages and allowances of members of the service;
  - (i) qualifications for offices within the service and duties attaching to such offices;
  - (j) promotion or demotion of officers and staff members;
  - (k) training and development of members of the service;
  - (l) discipline of members of the service;
  - (m) dress and appearance of members of the service;
  - (n) appraisal of performance of members of the service;
  - (o) approval and administration of leave arrangements;
  - (p) internal redeployment and retraining of officers and staff members;
  - (q) termination of employment of members of the service;
  - (r) determination of times within which members of the service are to perform their ordinary hours of work;

- (s) development of means to ensure all members of the service are treated justly, fairly and with compassion;
- (t) maintenance of proper records, including, but not limited to, records about—
  - (i) the action taken by a police officer or someone else in relation to a person suspected of having committed an offence; and
  - (ii) the result of any proceeding against the person for the offence.
- (3) The commissioner is authorised to do, or cause to be done, all such lawful acts and things as the commissioner considers to be necessary or convenient for the efficient and proper discharge of the prescribed responsibility.
- (4) In discharging the prescribed responsibility, the commissioner—
  - (a) is to comply with all relevant awards or industrial agreements, determinations and rules made by an industrial authority; and
  - (b) subject to this Act, is to ensure compliance with the requirements of all Acts and laws binding on members of the police service, and directions of the commissioner; and
  - (c) is to have regard to section 4.6 and Ministerial directions duly given thereunder; and
  - (d) is to discharge the responsibility in relation to such matters as are prescribed for the time being.

#### **4.9 Commissioner's directions**

- (1) In discharging the prescribed responsibility, the commissioner may give, and cause to be issued, to officers, staff members or police recruits, such directions, written or oral, general or particular as the commissioner considers necessary or convenient for the efficient and proper functioning of the police service.
- (2) A direction of the commissioner is of no effect to the extent that it is inconsistent with this Act.



- (3) Subject to subsection (2), every officer or staff member to whom a direction of the commissioner is addressed is to comply in all respects with the direction.
- (4) A direction issued under subsection (1) to officers about functions, powers or responsibilities that are also functions, powers or responsibilities of watch-house officers is taken to be also issued to watch-house officers.
- (5) In all proceedings—
  - (a) a document purporting to be certified by the commissioner to be a true copy of a direction under subsection (1) is admissible as evidence of the direction; and
  - (b) a direction under subsection (1) is to be taken as effectual until the contrary is proved.
- (6) In this section—

***watch-house officer*** means a staff member who is appointed by the commissioner to be a watch-house officer.

#### **4.10 Delegation**

- (1) The commissioner may delegate powers of the commissioner under this Act or any other Act to a police officer or staff member.
- (2) Without limiting subsection (1), the commissioner may also, under subsection (1), delegate powers of the commissioner to discharge the prescribed responsibility.

#### **4.11 Acting as commissioner**

- (1) The Minister may appoint an appropriate person to act as commissioner—
  - (a) whenever there is a vacancy in the office of commissioner; or
  - (b) during a period when the commissioner is suspended from office or can not perform the duties of office because of physical or mental incapacity.

- (2) The commissioner may appoint an appropriate person to act as commissioner during another period when the commissioner is absent from duty or can not perform the duties of the office.
- (3) The remuneration payable to a person who acts as commissioner must not be more than the remuneration payable to the commissioner.

#### **4.12 Commissioner's official seal**

- (1) The commissioner has an official seal.
- (2) All courts and persons acting judicially are to take judicial notice of—
  - (a) the signature of the commissioner or any person who at any time was the commissioner;
  - (b) the fact that the commissioner has, or any such person had, an official seal;
  - (c) the official seal of the commissioner or any such person;if the signature or seal appears on a document made for the purposes of judicial proceedings or on a document purporting, or seeming, to have been made for the purposes of this Act.

## **Part 5 Appointment of personnel**

### **Division 1 Officers and other police personnel**

#### **5.1 Ranks**

The ranks of officers are those declared for the time being by the regulations.

#### **5.2 Appointment to be on merit on impartial procedures**

- (1) In this section—

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*transfer* of a police officer to a position means the appointment of a police officer to a position in which the police officer will hold the same rank and be entitled to at least the same level of salary.

- (2) A decision to appoint a person as a police recruit or to a police officer position must be made by fair and equitable procedures that—
  - (a) include inviting applications and selection on the basis of the merit of applicants; and
  - (b) prevent unjust discrimination, whether in favour of or against a person.
- (3) However, if a decision is made to transfer a police officer on a basis prescribed by regulation, the decision need not involve the procedures mentioned in subsection (2)(a).
- (4) Written notice to a police officer of a transfer because of a decision under subsection (3) must specify the prescribed basis used for the transfer.
- (5) For the purposes of this section merit of an officer comprises—
  - (a) the integrity, diligence and good conduct of the officer; and
  - (b) the potential of the officer to discharge the duties of the position in question; and
  - (c) the industry shown by the officer in performance of the duties of office in the course of the officer's career; and
  - (d) the physical and mental fitness of the officer to perform the duties of the position in question.
- (6) For the purpose of determining the potential of an officer to discharge the duties of a position the following factors must be taken into account—
  - (a) the performance of duties of office in the course of the officer's career;
  - (b) the range of practical experience of the officer in the service or outside the service;
  - (c) the ability, aptitude, skill, knowledge and experience determined by the commissioner to be necessary for the

proper performance of the duties of the position in question;

- (d) any relevant academic, professional or trade qualifications of the officer.

### **5.3 Executive officers**

- (1) The Governor in Council may appoint as executive officers such persons as are recommended by the commissioner for appointment.
- (2) The number of positions as executive officer is to be such as is, for the time being, necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility and is recommended by the commissioner.

### **5.4 Conditions of employment**

- (1) An appointment to a position as executive officer, including by way of promotion, is to be on the basis of full-time employment.
- (2) The conditions on which an appointment as executive officer is held—
  - (a) are such as are for the time being approved by the commissioner and accepted by the person who is, or is to be, the executive officer; and
  - (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the executive officer; and
  - (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.
- (3) If an offer of a contract of employment as an executive officer, on conditions in writing approved by the commissioner in relation to the appointment, is made to a person before that person's appointment as executive officer, the person, on accepting appointment as executive officer, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that

accords with the contract last offered to the person before the appointment was made.

### **5.5 Acting as executive officer**

- (1) The commissioner may appoint an appropriate person to act as executive officer during—
  - (a) any vacancy, or all vacancies, in the office of executive officer; or
  - (b) any period, or all periods, when the executive officer is absent from duty or, for another reason, can not perform the duties of the office.
- (2) The remuneration payable to a person who acts as an executive officer must not be more than the remuneration payable to the executive officer.

### **5.6 Other appointments**

The commissioner may appoint such number of persons to be commissioned officers, noncommissioned officers, constables, police recruits as is necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.

### **5.7 Conditions of employment of commissioned officers**

- (1) Appointment to a position as a commissioned officer, including by way of promotion—
  - (a) if the position is prescribed as one open to appointment on a part-time basis—may be on the basis of part-time employment; or
  - (b) in the case of any other position—is to be on the basis of full-time employment.
- (2) A person—
  - (a) is to be appointed to, and employed in, a position as a commissioned officer on salary upon a tenure that is not limited by time, if the position is not one referred to in paragraph (b) or (c);

- (b) if a position of commissioned officer is prescribed as one open to appointment upon a limited duration of tenure—may be appointed to and employed in the position upon a limited duration of tenure;
- (c) if a position of commissioned officer is prescribed as one open to appointment on a contract basis—may be appointed to and employed in the position on a contract basis—
  - (i) upon a tenure that is not limited by time; or
  - (ii) for a limited duration of tenure.
- (3) The conditions of employment from time to time of a commissioned officer duly appointed on a contract basis—
  - (a) are such as are for the time being approved by the commissioner and accepted by the person who is, or is to be, the commissioned officer; and
  - (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the commissioned officer; and
  - (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.
- (4) If an offer of a contract of employment as a commissioned officer, on conditions in writing approved by the commissioner in relation to the appointment, is made to a person before that person's appointment as commissioned officer, the person, on accepting appointment as commissioned officer, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

## **5.8 Acting as commissioned officer**

- (1) The commissioner may appoint an appropriate person to act as a commissioned officer during—
  - (a) any vacancy, or all vacancies, in the office of commissioned officer; or

- (b) any period, or all periods, when a commissioned officer is absent from duty or, for another reason, can not perform the duties of the office.
- (2) The remuneration payable to a person who acts as a commissioned officer must not be more than the remuneration payable to a person appointed to the office.
- (3) While a person acts as a commissioned officer, the person is relieved of the duties of a constable at common law or under any Act or law.

### **5.9 Conditions of employment of noncommissioned officers and constables**

- (1) Appointment to a position as a noncommissioned officer or constable, including by way of promotion—
  - (a) is to be on the basis of full-time employment, if the position is not one referred to in paragraph (b);
  - (b) if the position is prescribed as one, or one of a class, open to appointment on a part-time basis—may be on the basis of part-time employment.
- (2) A person—
  - (a) is to be appointed to and employed in a position as a noncommissioned officer or constable upon a tenure that is not limited by time, if the position is not one referred to in paragraph (b);
  - (b) if the position is prescribed as one, or one of a class, open to appointment upon a limited duration of tenure—may be appointed and employed in a position as a noncommissioned officer or constable upon a limited duration of tenure.

### **5.10 Officer's election on termination of certain appointments**

- (1) If an officer who holds a position in the service on a contract basis or for a limited duration of tenure ceases to hold the position because—
  - (a) the contract or tenure has expired and has not been renewed; or

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- (b) the contract or tenure is terminated otherwise than by reason of—
  - (i) the officer's resignation from the service or retirement from the service; or
  - (ii) disciplinary action against the officer;

and before accepting the position that person was an officer in employment that satisfies the requirements of subsection (2) that person is entitled to elect to continue as an officer in accordance with this section.

- (2) The requirements referred to in subsection (1) are—
  - (a) the employment in the service before acceptance of the position referred to in subsection (1) must have been on a tenure not limited by time;
  - (b) the employment in the service before acceptance of the position referred to in subsection (1) must have been, or be taken to have been, continuous.
- (3) If a person makes an election under subsection (1), the commissioner may appoint the person at a rank determined by the commissioner—being a rank not lower than that at which the person was employed in the service immediately before the person first accepted employment in the position referred to in subsection (1), or a rank prescribed for the time being to be equivalent to that rank.
- (4) If a person makes an election under subsection (1), the person thereby renounces all entitlements secured to the person by the contract of employment in the event of its termination as referred to in subsection (1).
- (5) An election made under subsection (1)—
  - (a) must be made in writing signed by the elector and given to the commissioner within 14 days following—
    - (i) expiry of the contract or tenure in question; or
    - (ii) notice of termination of the contract or tenure being given to the holder of the position in question; and
  - (b) when duly made, has the effect that the elector's service as an officer is taken not to have been terminated by the



expiry or termination of the contract or tenure in question, but to have continued in accordance with the foregoing provisions of this section.

- (6) If the regulations prescribe requirements to be met, if service as an officer is to be taken as continuous, service of an officer referred to in this section is not continuous unless it accords with the requirements of the regulations, and subsection (5)(b) has operation subject to this subsection.

### **5.11 Conditions of employment of police recruits**

- (1) The conditions of employment of a police recruit—
  - (a) are as approved by the commissioner and accepted by the person who is, or is to be, the recruit; and
  - (b) are to be governed by a contract of employment made, or taken to be made, between the Crown and the recruit; and
  - (c) are not subject to any award or industrial agreement or any determination or rule of an industrial authority.
- (2) If an offer of a contract of employment as a police recruit on conditions in writing approved by the commissioner in relation to the appointment, including the grounds on which the employment may be continued and discontinued, is made to a person before that person's appointment as a recruit, the person, on accepting appointment as a recruit, is taken to have made with the Crown (and the Crown is taken to have made with the appointee) a contract of employment that accords with the contract last offered to the person before the appointment was made.

### **5.12 Appointment on probation**

- (1) This section does not apply in relation to an appointment as an officer made on a contract basis.
- (2) An appointment as an officer of a person who was not an officer immediately before the appointment is an appointment on probation—
  - (a) for a period not less than 12 months determined by the commissioner; or

- (b) in the absence of such a determination, for a period of 12 months.
- (3) Unless the position as an officer is advertised in the Queensland Police Gazette as one to which appointment is to be made without a period of probation, an appointment of an officer to a position on promotion is an appointment on probation—
  - (a) for a period not less than 6 months determined by the commissioner; or
  - (b) in the absence of such a determination—for a period of 6 months.
- (4) The commissioner may—
  - (a) in respect of an appointee referred to in subsection (2)—
    - (i) at any time during the initial period of probation or during any extension of a period of probation, terminate the employment of the appointee;
    - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate the employment of the appointee;
  - (b) in respect of an appointee referred to in subsection (3) whose appointment is on probation—
    - (i) at any time during the initial period of probation or during any extension of a period of probation, terminate that appointment;
    - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate that appointment.
- (5) If an appointment is terminated under subsection (4)(b), the person who was the appointee is to be retained in employment as an officer at a level of salary not less than the level of salary of the person immediately before the appointment that is terminated until—
  - (a) the person is appointed to another position in the service; or
  - (b) the person is otherwise dealt with under this Act.

**5.13 Officer not to refuse transfer, but may object**

- (1) A police officer who is transferred to a position must accept the transfer, even if the officer has not applied for it.
- (2) However, if the officer did not apply for the transfer, the officer may—
  - (a) object to the transfer under section 5.13A; or
  - (b) apply for a review of the transfer under section 9.3.

**5.13A Objection to transfer**

- (1) If a police officer is transferred to a position without applying for the transfer, the officer may object to the transfer by giving the commissioner written reasons for the objection within 14 days of receiving written notice of the transfer.
- (2) The commissioner may allow or reject the objection.
- (3) If the commissioner allows the objection, the transfer stops having effect.
- (4) If the commissioner rejects the objection, the commissioner must give the officer written reasons for the rejection.
- (5) This section—
  - (a) does not limit the right of an officer to apply to a commissioner for police service reviews for a review of the transfer (a *transfer review*); but
  - (b) does limit the right of an officer to object to a transfer under this section once the officer has applied for a transfer review.
- (6) If an officer objects to a transfer under this section, the time allowed by regulation for an application for a transfer review does not start to be counted until the day the commissioner gives the officer written reasons under subsection (4).
- (7) If an officer applies for a transfer review, the officer can not start or proceed further with an objection under this section.

**5.13B Delay in attendance for duty on directed transfer to allow for objection and review**

- (1) If a police officer is transferred to a position, the commissioner can not direct the officer to attend for duty in the position until—
  - (a) after the time allowed for an objection under section 5.13A(1) has ended; and
  - (b) if the officer objects to the transfer—the commissioner decides the objection.
- (2) If—
  - (a) the officer objects to the transfer under section 5.13; and
  - (b) the commissioner rejects the objection;the commissioner can not direct the police officer to attend for duty until after the time allowed by regulation for an application to a commissioner for police service reviews for a review of the transfer has ended.
- (3) Despite section 9.2, if the officer applies to a commissioner for police service reviews for a review of the transfer, the commissioner can not direct the officer to attend for duty—
  - (a) if the officer then withdraws the application—until at least 14 days after the withdrawal; or
  - (b) if the officer does not withdraw the application and the commissioner decides under section 9.5 to proceed with the transfer—until at least 14 days after the day the officer receives written notice of the commissioner’s decision.
- (4) This section does not limit the commissioner’s powers to direct an officer to attend for duty in a position in circumstances the commissioner considers are urgent.

