



Queensland

*Police Powers and Responsibilities Act 2000*

# **Police Powers and Responsibilities Regulation 2012**

**Current as at 1 November 2013**

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Queensland

# Police Powers and Responsibilities Regulation 2012

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# Police Powers and Responsibilities Regulation 2012

[as amended by all amendments that commenced on or before 1 November 2013]

## Part 1 Preliminary

### 1 Short title

This regulation may be cited as the *Police Powers and Responsibilities Regulation 2012*.

### 2 Dictionary

The dictionary in schedule 10 defines words used in this regulation.

## Part 2 Forensic procedures

### Division 1 QDNA index

#### 3 Application of pt 2

For the Act, schedule 6, definition *QDNA index* and section 494(5), this part prescribes the following—

- (a) types of QDNA indexes;
- (b) the type of information that may be included in each index.

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#### **4 QDNA indexes**

The following are the types of QDNA indexes—

- (a) the crime scene index;
- (b) the missing persons index;
- (c) the serious offenders index;
- (d) the suspects index;
- (e) the unknown deceased persons index;
- (f) the volunteers (limited purpose) index;
- (g) the volunteers (unlimited purpose) index;
- (h) the statistical index.

#### **5 Crime scene index**

- (1) The *crime scene index* is an index of the results of a DNA analysis of material obtained from a person or thing at a crime scene or other place that is, or may be, evidence of the commission of an offence.
- (2) The crime scene index may include information obtained from a declared agency of the results of a DNA analysis of material of a kind mentioned in subsection (1).
- (3) In this section—  
*crime scene* means—
  - (a) any place where an offence was committed or is reasonably suspected of having been committed; or
  - (b) any place associated with, or relevant to, the commission or suspected commission of an offence.

#### **6 Missing persons index**

- (1) The *missing persons index* is an index of the results of a DNA analysis of material known to relate, or that may relate, to a missing person.

- (2) The missing persons index may include information obtained from a declared agency of the results of a DNA analysis of material known to relate, or that may relate, to a missing person.

## **7 Serious offenders index**

- (1) The *serious offenders index* is an index of the results of a DNA analysis of a DNA sample taken from a person or a prisoner —
  - (a) under section 485 or 487 of the Act; or
  - (b) convicted of an indictable offence that is not already included because of paragraph (a).
- (2) The serious offenders index may include the results of a DNA analysis of a DNA sample relating to a person convicted of an indictable offence under the law of the Commonwealth or another State.

## **8 Suspects index**

- (1) The *suspects index* is an index of the results of a DNA analysis of a DNA sample taken, under a forensic procedure order or otherwise, from a person who is charged with or suspected of having committed an indictable offence.
- (2) The suspect index may include the results of a DNA analysis of a DNA sample taken from a person who is charged with or suspected of having committed an offence against a law of the Commonwealth or another State.

## **9 Unknown deceased persons index**

- (1) The *unknown deceased persons index* is an index of the results of a DNA analysis of a DNA sample taken from an unknown deceased person.
- (2) The unknown deceased persons index may include information obtained from a declared agency of the results of

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a DNA analysis of a DNA sample taken from an unknown deceased person.

## 10 Volunteers (limited purpose) index

(1) The *volunteers (limited purpose) index* is an index of the results of a DNA analysis of a DNA sample taken from a person under a forensic procedure consent, or a consent obtained before 2 February 2004—

- (a) that limited the purposes for which the results of the analysis may be used; or
- (b) that is otherwise subject to a limitation under the Act on the purposes for which the results of the analysis may be used; or

*Note for paragraph (b)—*

Under section 479(2) of the Act, a DNA sample taken from a child under 14 may only be used for the purpose for which consent to take the sample was given.

- (c) that is an index of the results of a DNA analysis of a sample that are not subject to a limitation under the Act but are to be used for a limited purpose.

(2) The *volunteers (limited purpose) index* may include information obtained from a declared agency of the results of a DNA analysis of a DNA sample taken from a person under a consent given under a law of the Commonwealth or another State—

- (a) that limited the purpose for which the result of the analysis may be used; or
- (b) that is otherwise subject to a limitation, under the law under which the consent was given, on the purposes for which the results of the analysis may be used.

## 11 Volunteers (unlimited purpose) index

(1) The *volunteers (unlimited purpose) index* is an index of the results of a DNA analysis of a DNA sample taken from a

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person under a forensic procedure consent, or a consent obtained before 2 February 2004, that did not limit the purposes for which the results of the analysis may be used.

- (2) The volunteers (unlimited purpose) index may include—
- (a) the results of a DNA analysis of a sample taken from a known deceased person; or
  - (b) information obtained from a declared agency of the results of a DNA analysis of a DNA sample taken from a person under a consent given under a law of the Commonwealth or another State—
    - (i) that did not limit the purpose for which the results of the analysis may be used; or
    - (ii) that is not otherwise subject to a limitation, under the law under which the consent was given, on the purposes for which the results of the analysis may be used.

## 12 Statistical index

- (1) The *statistical index* is an index of the results of DNA analyses from which it is not possible to identify the person to whom the results relate and that is used only to gather statistical information.
- (2) The statistical index may include information obtained from a declared agency of the results of DNA analyses from which it is not possible to identify the person to whom the results relate and that is used only to gather statistical information.

## Division 2 Permissible comparisons

### 13 Table of permissible comparisons—Act, s 494(2)

- (1) For section 494(2) of the Act, the prescribed table that permits comparison of the results of a DNA analysis with another DNA analysis using the CrimTrac database is stated in schedule 1.

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- (2) The results of a DNA analysis included in an index mentioned in schedule 1, column 1 may be compared with the results of a DNA analysis in an index set out opposite that DNA analysis in another column.
- (3) A comparison may be made whether or not—
  - (a) a name stated in the table for a QDNA index is identical to the name of a declared agency's index; or
  - (b) for a comparison with a declared agency's index—what may be included in a QDNA index under this part differs from what may be included in the declared agency's index.
- (4) In schedule 1—

*if within purpose* means the purpose for the comparison is consistent with the purpose for which the sample to which the results relate was taken.

#### **14 Exempt comparison—Act, s 494(4)**

For section 494(4) of the Act, a comparison is exempt from section 494(2) of the Act if the comparison is made using information from—

- (a) QDNA only; or
- (b) a database of a declared agency without using CrimTrac.

## **Part 3 Declared localities**

#### **15 Declared localities—Act, s 604(4)**

Each locality shown on the following maps is declared to be a locality for the definition *declared locality* in section 604(4) of the Act—

- (a) Map 1—Mount Isa;

- (b) Map 2—Cairns;
- (c) Map 3—Townsville;
- (d) Map 4—Inner Brisbane;
- (e) Map 5—Logan;
- (f) Map 6—Rockhampton;
- (g) Map 6A—Gracemere—Rockhampton;
- (h) Map 7—Caboolture.

*Note—*

The map for a declared locality is available for inspection at each police station in the locality between 8a.m. and 4p.m. Monday to Friday. All of the maps are available for inspection at Police Headquarters, 200 Roma Street, Brisbane between 8a.m. and 4p.m. Monday to Friday.

## **16 Prescribed particulars—Act, s 605(6)**

For section 605(6) of the Act, the following particulars must be entered in the register—

- (a) the name and address of the person released under section 605(1) or (3) of the Act, if known;
- (b) the person's age and date of birth, if known;
- (c) where and when the person was initially detained under section 604 of the Act;
- (d) the date of the person's release;
- (e) if the person was released at a place of safety—
  - (i) the place of safety; and
  - (ii) the person apparently in possession or in charge of the place of safety.