**5.14 Calculation of continuous service as officer**

- (1) For the purpose of calculating continuous service of an officer, continuous service had by a person—
  - (a) as an officer; and

- (b) as the holder of any prescribed office, offices or class of office under the Crown in any of its capacities;

where the service had as an officer and the service had as such holder are themselves continuous, are to be taken to constitute continuous service as an officer.

- (2) A person who has continuous service as an officer pursuant to subsection (1), while the person continues as an officer, retains and may claim against the Crown in right of the State in respect of all benefits and entitlements that have accrued to the person throughout the continuous service.
- (3) If the regulations prescribe requirements to be met, if service of an officer is to be taken as continuous, service or services referred to in this section is, or are, not continuous unless it accords, or they accord, with the regulations, and subsection (1) has operation subject to this subsection.

### **5.15 Officer as employee of Crown**

An officer, other than one who holds appointment on a contract basis, is taken—

- (a) to be an employee of the Crown; and
- (b) to be within the application of the *Industrial Relations Act 1999* to employees of the Crown as provided by that Act.

### **5.16 Special constables**

- (1) The commissioner may, in writing, appoint on such terms and conditions as the commissioner thinks fit such number of persons to be special constables as, in the commissioner's opinion, is necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.
- (2) A special constable—
  - (a) is not an employee of the Crown in right of the State or of the commissioner;

- (b) is not entitled to salary, allowances or other remuneration, except as provided for in the special constable's instrument of appointment;
  - (c) has, during the continuance of the appointment as such, the powers and duties of an officer as specified in the special constable's instrument of appointment, and no other.
- (3) Subject to subsection (2), such of the provisions of this Act relating to officers as may be reasonably applied to special constables so apply, as if a special constable were an officer.

### **5.17 Authorisation of non-State police officers**

- (1) This section applies if the commissioner reasonably believes—
- (a) a terrorist act has been committed or there is an imminent threat of a terrorist act; and
  - (b) the help of a non-State police officer is urgently needed to enable the Queensland Police Service to continue to perform its functions effectively while responding to the terrorist act or threat; and
  - (c) it is impracticable in the circumstances to appoint the officer as a special constable.
- (2) The commissioner may authorise the non-State police officer to exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* (the **Police Act**).
- (3) The authorisation must name the non-State police officer.
- (4) The authorisation—
- (a) may be limited to stated powers; and
  - (b) may be limited to a stated time; and
  - (c) may be given on conditions.
- (5) The authorisation may be given orally or in writing but, if given orally, must be put in writing as soon as reasonably practicable.
- (6) A failure to put the authorisation in writing does not invalidate the authorisation or anything done under the authorisation.

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- (7) While the authorisation is in force, the non-State police officer may exercise the powers only—
  - (a) in accordance with the authorisation; and
  - (b) subject to the directions of the commissioner or another State police officer.
- (8) The Police Act applies to the non-State police officer, in relation to the exercise of the powers, as if the officer were a State police officer.
- (9) The commissioner must ensure that, as soon as practicable after the authorisation is given, the non-State police officer is given an appropriate explanation of the officer's powers and responsibilities under the Police Act.
- (10) Part 10 applies to the non-State police officer as if the officer were a State police officer.
- (11) The commissioner must revoke the authorisation as soon as the commissioner is satisfied the non-State police officer's help is no longer needed.
- (12) The revocation may be made orally or in writing but, if made orally, must be put in writing as soon as reasonably practicable.
- (13) A failure to put the revocation in writing does not invalidate the revocation.
- (14) The commissioner may only delegate the commissioner's authorisation power to a State police officer of the rank of at least assistant commissioner.
- (15) The commissioner must include, in the annual report for a financial year, the following information about any authorisations made under this section during the financial year relating to a terrorist act or threat—
  - (a) the nature of the act or threat;
  - (b) the number of non-State police officers authorised and the police force or service of which they were members;
  - (c) when the authorisations started and ended;
  - (d) the functions performed by the officers;

- (e) the results of the authorisations, including benefits and problems.
- (16) This section does not purport to confer a duty on a federal police officer to perform a function, or to exercise a power, if the conferral of the duty would be beyond the legislative power of the Parliament of the State.
- (17) In this section—
- authorisation power* means the power to give or revoke an authorisation under this section.
- federal police officer* means a member of the Australian Federal Police.
- non-State police officer* means a police officer of a police force or service of another State or a federal police officer.
- State police officer* means a police officer of the Queensland Police Service.
- terrorist act* see the *Police Powers and Responsibilities Act 2000*, section 211.

## **Division 2                      Watch-house officers**

### **5.18      Appointment of watch-house officers**

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



- (b) possesses appropriate qualifications, standing and experience for performing the functions of a watch-house officer.

*Note—*

Staff members are appointed under the *Public Service Act 1996* or section 8.3(5) and are not police officers. Also, this section does not affect the powers of the commissioner to appoint watch-house managers. For the definition *watch-house manager*, see the *Police Powers and Responsibilities Act 2000*, schedule 6.

## Part 5A                      Alcohol and drug tests

### Division 1                      General

#### 5A.1    Object of pt 5A

The objects of this part are—

- (a) to ensure appropriate steps are taken in the interests of the health and welfare of relevant members of the service; and
- (b) to enhance the public's confidence in the service and the integrity of the service.

#### 5A.2    Definitions for pt 5A

In this part—

*alcohol test* means a test for deciding whether a relevant member is over the limit applying to the member when the test is conducted.

*analyst* means a person who, under section 5A.4A, is appointed as an analyst.<sup>3</sup>

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3    Section 5A.4A (Analysts)

***authorised person*** means—

- (a) in all cases—the commissioner or deputy commissioner; or
- (b) for an alcohol test or a random alcohol test—
  - (i) if the person to be tested is a police recruit or a staff member—a commissioned officer; or
  - (ii) otherwise—the assistant commissioner or a commissioned officer who holds rank above the rank of the person to be tested; or
- (c) for periodic testing of an operative—
  - (i) the assistant commissioner; or
  - (ii) a commissioned officer who—
    - (A) is responsible for supervising operatives; and
    - (B) is above the rank of the operative to be tested; or
- (d) for a test to be conducted because of section 5A.8(c)<sup>4</sup>—
  - (i) if the person to be tested is a police recruit or a staff member—a commissioned officer; or
  - (ii) otherwise—the assistant commissioner or a commissioned officer who holds rank above the rank of the person to be tested; or
- (e) for section 5A.10 or section 5A.14<sup>5</sup>—
  - (i) if the person to be tested is a police recruit or a staff member—a commissioned officer; or
  - (ii) otherwise—the assistant commissioner or a commissioned officer who holds rank above the rank of the person to be tested.

***critical area*** means any of the following in which a staff member or recruit performs functions for the police service—

- (a) a communications centre;

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4 Section 5A.8 (Circumstances for alcohol testing)

5 Section 5A.10 (Providing specimen of breath for alcohol test or random alcohol test) or 5A.14 (Providing specimen for targeted substance test)

- (b) a driver training facility;
- (c) a facility used for storing dangerous drugs under the *Police Powers and Responsibilities Act 2000*, chapter 21, part 4;<sup>6</sup>
- (d) a magazine used for storing explosives;
- (e) a police armoury or weapons collection facility;
- (f) a property point as defined under the *Police Powers and Responsibilities Act 2000*;
- (g) a watch-house;
- (h) a weapons training facility;
- (i) the unit known as the police air wing;
- (j) a place prescribed under a regulation as a critical area.

***critical incident*** means—

- (a) an incident in which it was necessary for an officer on duty to discharge a firearm in circumstances that caused or could have caused injury to a person; or
- (b) a death of a person in custody; or
- (c) either of the following in which a person dies or because of which a person is admitted to hospital for treatment of injuries—
  - (i) a vehicle pursuit;
  - (ii) a workplace incident at a police station or police establishment.

***dangerous drug*** means a dangerous drug under the *Drugs Misuse Act 1986*.

***deputy commissioner*** means the executive officer holding rank as deputy commissioner.

***evidence***, of a targeted substance in a person's urine, includes evidence of the presence of the following in the person's urine—

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<sup>6</sup> *Police Powers and Responsibilities Act 2000*, chapter 21 (Administration), part 4 (Use of dangerous drugs for training)

- (a) a targeted substance;
- (b) a substance that is used in a targeted substance;
- (c) a metabolite of a targeted substance.

**general alcohol limit** means the general alcohol limit under section 5A.6(1)(c).

**low alcohol limit** means the low alcohol limit under section 5A.6(1)(b).

**medical examination** includes medical assessment and test, whether physical or mental.

**no alcohol limit** means the no alcohol limit under section 5A.6(1)(a).

**operative** means a police officer who is—

- (a) a participant in an authorised operation under the *Police Powers and Responsibilities Act 2000*, chapter 11;<sup>7</sup> or
- (b) a covert operative for a controlled operation under the *Crime and Misconduct Act 2001*, chapter 3, part 6A.<sup>8</sup>

**over the limit**, in relation to a relevant member, means the member is over the general alcohol limit, the low alcohol limit or the no alcohol limit applying to the member.

**random alcohol test** means an alcohol test conducted under section 5A.9.

**relevant member** see section 5A.3.

**targeted substance** means—

- (a) a dangerous drug; or
- (b) another substance mentioned in section 5A.4 (c) or (d).

**targeted substance test** means a test for deciding whether a relevant member has evidence of a targeted substance in the member's urine.

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<sup>7</sup> *Police Powers and Responsibilities Act 2000*, chapter 11 (Controlled operations)

<sup>8</sup> *Crime and Misconduct Act 2001*, chapter 3 (Powers), part 6A (Controlled operations and controlled activities for misconduct offences)

**5A.3 Persons to whom pt 5A applies**

- (1) This part, other than to the extent specified in section 5A.21A, applies only to a member of the service (*relevant member*) who is—
  - (a) an officer; or
  - (b) a staff member whose duties include performing functions in a critical area; or
  - (c) a watch-house officer; or
  - (d) a police radio and electronics technician; or
  - (e) a recruit.
- (2) However, if the critical area mentioned in subsection (1) is a driver training facility, this part applies only to a staff member who is a driver, instructor or mechanic at the facility.

**5A.4 Substances to which pt 5A applies**

This part applies only in relation to the following substances—

- (a) alcohol;
- (b) a dangerous drug;
- (c) a substance that is a controlled drug, a restricted drug or a poison under the *Health Act 1937* that may impair a person's physical or mental capacity;
- (d) another substance that may impair a person's physical or mental capacity.

**5A.4A Analysts**

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

## 5A.5 Part does not affect other powers

This part does not affect the commissioner's powers under section 8.3.<sup>9</sup>

## Division 2 Provisions about alcohol testing

### 5A.6 When is a person over the limit

- (1) For this part—
  - (a) a person is over the *no alcohol limit* if the concentration of alcohol in the person's breath is more than 0g of alcohol in 210L of breath;
  - (b) a person is over the *low alcohol limit* if the concentration of alcohol in the person's breath is, or is more than, 0.02g of alcohol in 210L of breath;
  - (c) a person is over the *general alcohol limit* if the concentration of alcohol in the person's breath is, or is more than, 0.05g of alcohol in 210L of breath.
- (2) For this Act, the concentration of alcohol in a person's breath may be expressed as—
  - (a) a specified number of grams of alcohol in 210L of breath; or
  - (b) a specified number of grams in 210L.

*Example for subsection (2)—*

The concentration of alcohol in a person's breath may be expressed as 0.063g of alcohol in 210L of breath or as 0.063g/210L.

### 5A.7 Alcohol limits

- (1) A relevant member must be under the low alcohol limit—
  - (a) when reporting for duty for a rostered shift; or
  - (b) while on duty for a rostered shift; or
  - (c) while on call on a rotational basis for duty.

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9 Section 8.3 (Unfitness for duty on medical grounds)

- (2) Also, a relevant member must be under the general alcohol limit when not rostered for duty but permanently on call for duty in a place where there is a police station at which no more than 1 or 2 officers are permanently stationed.
- (3) However, if the person is a member of the special emergency response team, the person must not be over the no alcohol limit when reporting for duty, while on duty, or while on call on a rotational basis.
- (4) This section does not apply to a relevant member who is a police officer to the extent it prevents the member consuming alcohol while performing duties under an exemption under section 5A.9(4).

### **5A.8 Circumstances for alcohol testing**

An authorised person may require a relevant member to submit to an alcohol test if—

- (a) the person has been involved in a critical incident; or
- (b) the test is authorised under section 5A.9; or
- (c) an authorised person reasonably suspects the person is contravening or has contravened section 5A.7; or
- (d) for an officer who is an applicant to become an operative, the person is required to undergo a medical examination for deciding the person's suitability to be an operative.

### **5A.9 Random alcohol testing**

- (1) An authorised person may require a relevant member to submit to a random alcohol test.
- (2) However, an authorised person other than the commissioner or deputy commissioner may require the person to submit to the test—
  - (a) only with the written approval of the commissioner or deputy commissioner; or
  - (b) only if the test is conducted in accordance with criteria prescribed under a regulation for conducting random

alcohol tests without the approval of the commissioner or deputy commissioner.

- (3) For subsection (2)(b), a regulation may prescribe the criteria for deciding—
  - (a) when and where a random alcohol test may be conducted; and
  - (b) when a random alcohol test may be conducted without the approval of the commissioner or deputy commissioner.
- (4) Also, the commissioner or deputy commissioner may, in writing, exempt a relevant member or class of relevant member from random alcohol testing, either generally or in particular circumstances.

*Examples—*

- 1 The relevant member may be an operative.
  - 2 The relevant member may be required to consume alcohol at a hotel when keeping a person suspected of engaging in criminal activities under surveillance.
- (5) The power to approve random alcohol testing under this section can not be delegated.

### **5A.10 Providing specimen of breath for alcohol test or random alcohol test**

- (1) If a relevant member is required to submit to an alcohol test or a random alcohol test under this part, an authorised person may require the relevant member to provide a specimen of breath for the test.
- (2) The authorised person may require the relevant member to provide the specimen to the authorised person's satisfaction.
- (3) The relevant member must comply with a requirement under subsection (2).
- (4) The authorised person must perform the test—
  - (a) using an instrument approved by the commissioner for the purpose; and
  - (b) in accordance with the manufacturer's instructions for use of the instrument.



**5A.11 Failure to provide specimen of breath**

A relevant member who fails to provide a specimen of breath as required is taken to have been tested for alcohol and to have been over the limit for alcohol applying to the member when the failure happened.

**Division 3 Provisions about drug testing****5A.12 Targeted substance levels**

- (1) A relevant member must not have evidence of a dangerous drug present in the person's urine at any time.
- (2) A relevant member, who is lawfully taking a targeted substance mentioned in section 5A.4(c) or (d), must not perform duties in or involving an operational capacity or critical area if the substance impairs the member's capacity to perform the duties without danger to the member or someone else.
- (3) A relevant member must not have present in the person's urine—
  - (a) evidence of a targeted substance mentioned in section 5A.4(c) that the person may not lawfully take; or
  - (b) evidence of having taken a targeted substance mentioned in section 5A.4(c) or (d) in a way contrary to a direction of a doctor or a recommendation of the manufacturer of the substance.