## Part 4 Directing traffic

### 17 Directing vehicular and pedestrian traffic

- (1) For section 59 of the Act, a police officer may, by giving a direction or by signalling in a way stated in schedule 7, give the following directions—
  - (a) to stop;
  - (b) to stop at the place indicated;
  - (c) to move;
  - (d) to proceed.
- (2) Without limiting subsection (1), a police officer may give the direction by displaying a sign.
- (3) A signal shown in schedule 7 may be given by using a single traffic wand to signal in a way that is as near as practicable to the signal.
- (4) In this section—

*traffic wand* means a device, whether or not illuminated, commonly known as a traffic wand.

### 18 Directing animal traffic

For section 134(1) of the Act, a police officer may, by signalling in a way stated in schedule 7, give the following directions to a person in charge of an animal—

- (a) to stop, including to stop the animal;
- (b) to stop at the place indicated;
- (c) to move;
- (d) to proceed.



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## **Part 4A                      Impounding and immobilising    motor vehicles**

### **Division 1                      Prescribed type 2 vehicle related    offences**

#### **19                      Prescribed type 2 vehicle related offence—Act, s    69A(2)(e)**

For section 69A(2)(e) of the Act, the offences are the contravention of any of the following provisions of the *Transport Operations (Road Use Management—Vehicle Standards and Safety) Regulation 2010*—

- (a) section 5(1)(a)(i), (ii), (v) or (vi);
- (b) section 6(2);
- (c) section 10(1)(d);
- (d) section 11;
- (e) section 13(1).

### **Division 2                      Impounding and immobilising    notices**

#### **20                      Application of div 2**

This division prescribes other information for section 78(4)(c) of the Act.

#### **20A                      Impounding notices**

An impounding notice must state the following—

- (a) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motor vehicle;

[s 20B]

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- (b) that, if the driver is an adult, the driver will be required to pay the costs of removing or keeping the motor vehicle;
- (c) that, if the driver is a child and the child is found guilty of the offence for which the motor vehicle was impounded, the court may order the child or the child's parent or guardian to pay the costs of removing or keeping the motor vehicle;
- (d) that, if the owner of a motor vehicle fails to recover the motor vehicle after the period of impounding ends and the owner was the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the motor vehicle is impounded;
- (e) that, if the owner of the motor vehicle fails to recover the motor vehicle after the period of impounding ends and the owner was not the driver of the motor vehicle when it was impounded, the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impoundment ends that is more than 2 business days after the owner is given the impounding notice;
- (f) the penalty for unlawfully removing the motor vehicle from the place at which it is held;
- (g) the definition of *found guilty*, of an offence, under the Act.

## **20B Impounding notices for particular type 1 vehicle related offences**

- (1) This section applies if a police officer impounds a motor vehicle under section 74A(1) of the Act because of a type 1 vehicle related offence and the officer reasonably suspects that, in addition to the initiating impoundment offence, and within the relevant period—

- 
- (a) the driver of the motor vehicle has been charged with having committed a type 1 vehicle related offence on 1 previous occasion and the charge has not been decided; or
  - (b) the driver of the motor vehicle has previously been found guilty of a type 1 vehicle related offence committed on 1 previous occasion.
- (2) An impounding notice must also state that—
- (a) the motor vehicle can become the property of the State if the driver of the motor vehicle—
    - (i) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period; and
    - (ii) is found guilty of a second or subsequent type 1 vehicle related offence mentioned in section 74A(1) of the Act; and
  - (b) the motor vehicle can be taken to be forfeited to the State if—
    - (i) the motor vehicle is impounded until the end of proceedings under section 74A(2) of the Act; and
    - (ii) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the initiating impoundment offence.

## **20C Impounding notices for particular type 2 vehicle related offences**

- (1) This section applies if a police officer impounds a motor vehicle under section 74E(1) of the Act because of a type 2 vehicle related offence and the officer reasonably suspects that, in addition to the initiating impoundment offence—

[s 20D]

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- (a) within the relevant period, the driver of the motor vehicle has been charged with having committed type 2 vehicle related offences on 3 previous occasions; and
  - (b) for each of the charges mentioned in paragraph (a)—
    - (i) the charge has not been decided; or
    - (ii) the driver has been found guilty.
- (2) An impounding notice must also state that—
- (a) the motor vehicle can become the property of the State if the driver of the motor vehicle—
    - (i) has been found guilty of 3 type 2 vehicle related offences committed within the relevant period; and
    - (ii) is found guilty of the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1) of the Act; and
  - (b) the motor vehicle can be taken to be forfeited to the State if—
    - (i) the motor vehicle is impounded until the end of proceedings under section 74E(2) of the Act; and
    - (ii) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the initiating impoundment offence.

## **20D Immobilising notices**

An immobilising notice must state the following—

- (a) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motor vehicle;
- (b) if the motor vehicle is immobilised by the removal and confiscation of the vehicle's number plates—that before the motor vehicle's number plates may be returned, the

person entitled to possession of the number plates may be required to produce satisfactory evidence of their entitlement;

- (c) that, if the driver is an adult, the driver will be required to pay the costs of removing or keeping the motor vehicle;
- (d) that, if the driver is a child and the child is found guilty of the offence for which the motor vehicle was immobilised, the court may order the child or the child's parent or guardian to pay the costs of removing or keeping the motor vehicle;
- (e) the penalties for unlawfully operating a motor vehicle—
  - (i) during a number plate confiscation period; or
  - (ii) when an immobilising device is attached to a motor vehicle;
- (f) the penalties for interfering with—
  - (i) a number plate confiscation notice attached to a motor vehicle; or
  - (ii) an immobilising device attached to a motor vehicle;
- (g) the definition of *found guilty*, of an offence, under the Act.

## Part 5 Miscellaneous

### 21 Relevant law—Act, sch 6, definition *relevant law*

For the Act, schedule 6, definition *relevant law*, each Act stated in schedule 2 is prescribed for the Act, chapter 2, part 1.

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**22 Prescribed Act—Act, s 41(g)**

Each Act stated in schedule 3 is prescribed for section 41(g) of the Act.

**23 Corresponding law—Act, sch 6, definition *corresponding law***

For the Act, schedule 6, definition *corresponding law*, each Act stated in schedule 4 is a corresponding law for the stated provision of the Act.

**24 Prescribed Acts restricting starting of proceeding—Act, s 799**

For section 799 of the Act, each Act stated in schedule 5 is a prescribed Act.

**25 Declared agency—Act, sch 6, definition *declared agency***

For the Act, schedule 6, definition *declared agency*, each entity stated in schedule 6 is, subject to any stated restriction, a declared agency.

**26 Legal aid organisation—Act, sch 6, definition *legal aid organisation***

For the Act, schedule 6, definition *legal aid organisation*, the Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd (ATSILS) is declared to be an organisation that provides legal assistance to Aboriginal people and Torres Strait Islanders.

**27 Relevant disease—Act, sch 6, definition *relevant disease***

Each communicable disease mentioned in schedule 8 is prescribed for the Act, schedule 6, definition *relevant disease*.

**28 Responsibilities code—Act, sch 6, definition  
*responsibilities code***

For the Act, schedule 6, definition *responsibilities code*, the code of responsibilities of police officers is set out in schedule 9.

## **Part 6 Repeal**

**29 Repeal**

The Police Powers and Responsibilities Regulation 2000, SL No. 175 is repealed.

Schedule 1

# Schedule 1 Table of permissible comparisons

section 13

GDNA index result to be compared	Is comparison permitted									
Column 1	Column 2 Crime scene	Column 3 Suspect	Column 4 Volunteer (limited purpose)	Column 5 Volunteer (unlimited purpose)	Column 6 Serious offender	Column 7 Missing person	Column 8 Unknown deceased person	Column 9 Non-volunteers (NT) index	Column 10 Volunteers (NT) index	
crime scene	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	
suspect	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	
volunteer (limited purpose)	if within purpose	if within purpose	if within purpose	if within purpose	if within purpose	if within purpose	if within purpose	if within purpose	if within purpose	
volunteer (unlimited purpose)	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	
serious offender	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	