**5A.13 Circumstances for targeted substance testing**

- (1) An authorised person may require a relevant member to submit to a targeted substance test if—
  - (a) the relevant member—
    - (i) has been involved in a critical incident; or
    - (ii) is an operative; or
    - (iii) is an officer who is an applicant to become an operative and is required to undergo a medical

examination or test for deciding the person's suitability to be a covert operative; or

- (b) an authorised person reasonably suspects the relevant member is contravening or has contravened section 5A.12.
- (2) Also, an authorised person may require a person who has been notified of the person's appointment as a recruit to submit to a targeted substance test before the person starts the training necessary to become an officer.

### **5A.14 Providing specimen for targeted substance test**

- (1) An authorised person may require a relevant member to provide a specimen of urine to a doctor or registered nurse for a targeted substance test at a place and time specified by the authorised person.
- (2) If the specimen is required because of section 5A.13(1)(a)(i), the requirement must be made, and the specimen provided, as soon as reasonably practicable after the critical incident happened.
- (3) A doctor or registered nurse may give reasonably necessary directions to the relevant member about how the specimen is to be provided and providing a sufficient specimen for testing.
- (4) However, a direction given under subsection (3) must not be inconsistent with any requirements about the collection of urine specimens prescribed under a regulation for this section.
- (5) Subject to subsection (4), the relevant member must provide the specimen in accordance with the directions of a doctor or a registered nurse.
- (6) If the relevant member acts in accordance with the directions of the doctor or registered nurse but has a reasonable excuse, because of a medical condition, for being unable to provide a specimen of urine—
  - (a) the person does not contravene subsection (5); and
  - (b) the failure to provide the specimen is not to be taken as a positive test for this part.

- (7) As soon as practicable after a specimen of urine has been obtained under this section, the specimen must be dealt with in the way prescribed under a regulation for this section.
- (8) In this section—  
*registered nurse* means a registered nurse under the *Nursing Act 1992*.

### **5A.15 Effect of failure to provide specimen of urine**

A relevant member who fails to provide a specimen of urine is taken, unless section 5A.14(6) applies to the member, to have been tested for a targeted substance and to have been found to have had evidence of a targeted substance in the person's urine.

## **Division 4                      What happens if a test result is positive**

### **5A.16 If alcohol or targeted substance test positive**

- (1) This section applies if a test conducted under this part shows a relevant member, when tested—
  - (a) was over the limit applying to the member when the test was conducted; or
  - (b) had evidence of a targeted substance in the person's urine.
- (2) The commissioner may do any 1 or more of the following—
  - (a) suspend the relevant member from duty until the member is no longer over the relevant alcohol limit or no longer has evidence of a targeted substance in the person's urine;
  - (b) correct the relevant member by way of guidance;
  - (c) require the relevant member to undergo counselling or rehabilitation approved by the commissioner;
  - (d) require the relevant member to attend a government medical officer for a medical examination of the

member's fitness to continue to perform the member's current duties;

- (e) after considering a report of a government medical officer about a medical examination under paragraph (d), direct the relevant member to perform other duties for the time the commissioner considers necessary;
- (f) take disciplinary or other action against the relevant member under whichever of the following is relevant—
  - (i) this Act;
  - (ii) the *Public Service Act 1996*;
- (g) require the relevant member to submit to further testing from time to time until the commissioner is satisfied the reason for making the requirement no longer exists.

*Example of other action for paragraph (f)—*

action that may be taken under section 6.1

- (3) Subsection (2)(a), (b), (c) and (f) do not apply to a targeted substance mentioned in section 5A.12(2).<sup>10</sup>
- (4) A relevant member directed to perform other duties under subsection (2)(e) is entitled to be paid salary and allowances at the rate at which the member would have been paid had the member not been directed to perform the other duties.
- (5) A government medical officer who prepares a report about a medical examination of a relevant member may give the report to the commissioner.

### **5A.17 Effect of failure to comply**

- (1) This section applies if a relevant member—
  - (a) fails to attend or complete counselling or rehabilitation under a requirement under section 5A.16(2)(c); or
  - (b) fails to attend a government medical officer for medical examination under a requirement under section 5A.16(2)(d).

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10 Section 5A.12 (Targeted substance levels)

- (2) The commissioner may take disciplinary action against the member under whichever of the following is relevant—
- (a) this Act;
  - (b) the *Public Service Act 1996*.

## **Division 5                      General**

### **5A.18 Giving requirements**

A requirement under this part may be given orally or in writing or by any form of electronic communication.

### **5A.19 Interfering with specimens**

A person must not unlawfully interfere with a specimen of breath or urine provided under this part.

Maximum penalty—100 penalty units.

### **5A.20 Test result evidence generally inadmissible**

- (1) Evidence of—
- (a) anything done under this part; and
  - (b) the result of any test conducted under this part;
- is inadmissible in a civil or criminal proceeding before a court.
- (2) Without limiting subsection (1), evidence of any of the following is inadmissible in a civil or criminal proceeding before a court—
- (a) an approval given to conduct a random alcohol test;
  - (b) a requirement made under division 2, 3 or 4;
  - (c) a direction given by a person under division 3;
  - (d) a disclosure made or an agreement entered into under section 5A.21A.
- (3) Also, the commissioner and anyone else involved in any way in anything done under this part can not be compelled to

produce to a court any document kept or to disclose to a court any information obtained because of the doing of the thing.

- (4) This section does not apply to—
- (a) a proceeding for a charge of an offence arising from a critical incident; or
  - (b) an inquest in a Coroners Court into the death of a person in a critical incident; or
  - (c) a proceeding on an application under the *Industrial Relations Act 1999*, section 74<sup>11</sup> for reinstatement because of unfair dismissal.
- (5) Also, this section does not prevent the commissioner giving a witness identity protection certificate under the *Evidence Act 1977*, section 21F that includes matters mentioned in section 21G(1)(h) of that Act in relation to a person who has been found guilty of misconduct or a breach of discipline because of the testing of the person under this part.

### **5A.21 Evidentiary provision**

- (1) A certificate apparently signed by an analyst and stating the following is evidence of what it states—
- (a) a specimen of urine provided by a stated person on a stated day and at a stated place was received from a stated authorised person at the analyst's laboratory on a stated day and time;
  - (b) the analyst made a laboratory test of the specimen on a stated day and at the stated place;
  - (c) a stated targeted substance or a metabolite of a stated targeted substance was indicated by the laboratory test to be present in the person's urine.
- (2) A certificate apparently signed by a government medical officer and stating that the presence of a stated targeted substance in a person impairs or may impair the person's capacity to perform the person's duties without danger to the person or others is evidence of what it states.

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11 *Industrial Relations Act 1999*, section 74 (Application for reinstatement)

- (3) A certificate apparently signed by the commissioner and stating either of the following is evidence of what it states—
  - (a) at a stated time a stated officer performed duties in an operational capacity in a critical area;
  - (b) at a stated time a stated staff member performed duties involving a critical area.

### **5A.21A Agreements about counselling and rehabilitation**

- (1) This section applies to a member of the service, whether or not the member is a relevant member.
- (2) However, this section applies to a member of the service only if the member reports to a prescribed person that the member requires counselling or rehabilitation about the member's personal use of alcohol or a drug.
- (3) The member may apply in the approved form to the commissioner to enter into an agreement to provide to the member the counselling or rehabilitation approved by the commissioner.
- (4) A regulation may prescribe the matters that must be included in an agreement under this section.
- (5) The commissioner must not use information disclosed by a member under this section for the purpose of a disciplinary or other action against the member under this Act or the *Public Service Act 1996*, whichever is relevant.
- (6) Also, the commissioner must not disclose information in the possession of the police service because of subsection (2) or an agreement entered into under subsection (3) other than—
  - (a) for the purposes of the agreement; or
  - (b) for the purposes of section 6.1(1)(c) or 8.3;<sup>12</sup> or
  - (c) to the extent the commissioner considers reasonably necessary to prevent or lessen a serious threat to the public or to the member's health or safety; or

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12 Section 6.1 (Power to stand down and suspend) or 8.3 (Unfitness for duty on medical grounds)

(d) for the purposes of a claim for compensation under the *Workers' Compensation and Rehabilitation Act 2003*.

(7) In this section—

***prescribed person*** means a person to whom, under a regulation, a member of the service may make a request for the provision of counselling or rehabilitation about the member's personal use of alcohol or a drug.

## **5A.22 Application of Freedom of Information Act 1992**

The *Freedom of Information Act 1992* does not apply to a document created under this part.

## **5A.23 Limitation on disciplinary proceedings**

If 2 or more contraventions of this part by a particular relevant member arise out of the same facts or circumstances, a disciplinary proceeding against the relevant member may be started for 1 disciplinary offence only.

# **Part 5AA                      Assessment of suitability of persons seeking to be engaged, or engaged, by the service**

## **Division 1                      Preliminary**

### **5AA.1 Purpose of pt 5AA**

The purpose of this part is to ensure the commissioner—

(a) may gather all the relevant information the commissioner needs about a person engaged or seeking to be engaged by the service; and



- (b) may use the information to assess the person's suitability to be, or continue to be, engaged by the service.

### **5AA.2 Parliament's intention**

- (1) It is Parliament's intention that relevant information about a person that is obtained by the commissioner under this part is to be used only for assessing the person's suitability to be, or continue to be, engaged by the service.
- (2) However, it is not Parliament's intention to prevent the commissioner using information obtained under this part that discloses the commission of an offence, or is, or leads to, the discovery of evidence of the commission of an offence, for an investigation into the offence and any proceeding started or facilitated because of the investigation.

### **5AA.3 Meaning of *engaged by the service***

A person is *engaged by the service* for this part if the person is 1 of the following—

- (a) a police officer;
- (b) a staff member;
- (c) a recruit;
- (d) a special constable;
- (e) an external service provider;
- (f) a person performing functions at a police station or police establishment under a contract for services;
- (g) a person working in the service as a volunteer or as a student on work experience.

### **5AA.4 This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**5AA.5 Person to be advised of duties of disclosure etc.**

- (1) Before a person, other than an external service provider, is engaged by the service, the commissioner must, if the commissioner considers the terms of the engagement require it—
  - (a) tell the person—
    - (i) of the person's duty to disclose relevant information under division 2; and
    - (ii) that the commissioner may obtain relevant information about the person under division 3 and consider relevant information otherwise available to the commissioner; and
  - (b) give the person a copy of the guidelines for dealing with relevant information obtained by the commissioner under this part.
- (2) As soon as practicable after the chief executive officer of an entity other than the service becomes aware a person employed or engaged by the entity is an external service provider, the chief executive officer must—
  - (a) tell the person—
    - (i) the person is an external service provider; and
    - (ii) of the person's duty to disclose relevant information under division 2; and
    - (iii) that the commissioner may obtain relevant information about the person under division 3 and consider relevant information otherwise available to the commissioner; and
  - (b) give the person a copy of the guidelines issued by the commissioner for dealing with relevant information obtained by the commissioner under this part.

## **Division 2                    Disclosure of relevant information**

### **5AA.6 Persons engaged or seeking to be engaged by the service must disclose relevant information**

- (1) Each of the following must, if required by the commissioner, disclose to the commissioner any relevant information known to the person that may affect the person's suitability to be engaged by the service—
  - (a) a person engaged by the service;
  - (b) a person seeking to be engaged by the service.
- (2) A person required to disclose information under subsection (1)(b) must disclose the information before being engaged by the service.

### **5AA.7 Persons engaged by the service must disclose changes in relevant information**

If a person engaged by the service is aware that there is a change in relevant information about the person, the person must immediately disclose to the commissioner the details of the change.

*Note—*

For some persons engaged by the service, a failure to disclose a change in relevant information of which the person is aware may become the subject of disciplinary proceedings.

### **5AA.8 Requirements for disclosure**

- (1) To comply with section 5AA.6 or 5AA.7, a person must give the commissioner a disclosure in the approved form.
- (2) Without limiting subsection (1), the approved form must make provision for the disclosure of the following relevant information—
  - (a) the existence of a conviction or charge;
  - (b) when an offence was committed or alleged to have been committed;
  - (c) details of an offence or alleged offence;

- (d) for a conviction—whether or not a conviction was recorded and other details of the sentence.

### **Division 3                      Commissioner may obtain relevant information from other entities**

#### **5AA.9 Commissioner may request information from other authorities**

- (1) This section applies to a person who—
  - (a) is engaged by the service; or
  - (b) seeks to be engaged by the service and has given the commissioner a disclosure for the purposes of division 2.
- (2) Also, this section applies even though the disclosure does not state any relevant information about the person.
- (3) The commissioner may ask another law enforcement agency, whether a declared law enforcement agency, or a law enforcement agency of another country that has an obligation under the law of that country to assess the integrity of persons employed or engaged by the government of that country, to give the commissioner a report that includes relevant information about the person.

#### **5AA.10 Prosecuting authority to notify commissioner about committal, conviction etc.**

- (1) This section applies if a person is charged with an indictable offence and the director of public prosecutions is aware that the person is engaged by the service.
- (2) The director of public prosecutions must give the commissioner written notice of the person's name and the following particulars within 7 days after the director of public prosecutions becomes aware of the particulars—
  - (a) if the person is committed by a court for trial for an indictable offence—
    - (i) the court committing the person for trial; and

- (ii) particulars of the offence with which the person is charged; and
    - (iii) the date of the committal; and
    - (iv) the court to which the person was committed;
  - (b) if the person is convicted before the Supreme Court or the District Court of an indictable offence—
    - (i) the court convicting the person; and
    - (ii) particulars of the offence; and
    - (iii) the date of the conviction; and
    - (iv) the sentence imposed by the court;
  - (c) if the person is convicted of an indictable offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended—
    - (i) particulars of the offence of which the person is convicted; and
    - (ii) the date the appeal was decided or otherwise ended; and
    - (iii) if the appeal was decided—
      - (A) the court in which it was decided; and
      - (B) particulars of the decision;
  - (d) if the prosecution process ends without the person being convicted of an indictable offence—
    - (i) if relevant—the court in which the prosecution process ended; and
    - (ii) particulars of the offence with which the person was charged; and
    - (iii) the date the prosecution process ended.
- (3) For subsection (2)(d), a prosecution process ends if—
  - (a) an indictment is presented against the person and—
    - (i) a nolle prosequi is entered on the indictment; or
    - (ii) the person is acquitted; or
  - (b) the prosecution process has otherwise ended.

- (4) A reference in this section to a conviction of an indictable offence includes a summary conviction of an indictable offence.
- (5) Subsection (1) does not apply if the person is charged by a police officer.
- (6) Subsection (2)(a) does not apply if the prosecutor appearing is a police officer.
- (7) Subsection (2)(d) does not apply if the prosecution process ends while a police officer is in charge of the prosecution.

## **Division 4                      Controls on use of relevant information and information about particular investigations**

### **5AA.11 Assessment of suitability**

- (1) This section applies to the commissioner in considering relevant information about a person under this part.
- (2) When making the assessment, the commissioner may have regard to all relevant information available to the commissioner, including, but not limited to—
  - (a) information that is disclosed to the commissioner under this part; and
  - (b) information that is made available by a declared law enforcement agency or a law enforcement agency of another country because of a request made under this part; and
  - (c) information that is stored on—
    - (i) a database kept by the commissioner; or
    - (ii) a database kept by another law enforcement agency to which the commissioner has access; and
  - (d) information that is otherwise available to the commissioner.

*Examples for subsection (2)—*

- 1 information obtained from previous employment checks

- 2 fingerprint checks
- 3 DNA tests
- (3) In addition, information obtained under this part may be taken into account in deciding a question of merit under a merit provision.
- (4) Subsection (3) is in addition to and does not limit a merit provision.
- (5) In this section—
  - merit provision* means—
    - (a) section 5.2;<sup>13</sup> or
    - (b) the *Public Service Act 1996*, section 78.<sup>14</sup>

### **5AA.12 Particular persons to be advised if person unsuitable**

- (1) If, because of information relied on by the commissioner under this part, the commissioner considers a person, other than an external service provider, may not be suitable to be, or continue to be, engaged by the service, the commissioner must, before deciding the person is not suitable—
  - (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the commissioner about the information.
- (2) The commissioner must give reasons why the commissioner considers the person may not be suitable to be, or continue to be, engaged by the service unless the commissioner considers the disclosure of the information may—
  - (a) prejudice the investigation of a contravention or possible contravention of the law; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or

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13 Section 5.2 (Appointment to be on merit on impartial procedures)

14 *Public Service Act 1996*, section 78 (Selection for appointment to be on merit)

- (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (f) prejudice national security; or
  - (g) be prohibited under a law of this or any other State or the Commonwealth.
- (3) If, after considering any representations made under subsection (1)(b), the commissioner decides the person is not suitable to be, or continue to be, engaged by the service, the commissioner must give the person a written notice stating that the person is not suitable to be, or continue to be, engaged by the service.
- (4) Information relied on under this section to decide that a person is not suitable to be engaged by the service can not be used for any other purpose, unless its disclosure is authorised under section 5AA.14(3).

### **5AA.13 External service provider to be advised if person unsuitable**

- (1) If, because of information relied on by the commissioner under this part, the commissioner considers a person who is an external service provider may not be suitable to be, or continue to be, engaged by the service, the commissioner must, before deciding the person is not suitable—
- (a) disclose the information to the person and the chief executive officer of the relevant entity; and
  - (b) allow the person and the chief executive officer a reasonable opportunity to make representations to the commissioner about the information; and
  - (c) allow the person a reasonable opportunity to make representations to the commissioner about any representations made to the commissioner by the chief executive officer.



- (2) The commissioner must give reasons why the commissioner considers the person may not be suitable to be, or continue to be, engaged by the service unless the commissioner considers the disclosure of the information may—
  - (a) prejudice the investigation of a contravention or possible contravention of the law; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (f) prejudice national security; or
  - (g) be prohibited under a law of this or any other State or the Commonwealth.
- (3) If, after considering any representations made under subsection (1)(b) or (c), the commissioner decides the person is not suitable to be, or continue to be, engaged by the service, the commissioner must give the person and the chief executive officer of the relevant entity a written notice stating that the person is not suitable to be, or continue to be, engaged by the service.
- (4) If the person is already employed or engaged by the entity, the chief executive officer must—
  - (a) have regard to the commissioner's decision that the person is not suitable to be engaged by the police service and the reasons for the decision; and
  - (b) consider whether appropriate steps may be taken to minimise—
    - (i) the potential adverse effects of the assessment; and
    - (ii) the person's access to information in the possession of the commissioner; and

- (c) advise the commissioner of the chief executive officer's decision.
- (5) If the commissioner considers the steps taken do not adequately minimize the person's access to information in the possession of the commissioner, the commissioner may ask the chairperson of the Crime and Misconduct Commission to review the chief executive officer's decision.
- (6) A review conducted under this section—
  - (a) must be conducted in private; and
  - (b) must be conducted in the way decided by the chairperson; and
  - (c) if the chairperson considers it appropriate, may be conducted on the papers, without hearing submissions from any person; and
  - (d) is not a hearing or investigation of a kind the chairperson may hold under the *Crime and Misconduct Act 2001*.
- (7) The chairperson's decision on the review—
  - (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (8) Information disclosed to the chief executive officer of the entity under subsection (3) must not be disclosed to a member of a selection panel or to anyone else, unless this or another Act permits or requires the disclosure.

**5AA.14 Secrecy**

- (1) This section applies to a person who—
  - (a) is, or has been—
    - (i) a person engaged by the service; or

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- 
- (ii) a selection panel member; and
  - (b) in that capacity acquired relevant information about someone else.
- (2) The person must not disclose the information to anyone else.  
Maximum penalty—100 penalty units or 2 years imprisonment.
- (3) Subsection (2) does not apply to the disclosure of information about a person, if—
- (a) the disclosure—
    - (i) is to a police officer, a public service employee in the service, or a selection panel member, for the purpose of assessing the person’s suitability to be, or continue to be, engaged by the service; or
    - (ii) is with the person’s consent; or
    - (iii) is of information that is relevant to an existing investigation of an offence; or
    - (iv) is for a proceeding started because of an investigation mentioned in subparagraph (iii); or
    - (v) is information the person may disclose to a person who is entitled to ask for it under another Act; or

*Example for subparagraph (v)—*  
*Family Services Act 1987, part 4<sup>15</sup>*
  - (b) the information discloses evidence of the commission or suspected commission of an offence and an investigation is started or facilitated because of the information.
- (4) Also, a person involved in any way in anything done under this part can not be compelled to produce to a court any document kept, or to disclose to a court any information obtained, because of the doing of the thing.

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<sup>15</sup> *Family Services Act 1987, part 4* (Criminal histories of persons engaged by the department)

- (5) Other than to the extent the *Police Powers and Responsibilities Act 2000*, section 803<sup>16</sup> applies to the document or information, subsection (4) does not affect the operation of the *Judicial Review Act 1991*.
- (6) In this section—
- disclose*, in relation to information about a person, includes give access to information about a person.
- selection panel member* means a member of a panel formed to make a recommendation to the commissioner about a person's engagement by the service.

### **5AA.15 Guidelines for dealing with relevant information**

- (1) The commissioner must make guidelines, consistent with this part, for dealing with relevant information obtained by the commissioner under this part.
- (2) The purpose of the guidelines is to ensure—
- (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in assessing the persons' suitability to be, or continue to be, engaged by the service; and
  - (c) decisions about the suitability of persons, based on the information, are made in a consistent way.
- (3) The commissioner must give a copy of the guidelines, on request, to a person seeking to be engaged, or engaged, by the service.

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16 *Police Powers and Responsibilities Act 2000*, section 803 (Protection of methodologies)

## **Part 6 Standing down and suspension**

### **6.1 Power to stand down and suspend**

- (1) If—
  - (a) it appears to the commissioner, on reasonable grounds that—
    - (i) an officer is liable to be dealt with for official misconduct; or
    - (ii) an officer is liable to disciplinary action under section 7.4; or
    - (iii) the efficient and proper discharge of the prescribed responsibility might be prejudiced, if the officer's employment is continued; or
  - (b) an officer is charged with an indictable offence; or
  - (c) an officer is unfit for reasons of health to such an extent that the officer should not be subject to the duties of a constable;the commissioner may—
  - (d) stand down the officer from duty as an officer and direct the person stood down to perform such duties as the commissioner thinks fit; or
  - (e) suspend the officer from duty.
- (2) The commissioner may at any time revoke a standing down or suspension imposed under subsection (1).

### **6.2 Salary entitlement if stood down**

An officer who is stood down from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the officer would have received salary and allowances had the standing down not occurred.

### **6.3 Salary entitlement if suspended**

- (1) An officer suspended from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the

officer would have received salary and allowances had the suspension not occurred, unless the commissioner otherwise determines in a particular case.

- (1A) Except that an officer suspended under section 6.1(1)(c) is to be entitled to the salary and allowances to which that officer was previously entitled.
- (2) An officer suspended from duty who is not entitled to be paid salary during the suspension—
  - (a) may receive and retain salary, wages, fees or other remuneration from any lawful source during the suspension, unless the commissioner otherwise determines in a particular case;
  - (b) if the officer resumes duty as an officer on the revocation of the suspension—is entitled to receive a sum equivalent to the amount of salary and allowances the officer would have received had the suspension not occurred, reduced by a sum equivalent to the amount of salary, wages, fees and other remuneration to which the officer became entitled from any other source during the suspension, unless the commissioner otherwise determines in a particular case.
- (3) An officer suspended from duty without salary who enters into employment whereby the officer will become entitled to salary, wages, fees or other remuneration is to inform the commissioner immediately of the particulars of the employment.
- (4) An officer suspended from duty who during the suspension becomes entitled to salary, wages, fees or other remuneration from a source incompatible with assessment of the officer as a fit and proper person to be an officer and who fails to satisfy the commissioner that there are reasonable grounds for not dismissing the officer, may be dismissed from the service.

#### **6.4 Officer relieved of powers and duties while stood down or suspended**

While an officer remains stood down or suspended under section 6.1—

- (a) the officer is relieved of the powers and duties of a constable at common law or under any Act or law;
- (b) the officer is not bound by the oath or affirmation taken or made by the officer as prescribed by section 3.3;
- (c) the officer is not to be taken to have breached such oath or affirmation, or provisions of any Act or law relating thereto, or to be liable to disciplinary action under section 7.4, by reason of the officer's failure to exercise or perform the powers or duties required of the officer by such oath or affirmation.

## **Part 7**                      **Internal command and discipline**

### **7.1 Responsibility for command**

- (1) At any incident—
  - (a) that calls for action by police; and
  - (b) at which officers are present;the officer who is responsible for taking such action, and for action taken is—
  - (c) the officer designated for the purpose in accordance with established administrative arrangements;
  - (d) if there is no officer such as is referred to in paragraph (c)—the officer present who is most senior by rank;
  - (e) if there is no officer such as is referred to in paragraph (c) or (d)—the officer present who is most senior by length of continuous service as an officer.
- (2) For subsection (1)(e), any length of service other than as a police officer that is counted as continuous service under section 5.14<sup>17</sup> must be disregarded.

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17 Section 5.14 (Calculation of continuous service as officer)

## 7.2 Duty concerning misconduct or breaches of discipline

(1) In this section—

**conduct** means conduct of an officer, wherever and whenever occurring, whether the officer whose conduct is in question is on or off duty at the time the conduct occurs.

**officer** includes a police recruit.

(2) If any officer or staff member—

- (a) knows or reasonably suspects that conduct to which this section refers has occurred; or
- (b) is one in respect of whom it can be reasonably concluded that the officer or staff member knew or reasonably suspected that conduct to which this section refers has occurred;

it is the duty—

- (c) of the officer or staff member, in the case of conduct that is misconduct, to report the occurrence of the conduct, as soon as is practicable, to the commissioner and to the chairperson of the Crime and Misconduct Commission; and
  - (d) of the officer, in the case of conduct that is misconduct or a breach of discipline, to take all action prescribed by the regulations as action—
    - (i) to be taken in the circumstances of the case; and
    - (ii) to be within the authority of an officer of the rank or description to which that officer belongs.
- (3) The commissioner may, by written instrument, exempt stated officers or staff members who have or are likely to have knowledge of conduct that is an alleged contravention of the *Anti-Discrimination Act 1991* from compliance with subsection (2), generally or on stated conditions.
- (4) The commissioner may give an exemption under subsection (3) only if the commissioner is reasonably satisfied giving the exemption will not adversely affect the welfare of the officers or staff members affected by or involved in the conduct.
- (5) However, if a person is given an exemption generally because the person is likely to have knowledge of an alleged



contravention of the *Anti-Discrimination Act 1991* and the person is the person against whom the complaint for the contravention is made, the exemption does not operate in relation to the complaint against the person.

- (6) Also, the commissioner may, by written instrument, exempt an officer or staff member from compliance with subsection (2), generally or on stated conditions, if the officer or staff member—
  - (a) is appointed to provide confidential counselling services to officers and staff members; or
  - (b) is a prescribed person under section 5A.21A.
- (7) An exemption under subsection (6) only operates while the officer or staff member is providing professional counselling services in an official capacity.
- (8) If a person is not required to report misconduct under subsection (2) because of an exemption under subsection (3), the commissioner also is not required to report the misconduct.

### **7.3 Offence of victimisation**

A person who—

- (a) prejudices, or threatens to prejudice, the safety or career of any person;
- (b) intimidates or harasses, or threatens to intimidate or harass any person;
- (c) does any action that is, or is likely to be, to the detriment of any person;

because the person referred to in paragraph (a), (b) or (c), or any other person, has complied with section 7.2 by performing the duty therein prescribed commits an offence against this Act.

Maximum penalty—100 penalty units.

### **7.4 Disciplinary action**

- (1) In this section—

*officer*, in relation to a person liable to disciplinary action, includes a police recruit.

*prescribed officer* means an officer authorised by the regulations to take disciplinary action in the circumstances of any case in question.

- (2) An officer is liable to disciplinary action in respect of the officer's conduct, which the prescribed officer considers to be misconduct or a breach of discipline on such grounds as are prescribed by the regulations.
- (2A) If the prescribed officer—
- (a) decides a disciplinary charge of misconduct brought against the officer; or
  - (b) when deciding a charge of breach of discipline brought against the officer, finds the officer is guilty of misconduct;

the commissioner must give written notice of the decision, including the discipline imposed on the officer, or the finding and the discipline imposed on the officer to the Crime and Misconduct Commission and the officer within 14 days after making the decision or finding.

- (3) Without limiting the range of disciplines that may be imposed by the prescribed officer by way of disciplinary action, such disciplines may consist of—
- (a) dismissal;
  - (b) demotion in rank;
  - (c) reprimand;
  - (d) reduction in an officer's level of salary;
  - (e) forfeiture or deferment of a salary increment or increase;
  - (f) deduction from an officer's salary payment of a sum equivalent to a fine of 2 penalty units.
- (4) Every order made by way of disciplinary action takes effect in law and is to be given effect.

## **Part 8                      Resignation retirement and change in status**

### **8.1      Resignation**

- (1) Resignation from the service of an officer who holds a position on the basis of a contract that provides for the manner of the officer's resignation must be effected in accordance with the contract.
- (2) An officer, other than one referred to in subsection (1), may resign from the service at any time in the manner prescribed by the regulations.

### **8.2      Retirement**

An officer, other than one who holds a position on a contract basis—

- (a) may retire from employment in the service upon, or at any time after, attaining the age prescribed by the regulations in relation to officers of the class to which that officer belongs;
- (b) may retire from employment in the service when called upon under section 8.3 to retire from the service;
- (c) is to retire from employment in the service upon attaining the age of 60 years.

### **8.3      Unfitness for duty on medical grounds**

- (1) If the commissioner suspects on reasonable grounds that an officer—
  - (a) by reason of physical or mental infirmity is incapable of;  
or
  - (b) for any other reason pertaining to the officer's health or condition, is unfit for the purpose of;

performing the duties of office, or any other duties as an officer that the commissioner might reasonably direct the officer to perform, the commissioner is to advise the officer, in writing, of the suspicion and if upon receipt of such advice the

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officer does not accept the truth of the commissioner's suspicion, the commissioner is to obtain medical opinion on the matter.