QDNA index result to be compared	Is comparison permitted									
Column 1	Column 2 Crime scene	Column 3 Suspect	Column 4 Volunteer (limited purpose)	Column 5 Volunteer (unlimited purpose)	Column 6 Serious offender	Column 7 Missing person	Column 8 Unknown deceased person	Column 9 Non-volunteers (NT) index	Column 10 Volunteers (NT) index	
missing person	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	
unknown deceased person	yes	yes	if within purpose	yes	yes	yes	yes	yes	yes	

## **Schedule 2      Relevant law**

section 21

*Collections Act 1966*

*Drugs Misuse Act 1986*

*Explosives Act 1999*

*Lotteries Act 1997*

*Nature Conservation Act 1992*

*Property Agents and Motor Dealers Act 2000*

*Racing Act 2002*

*Second-hand Dealers and Pawnbrokers Act 2003*

*Security Providers Act 1993*

*Tow Truck Act 1973*

*Transport Operations (Marine Safety) Act 1994*

*Transport Operations (Passenger Transport) Act 1994*

*Transport Operations (Road Use Management) Act 1995*

*Weapons Act 1990*, but only in relation to a place used for 1 of the following purposes under a licence or other authority under that Act—

- (a) approved range;
- (b) approved shooting club;
- (c) armourer;
- (d) collector;
- (e) dealer;
- (f) security guard;
- (g) security organisation;
- (h) shooting gallery;
- (i) theatrical ordnance supplier.

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**Schedule 3      Prescribed Acts—Act, section  
41(g)**

section 22

*Animal Care and Protection Act 2001*

*Casino Control Act 1982*

*Classification of Computer Games and Images Act 1995*

*Classification of Films Act 1991*

*Classification of Publications Act 1991*

*Gaming Machine Act 1991*

*Health Act 1937*

*Liquor Act 1992*

*Nature Conservation Act 1992*

*Plant Protection Act 1989*

*Prostitution Act 1999*

*Public Safety Preservation Act 1986*

*Racing Act 2002*

*Residential Tenancies and Rooming Accommodation Act 2008*

*Second-hand Dealers and Pawnbrokers Act 2003*

*Summary Offences Act 2005*

*Tobacco and Other Smoking Products Act 1998*

*Transport Operations (Road Use Management) Act 1995*

*Weapons Act 1990*

## **Schedule 4      Corresponding laws**

section 23

### **Part 1                      Corresponding laws for Act, chapter 11**

For the Act, chapter 11, the corresponding laws are as follows—

- *Crimes (Controlled Operations) Act 2004* (Vic)
- *Crimes (Controlled Operations) Act 2008* (ACT)
- *Law Enforcement (Controlled Operations) Act 1997* (NSW)
- *Police Powers (Controlled Operations) Act 2006* (Tas).

### **Part 2                      Corresponding laws for Act, chapter 12**

For the Act, chapter 12, the corresponding laws are as follows—

- *Crimes (Assumed Identities) Act 2004* (Vic)
- *Crimes (Assumed Identities) Act 2009* (ACT)
- *Criminal Investigation (Covert Operations) Act 2009* (SA) to the extent that it applies to assumed identities
- *Law Enforcement and National Security (Assumed Identities) Act 2010* (NSW)
- *Police Powers (Assumed Identities) Act 2006* (Tas).

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**Part 3** **Corresponding laws for Act,  
chapter 13**

For the Act, chapter 13, the corresponding laws are as follows—

- *Crimes (Surveillance Devices) Act 2010* (ACT)
- *Police Powers (Surveillance Devices) Act 2006* (Tas)
- *Surveillance Devices Act* (NT)
- *Surveillance Devices Act 1999* (Vic).