- (2) For the purposes of subsection (1), the commissioner—
  - (a) may nominate any medical practitioner or medical practitioners to examine the officer concerned and report to the commissioner on the physical or mental health or other relevant condition of the officer, as the case may require; and
  - (b) may direct the officer concerned to submit to examination by the nominated medical practitioner or medical practitioners.
- (2A) If the officer concerned fails without reasonable cause to comply in all respects with a direction given by the commissioner, it is to be conclusively presumed that the commissioner's suspicion is true.
- (3) If, having regard to any medical opinions expressed by medical practitioners (including any such opinions furnished by the officer) on the health or condition of the officer concerned, or because of the presumption prescribed by subsection (2A), the prescribed authority is satisfied that the officer should not continue to be required to perform the duties of office, then, unless the commissioner takes action authorised by subsection (5), the prescribed authority may call upon the officer to retire from the service within a time specified by the prescribed authority.
- (4) If the officer called upon to retire does not retire within the time specified, the prescribed authority may dismiss the officer from the service.
- (5) If the commissioner believes the officer referred to in subsection (3) is sufficiently fit to perform duties as a staff member, then in lieu of the action authorised by subsections (3) and (4) and without limiting the commissioner's powers in relation to the officer, the commissioner may—
  - (a) in writing, appoint the officer to a position as a staff member, at a rate of salary not less than that of the officer immediately before such appointment; and

- (b) may direct the officer to report for and perform duty in the position to which the officer is so appointed.
- (6) The person appointed to a position under subsection (5) thereby ceases to be an officer and is relieved of all powers and duties of a constable at common law or under any Act or law.
- (7) In subsections (3) and (4)—
  - prescribed authority* means—
  - (a) the Governor in Council, in respect of an officer appointed to office by the Governor in Council;
  - (b) the commissioner, in respect of an officer appointed to office by the commissioner.

## **Part 9                      Review of decisions**

### **9.1      Operation of part**

This part does not confer an entitlement to seek a review under this part, of a decision of a description referred to in section 9.3 on a person who has a right of appeal against, or a right to seek a review of, the decision in question under the *Misconduct Tribunals Act 1997*.

#### **9.1A    Relationship with Industrial Relations Act 1999**

The industrial court and the industrial relations commission do not have jurisdiction in relation to a matter that has been, is being, or may be reviewed under this part even though it may be, or be about, or arise out of, an industrial matter within the meaning of the *Industrial Relations Act 1999*.

### **9.2      Review does not stay decision**

An application for review of a decision under this part—

- (a) does not affect the operation and effect of the decision pending disposal of the application; and

- (b) does not have the effect of deferring the liability of the applicant to implementation of the decision.

## **9.2A Commissioner for police service reviews**

- (1) A person is a commissioner for police service reviews—
  - (a) if the person is nominated under subsection (2)(a)—without further appointment; or
  - (b) if the person is nominated under subsection (2)(b) to (d)—on appointment by the Governor in Council under subsection (3).
- (2) The chairperson of the Crime and Misconduct Commission may nominate any of the following persons to be a commissioner for police service reviews—
  - (a) a commissioner or former commissioner of the Crime and Misconduct Commission;
  - (b) a former member of the Criminal Justice Commission;
  - (c) a person qualified for appointment as chairperson of the Crime and Misconduct Commission;
  - (d) a person who has community service experience, or experience of community standards and expectations, relating to public sector officials and public sector administration.
- (3) The Governor in Council may appoint as a commissioner for police service reviews a person who—
  - (a) is nominated for appointment under subsection (2)(b) to (d); and
  - (b) is not an ineligible person under the *Crime and Misconduct Act 2001*.
- (4) The person's appointment must be notified by gazette notice.
- (5) The appointment is for the term, not longer than 3 years, and on the conditions, including conditions of remuneration, stated in the instrument of appointment.
- (6) More than 1 person may hold office as a commissioner for police service reviews at any time.

**9.3 Application for review**

- (1) A police officer who is aggrieved by a decision about—
- (a) the selection of an officer for appointment to a police officer position, whether on promotion or transfer, if the selection procedures mentioned in section 5.2(2)(a) were required to be complied with; or
  - (b) the selection of an officer for transfer to a police officer position, if the selection procedures mentioned in section 5.2(2)(a) were not required to be complied with; or
  - (c) action against the officer for breach of discipline; or
  - (d) suspension or standing down of the officer; or
  - (e) another decision prescribed by regulation as open to review under this part;

may apply to have the decision reviewed by a commissioner for police service reviews.

- (1A) An application for the review of a decision mentioned in subsection (1)(a) may only be made by a person who properly applied for appointment to the position concerned and was unsuccessful.
- (1B) An application for the review of a decision mentioned in subsection (1)(b) may only be made by a police officer who was transferred to the position concerned without applying for the transfer.
- (2) An application for review of a decision that relates to action for breach of discipline may seek the review in respect of—
- (a) the decision that such action should be taken; or
  - (b) the nature of the discipline imposed;
- or both, and a review may be conducted accordingly.
- (3) Authority is hereby conferred on a commissioner for police service reviews—
- (a) to hear and consider all applications for review under this part duly made;
  - (b) to make recommendations relating to any matters relevant to a review under this part.

**9.4 Procedures**

- (1) An application for review under this part must be made as prescribed by the regulations or, where the regulations do not make any or sufficient provision, in accordance with directions of a commissioner for police service reviews.
- (2) A review under this part is to be conducted as prescribed by the regulations or, where the regulations do not make any or sufficient provision, as determined by a commissioner for police service reviews, having regard to the following principles—
  - (a) a review is an administrative proceeding of a non-adversarial nature;
  - (b) proceedings on a review should be informal and simple;
  - (c) legal representation is not permitted to any person concerned in a review.

**9.5 Result of review**

- (1) Upon conclusion of a review under this part, a commissioner for police service reviews is to make such recommendations as that commissioner considers appropriate to the matter under review to the commissioner of the police service.
- (2) The commissioner of the police service, upon consideration of the matter reviewed and having regard to the recommendations made, is to take such action as appears to the commissioner of the police service to be just and fair.

**9.6 Effect of rescission of decision**

If, following a review of a decision under this part, the decision is rescinded, it is to be taken that the decision was never made or implemented, whether or not any decision is substituted in its stead.



## Part 9A Police prints

### 9A.1 Payment for prints

- (1) A person for whom a print is made by or at the request of a police officer in the performance of the police officer's duty under this Act or otherwise, must pay to the commissioner a reasonable amount for printing and supplying the print.
- (2) If the person requires a marked print, the person must also pay to the commissioner a reasonable amount for marking the print.
- (3) However, the commissioner may, in a particular case, decide not to charge an amount under subsection (1) or (2).
- (4) In this section—

*reasonable amount*, for printing and supplying or marking a print, means a reasonable amount fixed by the commissioner, not more than the actual cost of producing and supplying, or marking, the print.

### 9A.2 Entitlement to prints

- (1) This section applies if the State or a police officer performing the police officer's duties tenders a print as an exhibit in a proceeding before a court or tribunal.
- (2) A person who satisfies the person who has custody of the print that the person requires a print identical to the print tendered for a prescribed purpose<sup>18</sup> is entitled to a print identical to the print tendered.
- (3) This section does not entitle a person to a print the person requires for a proceeding started in a court or tribunal because of something alleged to have been done or not done by a police officer or a State employee in the performance of his or her duties, unless a print identical to the print required has been tendered as an exhibit in the proceeding.

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18 See section 9A.4 (What is a *prescribed purpose*).

**9A.3 Procedure to obtain print for prescribed purpose**

- (1) A person who requires a print mentioned in section 9A.2 (the *tendered print*) for a prescribed purpose may, in writing, ask the person who has custody of the print or, if it is a photograph, the negative of the print, to give to the person a print identical to the tendered print.
- (2) The request must indicate the purpose for which the person requires the print.
- (3) However, it is not necessary to supply the print unless the person asking for it pays any amount fixed for the print under section 9A.1.
- (4) If the person who has custody of the negative is satisfied that the person making the request is entitled to the print and has paid any amount fixed for supplying the print, the person must cause the print to be made and supplied.
- (5) A person does not incur any liability at law merely because of the printing, marking or supply of a print under this part.

**9A.4 What is a *prescribed purpose***

For this part, each of the following is a prescribed purpose—

- (a) to answer a charge of an offence, the subject matter of or arising out of a proceeding in which a print identical to the print required is an exhibit;
- (b) for a proceeding started in a court or tribunal, whether it is the proceeding in which a print identical to the print required is an exhibit or another proceeding;
- (c) for deciding whether to start a proceeding in a court or tribunal or to make a particular claim in the proceeding;
- (d) for deciding whether to defend a proceeding that may be started in a court or tribunal or to make or resist a particular claim in the proceeding.

## **Part 10                      Miscellaneous provisions**

### **Division 1                      Provisions about information disclosure**

#### **Subdivision 1              Information disclosure generally**

##### **10.1    Improper disclosure of information**

(1) Any officer or staff member or person who has been an officer or a staff member who, except for the purposes of the police service, discloses information that—

- (a) has come to the knowledge of, or has been confirmed by, the officer or staff member or person through exercise, performance or use of any power, authority, duty or access had by the officer or staff member or person because of employment in the service; or
- (b) has come to the knowledge of the officer or staff member or person because of employment in the service;

commits an offence against this Act, unless—

- (c) the disclosure is authorised or permitted under this or another Act; or
- (d) the information is about a person offered an opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 379<sup>19</sup> and the disclosure is made to the chief executive of the department within which the *Health Act 1937* is administered; or
- (e) the disclosure is made under due process of law; or
- (f) the information is not of a confidential or privileged nature; or

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19 *Police Powers and Responsibilities Act 2000*, section 379 (Additional case when arrest for minor drugs offence may be discontinued)

- (g) the information would normally be made available to any member of the public on request.

Maximum penalty—100 penalty units.

- (2) In prosecution proceedings for an offence defined in subsection (1), it is irrelevant that information of the nature of that disclosed had also come to the defendant's knowledge otherwise than in a manner prescribed by subsection (1).

## **10.2 Authorisation of disclosure**

- (1) The commissioner may, in writing, authorise disclosure of information that is in the possession of the police service.
- (2) Subsection (1) does not apply if section 5A.20(4), 5A.21A(5), 5AA.14(3), 10.2A, 10.2B, 10.2C or 10.2D applies to the information.
- (3) Authorisation under subsection (1) must accord with any regulations made in relation to disclosure of such information, and any such authorisation is to be taken as authorising disclosure in accordance with any such regulations.
- (4) Also, subject to any regulation made under subsection (3), the commissioner may impose conditions on the disclosure of information under this section.
- (5) A person to whom the information is disclosed must not contravene a condition imposed under subsection (4).

Maximum penalty—40 penalty units.

- (6) Neither the Crown nor any person incurs any liability in law on account of a disclosure of information made under and in accordance with the commissioner's authorisation.

## **Subdivision 2 Criminal history disclosure provisions**

### **10.2A Disclosure of criminal history for employment screening under commercial or other arrangement**

- (1) This section applies in relation to the disclosure of the criminal history of a person (*relevant person*) if—

- (a) the disclosure is to be made to the CrimTrac Agency or the police force or service of another jurisdiction (each of which is a *relevant agency*); and
  - (b) the purpose of the disclosure is to facilitate the release of the relevant person's criminal history by the relevant agency to someone else under an arrangement; and
  - (c) the arrangement provides for the use of the relevant person's criminal history only for employment screening purposes.
- (2) The commissioner may disclose the relevant person's criminal history to the relevant agency as a function of the service.
  - (3) However, the commissioner may disclose the relevant person's criminal history to the relevant agency only with the person's written consent and only if the commissioner is satisfied the disclosure—
    - (a) is for a national criminal history check for employment screening purposes under a service provided by the relevant agency; and
    - (b) is, or is likely to be, of benefit to the community or a section of the community.
  - (4) In this section—

*arrangement* includes an intergovernmental arrangement and a commercial arrangement.

*employment* includes engagement on a voluntary basis.

### **10.2B Disclosure of criminal history for assessing suitability for diversion program**

- (1) This section applies for helping a person (the *decision maker*) decide whether another person is suitable to take part in a diversion program.
- (2) The commissioner may, for the purpose of assessing the person's suitability for the program and with the person's written consent, disclose the person's criminal history to the chief executive officer of the entity responsible for assessing the person's suitability.

- (3) The commissioner may disclose the person's criminal history as a function of the service and the relevant chief executive officer may use the information for the purpose of the assessment and, if required, in any report given to a decision maker on the person's suitability.

- (4) In this section—

*diversion program* means a government sponsored program for diverting alleged offenders from court proceedings that is prescribed under a regulation under this Act or a regulation under the *Bail Act 1980*, section 11(4).

*government sponsored program* means a program that is funded, or partly funded, by the State or Commonwealth government or is otherwise endorsed by the State government.

### **10.2C Misuse of information obtained under ss 10.2A–10.2B**

- (1) This section applies in relation to a disclosure of information made to a person under section 10.2A or 10.2B (a *relevant disclosure*).
- (2) A person to whom a relevant disclosure is made must not—
- (a) use the information for a purpose other than the purpose for which the information is disclosed; or
  - (b) disclose the information to someone other than the person to whom the information relates without that person's written consent.

Maximum penalty—100 penalty units.

## **Subdivision 3 Information disclosure by direct data feed**

### **10.2D Disclosure of information to the media by direct data feed**

- (1) This section applies in relation to information about particular incidents involving a response by an officer or officers as part of operational activities of the service.
- (2) However, this section applies to the information only if—

- (a) the commissioner is satisfied disclosing the information while officers are responding to the incident or soon after the response will not adversely affect operational activities undertaken as part of the response; and
  - (b) the commissioner considers it is appropriate to disclose the information to electronic or print media organisations (the *media*) or a section of the media by direct data feed.
- (3) The commissioner may, as a function of the service, disclose the information to the media by direct data feed, on the conditions and subject to the restrictions the commissioner considers appropriate.
- (4) Without limiting subsection (3), the restrictions the commissioner may impose on the disclosure of the information include restrictions about the nature of the information that is to be disclosed and when it is to be disclosed.
- (5) The commissioner discloses the information by *direct data feed* by giving the media organisation electronic access to operational information about the police service.

## **Subdivision 4      Other provisions about information disclosure**

### **10.2E Relationship to other laws**

To remove any doubt, it is declared that this division is subject to any other Act that—

- (a) requires or permits the commissioner to disclose information in the possession of the service about a person; or
- (b) prevents or restricts the commissioner from disclosing information in the possession of the service about a person.

**10.2F Declarations about particular information disclosures**

- (1) This section applies to a disclosure, made by the commissioner before the commencement of this section, of information of a kind mentioned in section 10.2, 10.2A or 10.2D in the circumstances mentioned in the section.
- (2) The disclosure is and always was, lawfully made.

**Division 2                    Other miscellaneous provisions****10.3      Protection from liability for reports**

- (1) It is lawful for any officer or staff member to express in a report made in good faith in the execution of duty, matters of opinion, judgment or recommendation (of the person making the report or other person) in addition to matters of fact.
- (2) A report is one made in the execution of duty if the person making the report reasonably believes the person to whom it is made to have the duty or authority to receive the report.
- (3) Neither the Crown nor any person incurs liability in law on account of a report made in good faith in the execution of duty concerning efficiency, conduct or character of any officer or staff member.
- (4) A report, such as is referred to in subsection (3) containing matter that is false, or grossly misleading in a material particular is not one made in good faith unless the defendant proves that the person who made the report reasonably believed the report to be true, and could not have discovered by exercise of reasonable diligence, the falsity or misleading nature of the matter.
- (5) Except as prescribed by subsection (4), the burden of proving absence of good faith is upon the person who alleges such absence.

**10.4      Rejection of frivolous complaints**

- (1) This section relates only to a report, complaint or information concerning conduct of an officer that does not amount to misconduct.



- (2) The commissioner may reject, and direct that no action be taken in relation to, a report or complaint made, or information furnished, that appears to the commissioner to have been made, or furnished, frivolously or vexatiously.
- (3) A person who has been notified in writing by or on behalf of the commissioner that a report or complaint made, or information furnished, by the person—
  - (a) appears to concern frivolous matter; or
  - (b) appears to have been made or furnished vexatiously;and who again makes a report or complaint, or furnishes information, to the same effect commits an offence against this Act.

Maximum penalty—100 penalty units.
- (4) It is a defence to a charge of an offence defined in subsection (3) to prove—
  - (a) that the report, complaint or information does not concern frivolous matter; or
  - (b) that the report, complaint or information was not made or furnished vexatiously.

## **10.5 Liability for tort generally**

- (1) The Crown is liable for a tort committed by any officer, staff member, recruit or volunteer, acting, or purporting to act, in the execution of duty as an officer, a staff member, recruit or volunteer, in like manner as an employer is liable for tort committed by the employer's servant in the course of employment.
- (1A) The Crown is to be treated for all purposes as a joint tortfeasor with the officer, staff member, recruit or volunteer who committed the tort.
- (2) In no case does the Crown's liability for a tort committed by any officer, staff member, recruit or volunteer extend to a liability to pay damages in the nature of punitive damages.
- (3) In proceedings upon a claim by the Crown for damages in respect of a tort, actions done or omissions made by an officer acting, or purporting to act, in the execution of duty as an

officer may be relied on as constituting contributory negligence by the Crown, if the actions or omissions could have been so relied on if they had been done or made by a servant of the Crown in the course of employment.

- (4) For the purposes of this section, an action done or omission made by an officer acting, or purporting to act, in the capacity of a constable is taken to have been done or made by the officer acting, or purporting to act, in the execution of duty as an officer.
- (5) If an officer, staff member, recruit or volunteer incurs liability in law for a tort committed by the officer, staff member, recruit or volunteer in the course of rendering assistance, directly or indirectly, to a person suffering, or apparently suffering, from illness or injury in circumstances that the officer, staff member, recruit or volunteer reasonably considers to constitute an emergency, and if the officer, staff member, recruit or volunteer acted therein in good faith and without gross negligence, the Crown is to indemnify and keep indemnified the officer, staff member, recruit or volunteer in respect of that liability.
- (6) In this section—

*volunteer* means a person appointed by the commissioner to perform duties for the service on an unpaid voluntary basis on conditions decided by the commissioner.

## **10.6 Payment and recovery of damages**

- (1) The Crown may pay—
  - (a) the whole or part of damages, other than damages in the nature of punitive damages, and costs awarded against any officer, staff member or recruit, in proceedings with respect to a tort committed by the officer, staff member or recruit acting, or purporting to act, in the execution of duty; and
  - (b) the whole or part of costs incurred, and not recovered, by the officer, staff member or recruit in the proceedings.
- (2) If any officer, staff member or recruit is liable to pay a sum under a settlement of a claim that has, or might have, given

rise to proceedings such as are referred to in subsection (1), the Crown may pay the whole or part of the sum.

- (3) Except as provided by section 10.5(5), if the Crown has paid moneys by way of damages or costs in respect of a tort committed by any officer, staff member or recruit, or has paid moneys under a settlement referred to in subsection (2), the Crown may recover, in a court of competent jurisdiction, contribution from the officer, staff member or recruit in respect of that payment.
- (4) In proceedings for contribution under subsection (3) the amount of contribution recoverable is such amount as is found by the court to be just and equitable in the circumstances.

### **10.7 Provision of legal representation**

- (1) The commissioner may provide legal representation on behalf of any officer, staff member or recruit against whom any action, claim or demand or proceeding in respect of an offence is brought or made otherwise than by or on behalf of the Crown in any of its capacities on account of any action done or omission made by the officer, staff member or recruit acting, or purporting to act, in the execution of duty.
- (2) If it is found, or conceded, in relation to any such action, claim, demand or proceeding that the officer, staff member or recruit, was not acting in the execution of duty in doing the action or making the omission on which the action, claim, demand or proceeding is based, the commissioner may recover from the officer, staff member or recruit the amount of costs and expenses incurred by the commissioner in providing legal representation under subsection (1) in any court of competent jurisdiction as a debt due and payable by the officer, staff member or recruit to the commissioner and unpaid.

### **10.8 Compensation for injury or death**

If an officer or recruit suffers injury or death in circumstances such that, had the injury or death occurred to a worker employed elsewhere than in the police service, compensation or expenses would have been payable under the *Workers'*

*Compensation and Rehabilitation Act 2003* to or on account of the worker or the worker's dependants, the Crown is to indemnify the officer or recruit and, if the case requires, the dependants of the officer or recruit as if the officer or recruit were a worker covered by a policy under that Act.

## **10.9 Service and production of documents**

- (1) Any document that an Act requires or authorises to be given to or served on the commissioner is taken to have been duly so given or served if it is given to the holder for the time being of any office nominated in that behalf by the commissioner.
- (1A) The commissioner must, from time to time, notify in the gazette the offices so nominated.
- (2) Any member of the service may, with the leave of the court or tribunal concerned, represent the commissioner in that court or tribunal to produce to that court or tribunal any document or thing required to be produced in response to the document referred to in subsection (1) and given or served as prescribed.

## **10.10 Police establishments**

- (1) The commissioner may, by gazette notice—
  - (a) declare any place to be a police establishment or police station;
  - (b) declare any place to be part of a police establishment or police station;
  - (c) declare the cessation of any place as a police establishment or police station or as a part thereof;
  - (d) assign a name to a police establishment or police station and change a name so assigned;
  - (e) define the limits of a police establishment or police station as the commissioner thinks fit.
- (2) In subsection (1)—

*place* means a place appropriated to the use of, or used by, the police service for the purpose of performing functions of the service.

**10.11 Ownership of official property**

For the purpose of any legal proceedings—

- (a) every police establishment or police station; or
- (b) anything (animate or inanimate), which is not the private property of any person, that is appropriated to the use of, or is used by, the police service or any officer or staff member in the capacity as such;

is taken to be the property of the commissioner for the time being, and may be sufficiently described as the property of the commissioner of the police service.

**10.12 Legal proceedings**

- (1) Any proceedings or any action, claim or demand to which the commissioner for the time being is a party does not abate or terminate by reason that such party has ceased to be the commissioner, but may continue in the name of the successor in office.
- (2) In a proceeding, an allegation or statement, in a complaint or another initiating process, or in a pleading or affidavit, of any of the following things is evidence of the thing alleged or stated—
  - (a) a stated place is a police establishment or police station;
  - (b) a stated thing is appropriated to the use of, or is used by, the police service or any officer or staff member in the officer's or member's official capacity;
  - (c) a stated act, omission, conduct or breach of duty has not been authorised or consented to by the commissioner in relation to anything mentioned in paragraph (a) or (b);
  - (d) stated property is the property of the commissioner under this Act.
- (3) In a proceeding, a document signed by the commissioner and stating either of the following is evidence of the thing stated—
  - (a) at a stated time or during a stated period a stated person was a police dog handler or mounted police officer;

- (b) at a stated time or during a stated period a dog or horse identified in the document was a police dog or police horse.
- (4) If, in a proceeding, a person intends to question the power of an officer to act under a delegation given under this Act, the person must give to the commissioner notice of the intention at least 7 days before the power is questioned in the proceeding.

### **10.13 Surrender of equipment**

- (1) Upon a person ceasing to be an officer, it is lawful for the person to retain all items of equipment, gear or accoutrements issued to the person as an officer, except such items as the person is directed in writing by the commissioner to surrender.
- (1A) If the commissioner gives such a direction, the commissioner may specify therein a date by which the items are to be surrendered and the person to whom the direction is given is to comply with the direction.
- (2) The person must comply with a direction given to the person under subsection (1).

Maximum penalty—100 penalty units.
- (3) Upon a complaint of a commissioned officer a justice may issue a warrant authorising the commissioned officer—
  - (a) to search for and seize on behalf of the commissioner anything that, pursuant to a direction of the commissioner is required to be surrendered and has not been surrendered; and
  - (b) for that purpose to enter any place in which the thing sought is believed by the commissioned officer to be, and to break open any receptacle capable of containing the thing sought.
- (4) Before executing a warrant in respect of any place, the commissioned officer is to show the warrant to the occupier (if any) of the place, if the occupier is present at the place, and seek the occupier's permission to enter and search the place and to seize anything that is sought and is found therein, but if

the occupier is not present or refuses consent, the commissioned officer, and all persons acting in aid of the commissioned officer, may proceed to execute the warrant using such reasonable force as is necessary, and doing all other things reasonably required, to execute the warrant.

### **10.14 Vacating of premises**

- (1) If a person who is in possession of premises—
  - (a) that are the property of the commissioner; or
  - (b) of which the commissioner is entitled to possession;having been notified in writing, by the commissioner to vacate the premises, fails to vacate the premises within 28 days following the giving of notification to vacate in the approved form, a magistrate, upon a complaint of the commissioner, or a person authorised in writing by the commissioner in that behalf, may issue a warrant authorising any officer—
  - (c) to enter the premises and remove therefrom all persons (and their property) who are not authorised by the commissioner to be in or on the premises; and
  - (d) to deliver vacant, or other, possession (as the commissioner requires) to the commissioner.
- (1A) Notification to vacate premises may be given for the purposes of subsection (1) by any means calculated to bring the notification to the notice of the person to whom it is directed, including by advertisement in an appropriate newspaper.
- (2) An officer executing a warrant issued under subsection (1), and all persons acting in aid of the officer, may use such reasonable force as is necessary, and do all other things reasonably required, to execute the warrant.

### **10.16 Charges for police services**

- (1) A person for whom prescribed police services are provided is liable for payment to the commissioner of charges for those services in an amount determined by the commissioner.
- (2) Charges for provision of prescribed police services may be declared by regulation in which event the commissioner is not

entitled to payment for the provision of particular services of any amount in excess of the charge so declared for the time being in relation to services of that description.

- (3) In a proceeding for the recovery of a service charge for the provision of a prescribed police service, a certificate purporting to be signed by the commissioner and stating that a specified amount is payable to the commissioner by a specified person for a specified police service is evidence of the matter stated.

### **10.17 Exemption from tolls**

- (1) Officers who are engaged in the actual performance of duty as officers are exempt from liability for payment of any toll, levy or other charge whatsoever upon—
  - (a) passing through or over any tollgate, turnpike or road;
  - (b) crossing any bridge;
  - (c) using any ferry;notwithstanding any other Act or law.
- (2) The exemption prescribed by subsection (1) extends to—
  - (a) all prisoners under the officers' charge;
  - (b) all vehicles, vessels, carriages or horses used on the occasion in question solely for carrying officers, their prisoners and baggage;
  - (c) a return journey to the officers' operational base undertaken as soon as practicable after the actual performance of duty that has taken the officers away from such base.
- (3) A person engaged in the collection of tolls, levies or other charges who has reasonable grounds for believing that an exemption from payment thereof exists under subsection (1) or (2) and who receives payment in disregard of such exemption commits an offence against this Act.

Maximum penalty—4 penalty units.



**10.18 Prohibited use of words suggesting association with police**

- (1) Except with the commissioner's consent thereto first obtained, a body or association of persons (whether incorporated or not) must not—
  - (a) have a prescribed expression as, or as part of, its name;
  - (b) use a prescribed expression in conjunction with its name, in any context.
- (2) Except with the commissioner's consent thereto first obtained, a person must not—
  - (a) have a prescribed expression as, or as part of, a name under which the person conducts business;
  - (b) use a prescribed expression in conjunction with a name under which the person conducts business, in any context.
- (3) In this section a *prescribed expression* is any of the following—
  - (a) commissioner of police;
  - (b) commissioner of the police service;
  - (c) member of the police service;
  - (d) police;
  - (e) police force;
  - (f) police officer;
  - (g) any expression that resembles any of the expressions mentioned in paragraph (a) to (f), or that includes words taken from 2 or more of the expressions.
- (4) A person who contravenes, or is taken to have contravened subsection (1) or (2) commits an offence against this Act.  
Maximum penalty—100 penalty units.
- (5) If a contravention of subsection (1) occurs each member of the governing body of the body or association concerned is taken to have committed the contravention and is liable to the prescribed penalty for an offence against this Act.

**10.19 Offences**

A person—

- (a) who knowingly—
  - (i) harbours or entertains an officer in any place; or
  - (ii) permits an officer to abide or linger in any place over which the person has and may exercise control;  
  
at any time when the officer is on duty, except where actual performance of duty by the officer requires the officer's presence in that place; or
- (b) who has in possession—
  - (i) a document of a confidential nature brought into existence for the purposes of the police service; or
  - (ii) anything (animate or inanimate) appropriated to the use of the police service; or
  - (iii) anything (animate or inanimate) on issue to an officer or to a person who was an officer;  
  
unless the person has a lawful excuse for such possession; or
- (c) who assumes the name of an officer with intent to mislead; or
- (d) who, being other than an officer lawfully entitled to do so—
  - (i) assumes the designation or description of an officer or of a class of officer; or
  - (ii) wears the uniform of an officer, or a colourable imitation thereof;  
  
except in either such case—
    - (iii) with the consent of the commissioner; or
    - (iv) for the purposes of a theatrical, circus or similar entertainment; or
    - (v) for the purposes of a ball, carnival or similar occasion for wearing fancy dress; or

- (e) who, being other than an officer lawfully entitled to do so, for the purposes of, or in connection with, any business, occupation or employment—
  - (i) assumes or uses the designation ‘detective’, ‘private detective’ or other designation that includes the word ‘detective’ or the name, designation, rank or description of any officer or any class of officer; or
  - (ii) being a person who was an officer, or a member of the police force, uses the designation, rank or description that was the person’s while an officer or such a member; or
- (f) who is found on, or having just left, any place appropriated to the use of, or used for the time being by, the police service, unless the person has a lawful excuse for being or having been in or on that place;

commits an offence against this Act.

Maximum penalty—100 penalty units.

### **10.20 Bribery or corruption of officers or staff members**

- (1) A person who corruptly gives to, confers on, or procures for any officer or staff member property or a benefit of any kind, or offers, promises or agrees to do so with a view to—
  - (a) the officer or staff member neglecting the officer’s or member’s duty; or
  - (b) influencing the officer or staff member in performance of the officer’s or member’s duty or exercise of the officer’s powers; or
  - (c) the officer or staff member using or taking advantage of the officer’s or member’s position in the police service to facilitate commission of an offence, or to provide the person with any information, service or advantage whether or not the person would otherwise be entitled thereto;

commits an offence against this Act.

Maximum penalty—100 penalty units.

- (2) Liability of a person to be dealt with for an offence under subsection (1) does not affect the person's liability to be dealt with under the Criminal Code for an offence defined therein, which is constituted by the person's conduct.
- (3) However, the person is not to be dealt with under both subsection (1) and the Criminal Code in respect of the same conduct.

### **10.21 False representation causing police investigations**

- (1) A person who by conduct, by statements (oral or written), or by conduct and statements (oral or written), falsely and with knowledge of the falsity represents that an action has been done or circumstances exist, which action or circumstances, as represented, is or are such as reasonably calls, or call, for investigation by an officer commits an offence against this Act.

Maximum penalty—100 penalty units.

- (2) If statements alleged to have been made by a person relate to the conduct of an officer the person can not be convicted in respect thereof on the uncorroborated evidence of an officer, or of officers.
- (3) A court by which a person has been found guilty, or before which a person has pleaded guilty, of an offence defined in subsection (1), whether or not it imposes a penalty in respect thereof, may order the person to pay to the Crown a reasonable sum for the expenses of or incidental to any investigation made by an officer as a result of the false representation.
- (4) This section does not apply to a representation relating to an offence, or the circumstances of an offence that has actually been committed.