**Part 4** **Corresponding laws for Act,  
section 722**

For section 722 of the Act, the corresponding laws are as follows—

- *Crimes Act 1900* (ACT)
- *Crimes Act 1958* (Vic)
- *Criminal Investigation (Extra-territorial Offences) Act* (NT)
- *Criminal Investigation (Extraterritorial Offences) Act 1984* (SA)
- *Criminal Investigation (Extra-Territorial Offences) Act 1987* (Tas)
- *Criminal Investigation (Extra-territorial Offences) Act 1987* (WA)
- *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

## **Schedule 5      Prescribed Acts—Act, section 799**

section 24

*Adoption Act 2009*

*Classification of Computer Games and Images Act 1995*

*Classification of Films Act 1991*

*Classification of Publications Act 1991*

*Corrective Services Act 2006*

*Education (General Provisions) Act 2006*

*Education (Queensland College of Teachers) Act 2005*

*Exotic Diseases in Animals Act 1981*

*Explosives Act 1999*

*Gaming Machine Act 1991*

*Motor Accident Insurance Act 1994*

*Public Trustee Act 1978*

*Queensland Building Services Authority Act 1991*

*Queensland Heritage Act 1992*

*Soil Conservation Act 1986*

*Travel Agents Act 1988*

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## Schedule 6      Declared agencies

## section 25

- 1 A police force or police service of another State or the Commonwealth.
- 2 The following Commonwealth entities—
  - (a) Australian Crime Commission;
  - (b) Australian Customs Service;
  - (c) Australian Securities and Investments Commission;
  - (d) Australian Taxation Office;
  - (e) Commonwealth department within which the *Migration Act 1958* (Cwlth) is administered;
  - (f) Australian Security Intelligence Organisation;
  - (g) Austrac;
  - (h) the unit of the Australian Defence Force known as the Special Air Service, but only when helping the police service reduce the risk of serious injury to a person, and to the extent disclosure of information under the Act is necessary to help reduce the risk.
- 3 The following New South Wales entities—
  - (a) New South Wales Crime Commission;
  - (b) Police Integrity Commission;
  - (c) ICAC.
- 4 CMC
- 5 A Royal Commission or another commission of inquiry, not already mentioned in this schedule, established under a law of the Commonwealth or a State for inquiring into allegations involving the commission of serious indictable offences.
- 6 Interpol, but only—

Schedule 6

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- (a) for the transmission for comparison, and the comparison, of the results of a DNA analysis with the results of other DNA analyses; and
  - (b) for the communication between the police service and the relevant agency of the results of the comparison and any information about the results.
- 7 A law enforcement agency of a foreign country, but only—
  - (a) for the transmission for comparison, and the comparison, of the results of a DNA analysis with the results of other DNA analyses; and
  - (b) for the communication between the police service and the law enforcement agency of the results of the comparison and any information about the results.



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## Schedule 7 Traffic signals