### **10.21A Unlawful possession of prescribed articles**

- (1) A person must not unlawfully possess a prescribed article.  
Maximum penalty—40 penalty units.

- (2) A person must not unlawfully supply to someone else a prescribed article that is evidence of the commission of an offence.

Maximum penalty—40 penalty units.

- (3) Subsection (2) does not prevent a person supplying a print, an audio recording, or a transcript of an audio or video recording, to a person charged with an offence of which the article is evidence or the person's lawyer, for the purpose of enabling the person to defend the charge.

- (4) A person must not possess a print, an audio recording, or a transcript of an audio or video recording supplied under subsection (3) after the time allowed for any appeal against a conviction for an offence of which the relevant article is evidence ends, unless the article is kept as part of court records or the records of a lawyer acting for the person charged with the offence.

Maximum penalty—40 penalty units.

- (5) In this section—

*prescribed article* means any of the following that is the property of the commissioner—

- (a) a print;
- (b) a video recording;
- (c) a transcript of an audio or video recording.

### **10.21B Killing or injuring police dogs and police horses**

- (1) A person must not, without lawful excuse—
- (a) kill, maim, wound or otherwise injure a police dog or police horse; or
  - (b) attempt to kill, maim, wound or otherwise injure a police dog or police horse.

Maximum penalty—40 penalty units or 2 years imprisonment.

- (2) A court that finds a person guilty of an offence against subsection (1) may, in addition to any penalty that may be

imposed, order the person to pay to the commissioner a reasonable amount for—

- (a) the treatment, care, rehabilitation and retraining of the police dog or police horse concerned; or
- (b) if it is necessary to replace the police dog or police horse—buying and training its replacement.

### **10.21C Local laws do not apply in relation to police dogs or horses etc.**

A local law does not apply in relation to—

- (a) a police dog or police horse; or
- (b) a police dog handler in connection with the keeping, maintenance or use of any police dog for discharging a function under this Act; or
- (c) an officer in connection with the keeping, maintenance or use of any police horse for discharging a function under this Act.

### **10.23 Proceedings for offences**

- (1) Proceedings for prosecution in respect of an offence against this Act are to be taken in a summary manner under the *Justices Act 1886*—
  - (a) in the case of an offence against section 10.19 or 10.20, on the complaint of any officer;
  - (b) in the case of any other offence, on the complaint of an officer authorised, in writing, by the commissioner.
- (2) An allegation or averment in a complaint that—
  - (a) the complainant is an officer; or
  - (b) the complainant is authorised by the commissioner to lay the complaint;

is sufficient proof of the matter alleged or averred in the absence of evidence to the contrary.

- (3) Proceedings in respect of an offence against this Act may be commenced within 1 year following the commission of the

offence or within 1 month after the commission of the offence first comes to the complainant's knowledge, whichever period is the later.

### **10.24 Representation of officers in court**

- (1) Any officer or service legal officer may appear for and represent an officer involved in any of the following proceedings in a Magistrates Court or a Childrens Court—
  - (a) a proceeding for an application made by an officer in the performance of duty under any Act;
  - (b) a proceeding in which an officer is involved in the performance of duty otherwise than only as a witness;
  - (c) a proceeding in which the commissioner is involved or of which the commissioner or another officer is required to be given notice.

*Example for subsection (1)(a)—*

an application for a post-search approval order under the *Police Powers and Responsibilities Act 2000*

- (2) Also, any officer or service legal officer may appear and act for the prosecution in a proceeding in a Magistrates Court or a Childrens Court for a charge of an offence even though the officer is not the informant or complainant.
- (3) In this section—

***service legal officer*** means a government legal officer within the meaning of the *Legal Profession Act 2004* who is a staff member.

### **10.26 Annual report**

- (1) As soon as is practicable after 30 June in each year the commissioner is to furnish to the Minister a report on—
  - (a) the administration and operations of the police service; and
  - (b) such other matters as are directed by the Minister;
 within the period of 12 months preceding that date.

- (2) The Minister is to lay the report before the Legislative Assembly within 14 sitting days after the day on which the Minister receives the report.

### **10.27 Review of Act**

- (1) In the period of 6 months preceding the termination of the first term of appointment of the person who is the first commissioner after the passing of this Act the Minister is to carry out, or cause to be carried out, a review of the operation of this Act and at an appropriate time in the period of 5 years following completion of that review the Minister is to carry out, or cause to be carried out, a review of the operation of this Act as in force at that time.
- (2) In the carrying out of a review under subsection (1) the Minister is to consider and have regard to—
  - (a) the effectiveness of the operation of this Act and of the operations of the police service;
  - (b) the views and comments of persons having an interest in the operation of this Act and the operations of the police service;
  - (c) such other matters as the Minister considers to be relevant to the effectiveness of this Act.
- (3) As soon as is practicable after completion of a review under subsection (1) the Minister is to prepare a report based on the review, and is to lay the report before the Legislative Assembly within 14 sitting days after the report is prepared.

### **10.28 Regulation-making power**

- (1) The Governor in Council may make regulations for the purposes of this Act.
- (1A) A regulation may provide with respect to—
  - (a) management and control of the affairs of the police service; and
  - (b) powers, duties, entitlements, obligations and liabilities of officers and recruits; and
  - (c) powers and duties of staff members; and



- (d) the institution and conduct of appeals or reviews about appointments, disciplinary action or related action within the police service.
- (2) The regulations may prescribe with respect to any matter, other than duties, obligations or liabilities of members of the police service, by reference to—
  - (a) determinations or rulings to be made from time to time by the commissioner;
  - (b) standards to be set or adopted from time to time by the commissioner.
- (3) The regulations may provide for offences against the regulations and in respect thereof impose a fine not exceeding 100 penalty units.

## **Part 11                      Transitional provisions**

### **Division 1                      Transitional provisions for Police Service Administration Act 1990**

#### **11.1      Interpretation of certain references**

- (1) A reference in any Act or document to—
  - (a) the Police Force is taken to be a reference to the Police Service; and
  - (b) the Commissioner of Police is taken to be a reference to the Commissioner of the Police Service; and
  - (c) a member of the police force, a police officer or a constable is taken to be a reference to an officer; and
  - (d) a member of the police force, a police officer or a constable holding a rank that does not exist in the Police Service, but did exist in the Police Force, is taken to be a reference to an officer holding a corresponding rank in the Police Service.

- (2) A regulation may prescribe a rank in the Police Service to be a corresponding rank to a rank in the Police Force.

## **11.2 References to repealed Act**

A reference in an Act or document to the *Police Act 1937* is taken to be a reference to this Act.

## **Division 2 Transitional provision to assist in interpretation**

### **11.3 Relevant information**

The commissioner is taken always to have had power to inquire into a person's criminal history and to take into account relevant information for deciding whether the person is suitable to be engaged, or to continue to be engaged, by the service.

### **11.4 Amendment of regulation by Police Powers and Responsibilities and Other Legislation Amendment Act 2003 does not affect powers of Governor in Council**

The amendment of the *Police Service Administration Regulation 1990* by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* does not affect the power of the Governor in Council to further amend the regulation or to repeal it.

### **11.5 Declaration about s 5.17**

- (1) To remove doubt it is declared that section 5.17 of this Act is, and always has been, part of part 5 of this Act.
- (2) Also, in the first reprint under the *Reprints Act 1992* of this Act as amended by the *Police and Other Legislation Amendment Act 2005*, section 5.17 must be relocated to part 5.

## **Schedule                      Relevant information**

section 1.4, definition *relevant information*

Information about police officers, recruits and applicants to become police officers or recruits

- 1 Information in a database kept by the CrimTrac Agency about—
  - the person’s criminal history
  - cautions or warnings administered or given to the person
  - the person’s involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - whether the person has had a weapons licence suspended or cancelled.
- 2 Information in the database kept by the commissioner and known as Polaris about—
  - the person’s criminal history
  - the person’s traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate
  - address checks for the person
  - the person’s driver licence details.
- 3 Information in a QPS database kept by the commissioner about whether the person is a person of interest because, for example, the person is a suspect, an offender, a missing person, a complainant, or a witness.
- 4 The complete record in a database kept by the commissioner of any of the following—
  - any incidents, including traffic incidents, involving the person

**Schedule (continued)**

- any offences involving the person
  - any complaints involving the person
  - the person's domestic violence history
  - the person's drug history
  - the person's arrest history
  - any detention of the person in custody
  - any prosecutions started against the person.
- 5 Information about the person supplied to the commissioner by another police service, whether based on a request made after a search of a database kept by the CrimTrac Agency in relation to a person or because of information given by the person.
  - 6 Information about the person supplied to the commissioner by Interpol.
  - 7 If the person is a recommended appointee to a position, information supplied to the commissioner by a police officer in relation to a person.
  - 8 Information about the person kept in a database of criminal intelligence, whether the database is kept by the commissioner or is one to which the commissioner has access.
  - 9 Information about the person that is supplied to the commissioner by the Crime and Misconduct Commission.
  - 10 Information about the person that is supplied to the commissioner by the department within which the *Corrective Services Act 2006* is administered.
  - 11 Information about the person in the possession of the commissioner because of inquiries made by the unit of the service known as the Ethical Standards Command.
  - 12 Information about the person supplied by the Australian Defence Force (*ADF*) about the following if the person is serving, or has served, as a member of ADF and is an applicant to become a police officer—

**Schedule (continued)**

- checks made in relation to the person
  - the person's conduct as a member of the ADF
  - the person's medical history.
- 13 Information about the person supplied to the commissioner by a police force or service of another State, the Commonwealth, or another country, about the following if the person is serving, or has served, as a police officer in that jurisdiction and is an applicant to become a police officer—
- checks made in relation to the person
  - the person's conduct as a police officer
  - the person's medical history.

**Information about staff members, applicants to become staff members, volunteers and students on work experience**

- 1 Information in a database kept by the CrimTrac Agency about—
- the person's criminal history
  - cautions or warnings administered or given to the person
  - the person's involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - any known alias of the person.
- 2 Information in a QPS database kept by the commissioner about—
- the person's criminal history
  - if the person is nominated for appointment to a position that involves significant driving duties—the person's Queensland traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate.

**Schedule (continued)**

- 3 Information in a database, other than the database known as Polaris, kept by the commissioner about—
  - the person’s criminal history
  - cautions administered to the person in Queensland
  - charges laid against the person in Queensland
  - whether the person is wanted for questioning
  - any known alias of the person.
- 4 Information about the person supplied to the commissioner by a declared law enforcement agency about the following if the person has lived for an extensive period outside Queensland—
  - charges laid against the person that have not been decided, dismissed or withdrawn
  - any known alias of the person.
- 5 Information about the person kept in a database of criminal intelligence, whether the database is kept by the commissioner or is one to which the commissioner has access.
- 6 Information about the person, if the person was employed in a unit of public administration or a local government within the last 10 years, that is supplied to the commissioner by the Crime and Misconduct Commission.
- 7 For former employees of the service, information in the possession of the commissioner because of inquiries made by the unit of the service known as the Ethical Standards Command.
- 8 Information about the person that is in the possession of the commissioner and held in the drug occurrence system kept as part of the QPS database known as QPRIME.

**Persons performing, or seeking to perform functions, for the service under a contract for services**

- 1 Information in a database kept by the CrimTrac Agency about—
  - the person’s criminal history

**Schedule (continued)**

- any warrants in relation to the person, in Queensland or interstate, that are outstanding
  - the person's involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - any restraining orders made against the person
  - any known alias of the person.
- 2 Information in the database kept by the commissioner and known as Polaris about—
- the person's Queensland criminal history
  - the person's traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate.
- 3 Information in a QPS database kept by the commissioner about the person's criminal history, the person's cautions or charges, and whether the person is wanted for questioning or has any aliases.

**External service providers**

- 1 Information about the external service provider's criminal history.

## 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 18 June 2007. Future amendments of the Police Service Administration Act 1990 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
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		



## 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 to	Effective	Reprint date
1	1993 Act No. 77	15 December 1993	11 February 1994
1A	1994 Act No. 87	1 December 1994	24 June 1996
1B	1996 Act No. 75	1 February 1997	4 February 1997
1C	1997 Act No. 31	12 June 1997	4 July 1997
1D	1997 Act No. 67	8 December 1997	6 January 1998
2	1998 Act No. 19	6 April 1998	30 April 1998
2A	1999 Act No. 33	1 July 1999	14 July 1999
2B	2000 Act No. 22	1 July 2000	25 August 2000
2C	2000 Act No. 46	25 October 2000	8 November 2000
3	2000 Act No. 46	25 October 2000	9 February 2001
3A	2001 Act No. 34	7 June 2001	7 September 2001
3B	2001 Act No. 69	1 January 2002	15 January 2002
3C	2001 Act No. 69	1 March 2002	15 March 2002

Reprint No.	Amendments included	Effective	Notes
3D	2003 Act No. 19	9 May 2003	
3E	2003 Act No. 27	1 July 2003	
3F	2003 Act No. 92	3 December 2003	
3G	2004 Act No. 8	6 August 2004	
3H rv	2003 Act No. 67	23 October 2004	
3I	2004 Act No. 43	11 April 2005	
3J	2005 Act No. 17	29 April 2005	
3K	2005 Act No. 45	30 June 2006	
3L	2006 Act No. 26	21 July 2006	
	2000 Act No. 5 (amd 2006 Act No. 26)		
3M	2006 Act No. 29	28 August 2006	
3N	2006 Act No. 58	2 February 2007	
4	2007 Act No. 1	16 February 2007	
4A	2007 Act No. 27	18 June 2007	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1, 4
Renumbered provisions	1

## **6 List of legislation**

### **Police Service Administration Act 1990 No. 4**

date of assent 4 April 1990

ss 1.1–1.2 commenced on date of assent

ss 1.3–4.12, 5.1–5.5, 5.10, 10.9–10.12, 10.25–10.27, 11.1–11.8, 11.11 commenced  
8 May 1990 (proc pubd gaz 28 April 1990 p 2635)

remaining provisions commenced 18 June 1990 (proc pubd gaz 16 June 1990 p 921)

amending legislation—

### **Statute Law (Miscellaneous Provisions) Act 1992 No. 36 s 2 sch 1**

date of assent 2 July 1992

commenced on date of assent

### **Police Service Administration Amendment Act 1993 No. 77**

date of assent 15 December 1993

commenced on date of assent

### **Statute Law (Miscellaneous Provisions) Act (No. 2) 1994 No. 87 s 3 sch 2**

date of assent 1 December 1994

commenced on date of assent

### **Public Service Act 1996 No. 37 ss 1–2, 147 sch 2**

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

### **WorkCover Queensland Act 1996 No. 75 ss 1–2, 535 sch 2**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 February 1997 (1996 SL No. 442)

### **Police Service Administration Amendment Act 1997 No. 31**

date of assent 12 June 1997

commenced on date of assent

### **Misconduct Tribunals Act 1997 No. 59 ss 1–2, 48 sch 1**

date of assent 5 November 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 8 December 1997 (1997 SL No. 417)

### **Police Powers and Responsibilities Act 1997 No. 67 ss 1–2, 139 sch 2**

date of assent 1 December 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 6 April 1998 (see s 2)

### **Police and Other Legislation (Miscellaneous Provisions) Act 1998 No. 19 ss 1–2(1), pt 2**

date of assent 26 March 1998

s 14 commenced 6 April 1998 (see s 2(1))

remaining provisions commenced on date of assent

**Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3**

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

**Police Powers and Responsibilities Act 2000 No. 5 ss 1–2, 461 (prev 373) sch 3, (this Act is amended, see amending legislation below)**

date of assent 23 March 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2(1), (3) and 2000 SL No. 174)