sections 17 and 18

### 1 Stop signal for person facing signal

Figure 1

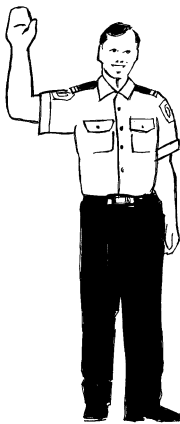


figure 1(a)  
from the front

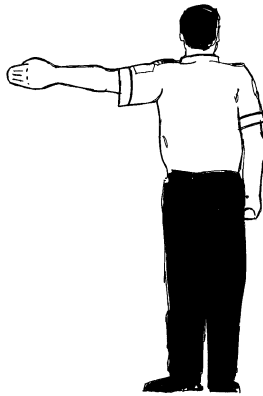


figure 1(b)  
from the rear



figure 1(c)  
from left side



figure 1(d)  
from right side

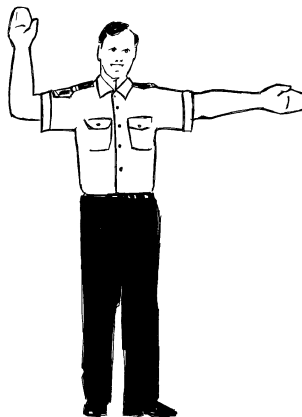


figure 1(e)  
combination from front and rear

**2 Proceed signal for person facing signal**

Figure 2

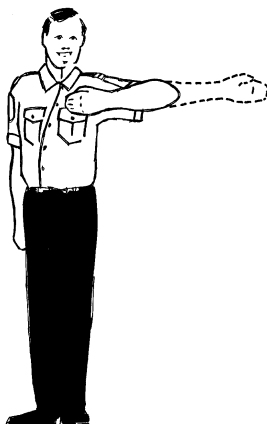


figure 2(a)  
from left side

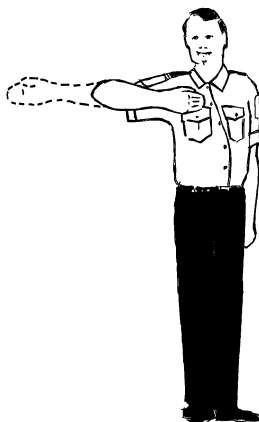


figure 2(b)  
from right side

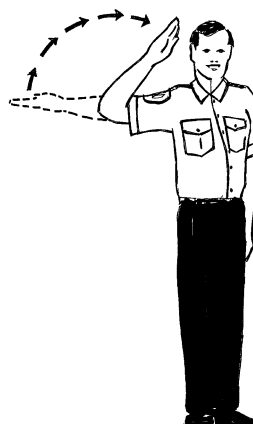


figure 2(c)  
from right side

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**3 Signal to stop at place indicated for person facing signal**

Figure 3



figure 3(a)  
in front



figure 3(b)  
behind

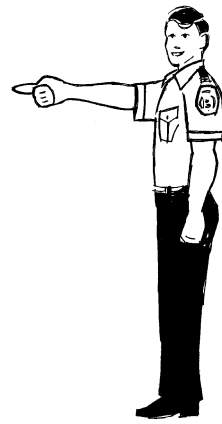


figure 3(c)  
at kerb etc.

## **Schedule 8      Relevant diseases**

section 27

Chancroid

Chlamydia

Donovanosis

Gonorrhoea

Hepatitis B

Hepatitis C

Hepatitis D

Human immunodeficiency virus (HIV)

Lymphogranuloma venereum

Syphilis

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## **Schedule 9      Responsibilities code**

section 28

### **Part 1              Preliminary**

#### **1              Short title**

This code may be cited as the *Police Responsibilities Code 2012*.

#### **2              Code does not generally apply to covert operations**

Unless this code otherwise expressly provides, this code does not apply to functions of a police officer performed as part of a covert operation.

### **Part 2              Powers and responsibilities relating to search warrants, obtaining documents, and crime scenes**

#### **Division 1              Search warrants**

#### **3              Search warrant application**

(1) An application for a search warrant under section 150 of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to be searched;

Schedule 9

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- (c) for an occupied place, the name of the occupier of the place, if known;
  - (d) the offence, suspected offence or confiscation related activity to which the application relates;
  - (e) for a forfeiture proceeding—the Act under which the proceeding may be started;
  - (f) a description of the nature of the thing sought that is reasonably suspected of being evidence of—
    - (i) the commission of the offence; or
    - (ii) the confiscation related evidence in relation to the confiscation related activity;
  - (g) information or evidence being relied on to support a reasonable suspicion that evidence of the commission of an offence or the confiscation related evidence is—
    - (i) at the place; or
    - (ii) likely to be taken to the place within the next 72 hours;
  - (h) for each search warrant issued in the previous year in relation to the place or a person suspected of being involved in the commission of the offence or suspected offence, or the confiscation related activity, to which the application relates—
    - (i) when and where the warrant was issued; and
    - (ii) the type of offence or confiscation related activity to which the warrant related; and
    - (iii) whether anything was seized under the warrant or a proceeding was started after a search.
- (2) If authority to exercise any of the following powers under the search warrant is being sought, the application must state why it is necessary to exercise the power—
- (a) to search anyone found at the place for anything sought under the warrant that can be concealed on the person;
  - (b) to search anyone or anything in, on or about to board, or be put on, a transport vehicle;

- 
- (c) to—
- (i) take a vehicle to a place with appropriate facilities for searching the vehicle; and
  - (ii) search the vehicle for evidence of the commission of an offence that may be concealed in the vehicle.