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2000 No. 22 ss 1, 28(6) (amends 2000 No. 5 above)**

date of assent 23 June 2000

commenced on date of assent

**Police Powers and Responsibilities and Other Acts Amendment Act 2000 No. 22 pts 1, 6**

date of assent 23 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2000 (see s 2)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**Police Service Administration and Misconduct Tribunals Amendment Act 2001 No. 34 pts 1–2**

date of assent 7 June 2001

commenced on date of assent

**Animal Care and Protection Act 2001 No. 64 ss 1–2, 231**

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)

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

date of assent 9 May 2003

commenced on date of assent

**Workers' Compensation and Rehabilitation Act 2003 No. 27 ss 1–2(2), 622 sch 5**

date of assent 23 May 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2003 (see s 2(2))

**Police Service Administration (Alcohol and Drug Testing) Amendment Act 2003 No. 67 pts 1–2**

date of assent 22 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 23 October 2004 (automatic commencement under AIA s 15DA(2))

**Police Powers and Responsibilities and Other Legislation Amendment Act 2003 No. 92 s 1, pt 9**

date of assent 3 December 2003

commenced on date of assent

**Terrorism (Community Safety) Amendment Act 2004 No. 8 pts 1, 7**

date of assent 20 May 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 6 August 2004 (2004 SL No. 147)

**Justice and Other Legislation Amendment Act 2004 No. 43 ss 1–2, pt 19**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 11 April 2005 (2005 SL No. 26)

**Police and Other Legislation Amendment Act 2005 No. 17 pts 1, 3**

date of assent 29 April 2005

commenced on date of assent (see s 2)

**Cross-Border Law Enforcement Legislation Amendment Act 2005 No. 45 ss 1–2(1), 74 sch 4**

date of assent 14 October 2005

ss 1–2 commenced on date of assent

remaining provisions commenced 30 June 2006 (2006 SL No. 144)

**Police Powers and Responsibilities and Other Acts Amendment Act 2006 No. 26 ss 1, 2(1), pt 8**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Police Powers and Responsibilities Act 2000 No. 5 s 810 sch 4 (prev s 459A sch 3A) (this Act is amended, see amending legislation below)**

amending legislation—

**Police Powers and Responsibilities and Other Acts Amendment Act 2006 No. 26 ss 1–2, 84, 86 (amends 2000 No. 5 above)**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 21 July 2006 (2006 SL No. 185)

**Corrective Services Act 2006 No. 29 ss 1, 2(2), 518 sch 3**

date of assent 1 June 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 28 August 2006 (2006 SL No. 213)

**Police Service Administration Amendment Act 2006 No. 58**

date of assent 7 December 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 2 February 2007 (2007 SL No. 2)

**Summary Offences and Other Acts Amendment Act 2007 No. 1 ss 1, 32 sch 2**

date of assent 16 February 2007

commenced on date of assent

**Legal Profession Act 2007 No. 24 ss 1–2, 770 sch 1**

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force (see s 2)**Police and Other Legislation Amendment Act 2007 No. 27 ss 1, 2(2), pt 4**

date of assent 28 May 2007

ss 1–2 commenced on date of assent

remaining provisions commenced 18 June 2007 (see s 2(2))

## 7 List of annotations

**Definitions****s 1.4**

amd 1992 No. 36 s 2 sch 1

sub 1993 No. 77 s 2 sch 1

def “**alcohol test**” ins 2003 No. 67 s 4def “**assistant commissioner**” ins 2005 No. 17 s 23def “**authorised person**” ins 2003 No. 67 s 4def “**award**” amd 1999 No. 33 s 747 sch 3def “**breach of discipline**” amd 1997 No. 67 s 139 sch 2; 2000 No. 5 s 461 sch 3def “**conviction**” ins 2003 No. 92 s 30def “**covert operative**” ins 2003 No. 67 s 4

om 2005 No. 45 s 74 sch 4

def “**criminal history**” ins 2003 No. 92 s 30

sub 2006 No. 58 s 4

def “**CrimTrac Agency**” ins 2003 No. 92 s 30def “**critical area**” ins 2003 No. 67 s 4def “**critical incident**” ins 2003 No. 67 s 4def “**dangerous drug**” ins 2003 No. 67 s 4def “**declared law enforcement agency**” ins 2003 No. 92 s 30def “**deputy commissioner**” ins 2003 No. 67 s 4def “**engaged by the service**” ins 2003 No. 92 s 30def “**evidence**” ins 2003 No. 67 s 4def “**external service provider**” ins 2003 No. 92 s 30def “**general alcohol limit**” ins 2003 No. 67 s 4def “**handler**” ins 1998 No. 19 s 4def “**industrial agreement**” sub 1999 No. 33 s 747 sch 3def “**low alcohol limit**” ins 2003 No. 67 s 4def “**marked print**” ins 1998 No. 19 s 4def “**medical examination**” ins 2003 No. 67 s 4

def “**member of the service**” ins 1998 No. 19 s 4  
 def “**no alcohol limit**” ins 2003 No. 67 s 4  
 def “**official misconduct**” amd 1997 No. 59 s 48 sch 1  
     sub 2001 No. 69 s 378 sch 1  
 def “**operative**” ins 2005 No. 45 s 74 sch 4  
 def “**over the limit**” ins 2003 No. 67 s 4  
 def “**police dog**” ins 1998 No. 19 s 4  
 def “**police horse**” ins 1998 No. 19 s 4  
 def “**prescribed person**” ins 2005 No. 17 s 23  
 def “**print**” ins 1998 No. 19 s 4  
 def “**QPS database**” ins 2003 No. 92 s 30  
     sub 2007 No. 27 s 16  
 def “**random alcohol test**” ins 2003 No. 67 s 4  
 def “**relevant information**” ins 2003 No. 92 s 30  
 def “**relevant member**” ins 2003 No. 67 s 4  
 def “**targeted substance**” ins 2003 No. 67 s 4  
 def “**targeted substance test**” ins 2003 No. 67 s 4  
 def “**watch-house officer**” ins 2006 No. 26 s 112

**Meaning of “tenure not limited by time”**

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**Notes in text**

s 1.6 ins 2003 No. 92 s 31

**Membership of service**

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**Functions of service**

s 2.3 amd 2000 No. 5 s 461 sch 3

**Presence of police officers at fire or chemical incident**

s 2.3A ins 2000 No. 5 s 461 sch 3  
 amd 2003 No. 19 s 3 sch

**Administration of staff members**

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 amd 1996 No. 37 s 147 sch 2

**Officers etc. employed under this Act**

2.5A ins 1996 No. 37 s 147 sch 2

**Meaning of “officer” in part**

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**Oath of office**

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**Execution of process**

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**Performance of duty**

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 om 1997 No. 67 s 139 sch 2

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amd 2001 No. 69 s 378 sch 1

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**Term of appointment**

**s 4.4** sub 1993 No. 77 s 2 sch 1

**Removal and suspension of commissioner**

**s 4.5** amd 1993 No. 77 s 2 sch 1; 1997 No. 59 s 48 sch 1; 2001 No. 69 s 378 sch 1

**Recording and publication of communications**

**s 4.7** amd 1993 No. 77 s 2 sch 1; 2001 No. 69 s 378 sch 1

**Commissioner's responsibility**

**s 4.8** amd 1993 No. 77 s 2 sch 1; 1998 No. 19 s 5

**Commissioner's directions**

**s 4.9** amd 1993 No. 77 s 2 sch 1; 2006 No. 26 s 113

**Delegation**

**s 4.10** sub 1993 No. 77 s 2 sch 1

**Acting as commissioner**

**s 4.11** sub 1993 No. 77 s 2 sch 1

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**Conditions of employment**

**s 5.4** amd 1993 No. 77 s 2 sch 1

**Acting as executive officer**

**s 5.5** sub 1993 No. 77 s 2 sch 1

**Conditions of employment of commissioned officers**

**s 5.7** amd 1992 No. 36 s 2 sch 1; 1993 No. 77 s 2 sch 1

**Acting as commissioned officer**

**s 5.8** sub 1993 No. 77 s 2 sch 1

**Conditions of employment of police recruits**

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def “analyst” ins 2006 No. 26 s 116  
def “authorised person” amd 2005 No. 17 s 24; 2005 No. 45 s 74 sch 4  
def “covert operative” om 2005 No. 45 s 74 sch 4  
def “critical area” amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)  
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amd 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

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**Substances to which pt 5A applies**

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**Alcohol limits**

s 5A.7 ins 2003 No. 67



**Circumstances for alcohol testing**

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**Random alcohol testing**

s 5A.9 ins 2003 No. 67  
amd 2005 No. 45 s 74 sch 4

**Providing specimen of breath for alcohol test or random alcohol test**

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**Failure to provide specimen of breath**

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**Division 3—Provisions about drug testing**

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**Circumstances for targeted substance testing**

s 5A.13 ins 2003 No. 67 s 5  
amd 2005 No. 45 s 74 sch 4

**Providing specimen for targeted substance test**

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**Giving requirements**

s 5A.18 ins 2003 No. 67 s 5

**Interfering with specimens**

s 5A.19 ins 2003 No. 67 s 5

**Test result evidence generally inadmissible**

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**Evidentiary provision**

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**Application of Freedom of Information Act 1992**

s 5A.22 ins 2003 No. 67 s 5

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**s 5AA.15** ins 2003 No. 92 s 32

**Power to stand down and suspend**

**s 6.1** amd 1993 No. 77 s 2 sch 1

**Salary entitlement if suspended**

**s 6.3** amd 1993 No. 77 s 2 sch 1

**Responsibility for command**

**s 7.1** amd 1998 No. 19 s 6

**Duty concerning misconduct or breaches of discipline**

**s 7.2** amd 1998 No. 19 s 7; 2001 No. 69 s 378 sch 1; 2005 No. 17 s 29

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**s 7.4** amd 1997 No. 59 s 48 sch 1; 2001 No. 69 s 378 sch 1

**Retirement**

**s 8.2** amd 1993 No. 77 s 2 sch 1

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**s 8.3** amd 1993 No. 77 s 2 sch 1

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**s 9.4** amd 1993 No. 77 s 2 sch 1

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**s 9.5** amd 1993 No. 77 s 2 sch 1

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**s 10.1** amd 1993 No. 77 s 2 sch 1; 2000 No. 22 s 38; 2005 No. 17 s 30; 2005 No. 45 s 74 sch 4; 2000 No. 5 s 810 sch 4 (amd 2006 No. 26 ss 84, 86)

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**s 10.2** amd 1998 No. 19 s 9; 2005 No. 17 s 31; 2006 No. 58 s 7

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**s 10.4** amd 1993 No. 77 s 2 sch 1

**Liability for tort generally**

**s 10.5** amd 1998 No. 19 s 10; 2004 No. 43 s 89

**Compensation for injury or death**

**s 10.8** amd 1993 No. 77 s 2 sch 1; 1996 No. 75 s 535 sch 2; 2003 No. 27 s 622 sch 5

**Service and production of documents**

**s 10.9** amd 1998 No. 19 s 11

**Police establishments**

**s 10.10** amd 1993 No. 77 s 2 sch 1

**Legal proceedings**

**s 10.12** amd 1993 No. 77 s 2 sch 1; 1998 No. 19 s 12

**Surrender of equipment**

**s 10.13** amd 1993 No. 77 s 2 sch 1

**Vacating of premises**

**s 10.14** amd 1993 No. 77 s 2 sch 1

**Property in police possession**

**s 10.15** amd 1993 No. 77 s 2 sch 1  
om 2000 No. 5 s 461 sch 3 (amd 2000 No. 22 s 28(6))

**Charges for police services**

**s 10.16** amd 1993 No. 77 s 2 sch 1

**Offences**

**s 10.19** amd 1993 No. 77 s 2 sch 1; 2003 No. 19 s 3 sch

**Bribery or corruption of officers or staff members**

**s 10.20** amd 1993 No. 77 s 2 sch 1

**Assault etc. of police officer**

**s 10.20A** ins 1993 No. 77 s 2 sch 1  
om 1997 No. 67 s 139 sch 2

**Unlawful possession of prescribed articles**

**s 10.21A** ins 1998 No. 19 s 13

**Killing or injuring police dogs and police horses**

**s 10.21B** ins 1998 No. 19 s 13  
amd 2001 No. 64 s 231(2)–(3)

**Local laws do not apply in relation to police dogs or horses etc.**

**prov hdg** sub 2003 No. 19 s 3 sch  
**s 10.21C** ins 2000 No. 5 s 461 sch 3

**Apprehension etc. of offenders against Act**

**s 10.22** amd 1993 No. 77 s 2 sch 1; 1998 No. 19 s 14  
om 2000 No. 5 s 461 sch 3

**Proceedings for offences**

**s 10.23** amd 1993 No. 77 s 2 sch 1; 2000 No. 5 s 461 sch 3

**Representation of officers in court**

**s 10.24** amd 1993 No. 77 s 2 sch 1  
sub 2000 No. 5 s 461 sch 3  
amd 2005 No. 17 s 32

**Regulation-making power**

**prov hdg** sub 2007 No. 1 s 32 sch 2  
**s 10.28** (prev s 10.25) amd 1993 No. 77 s 2 sch 1  
renum 1993 No. 77 s 2 sch 1

**PART 11—TRANSITIONAL PROVISIONS**

**pt hdg** sub 1993 No. 77 s 2 sch 1

**Division 1—Transitional provisions for Police Service Administration Act 1990**

**div hdg** ins 2003 No. 92 s 33

**Interpretation of certain references**

**s 11.1** sub 1993 No. 77 s 2 sch 1  
amd 1994 No. 87 s 3 sch 2

**References to repealed Act**

**s 11.2** prev s 11.2 om 1993 No. 77 s 2 sch 1  
pres s 11.2 ins 1994 No. 87 s 3 sch 2

**Division 2—Transitional provision to assist in interpretation**

**div hdg** ins 2003 No. 92 s 34

**Relevant information**

**s 11.3** prev s 11.3 om 1993 No. 77 s 2 sch 1  
pres s 11.3 ins 2003 No. 92 s 34

**Amendment of regulation by Police Powers and Responsibilities and Other Legislation Amendment Act 2003 does not affect powers of Governor in Council**

s 11.4      prev s 11.4 om R1 (see RA s 40)  
              pres s 11.4 ins 2003 No. 92 s 34

**Declaration about s 5.17**

s 11.5      prev s 11.5 om 1993 No. 77 s 2 sch 1  
              pres s 11.5 ins 2005 No. 17 s 33

**Certain reference construed as reference to commissioner**

s 11.6      om 1993 No. 77 s 2 sch 1

**Certain references construed as reference to officers**

s 11.7      om 1993 No. 77 s 2 sch 1

**Oath etc. under Police Act continued**

s 11.8      om 1993 No. 77 s 2 sch 1

**Application of Part VII to probationaries etc.**

s 11.9      om 1993 No. 77 s 2 sch 1

**Saving of proceedings**

s 11.10     om 1993 No. 77 s 2 sch 1

**Regulations may supply deficiency**

s 11.11     om 1993 No. 77 s 2 sch 1

**SCHEDULE—RELEVANT INFORMATION**

ins 2003 No. 92 s 35

amd 2006 No. 26 s 118; 2006 No. 29 s 518 sch 3; 2007 No. 27 s 17