*Examples for subsection (2)—*

- 1 The power to search anyone found at the place may be necessary because the nature of the thing sought may be concealed on a person.
  - 2 The power to search anyone or anything in, on or about to board, or be put on, a transport vehicle may be necessary because the offence relates to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it.
  - 3 The power to take a vehicle to a place with appropriate facilities for searching the vehicle may be necessary because the nature of the thing sought may be concealed in a vehicle or because the vehicle needs to be scientifically examined.
- (3) If the application includes the authority to execute the warrant at night, the application must state why it is necessary to execute the warrant at night.

*Example for subsection (3)—*

It may be necessary to execute the warrant at night for an early morning search to prevent the loss or destruction of evidence, or because the occupier is only at the place at night.

- (4) If the application is for an order requiring a stated person to give to a police officer stated documents, the application must state—
- (a) the name or position of the person to be ordered to produce the documents; and
  - (b) a description of the documents.

*Example for subsection (4)—*

An order requiring a person to give stated types of documents to a police officer may be necessary because the place contains many documents unrelated to the offence or forfeiture proceeding or because the documents are stored electronically, and accessing the relevant documents is difficult.

## **Division 2                      Post-search approval**

### **4                      Post-search approval application**

An application for a post-search approval order under section 161(1) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the information or evidence relied on to support the reasonable suspicion—
  - (i) in the circumstances existing before the search, that the commission of an offence was at or about the place, or in the possession of a person at or about the place, and would have been concealed or destroyed unless the place was immediately entered and searched; or
  - (ii) a part 2 offence had been, was being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it;

*Note—*

For the definition of a *part 2 offence*, see section 159 of the Act.

- (c) in relation to the thing sought—
  - (i) the type of offence in relation to which the search was conducted; or
  - (ii) the Act under which a forfeiture proceeding may be started;
- (d) the nature of the thing sought that was reasonably suspected of being evidence of the commission of an offence;
- (e) the time, date and place of the search;
- (f) a description of anything seized because of the search;
- (g) the name, age and address of each person detained or searched, if known;



- 
- (h) information about any proceeding started against a person, before or because of the search, for an offence in relation to which the search was conducted;
  - (i) if an order under the Act, section 693 or 694 for a declaration of who is the owner or for the retention, disposal, return or destruction of anything seized is sought, why the order should be made.

## **5 Appeal—Act, s 163**

- (1) This section applies if a police officer considers the commissioner should appeal under section 163 of the Act against a decision of a magistrate.
- (2) The police officer must give the commissioner a report explaining the reasons for the appeal.
- (3) The report must be accompanied by the following—
  - (a) a copy of the application for the post-search approval;
  - (b) a copy of any transcript of the proceeding for the application;
  - (c) an affidavit—
    - (i) identifying any document relevant to the appeal; and
    - (ii) stating anything else relevant to the appeal.

## **Division 3 Crime scenes**

### **6 Who is an authorised assistant for crime scene powers**

For the Act, schedule 6, definition *authorised assistant*, an assistant is authorised for the Act if—

- (a) the assistant is not a police officer; and
- (b) in the opinion of the responsible officer at a crime scene, the assistant has specialised knowledge or skills of a kind necessary for exercising a power mentioned in section 176(1) of the Act at a crime scene; and

*Examples for paragraph (b)—*

- a doctor, pathologist or forensic scientist
  - a photographer or fingerprint expert
  - an electrician or carpenter
  - a person who can operate an excavator or another machine
- (c) the assistant is asked by the responsible officer or an investigating police officer to exercise the power at the crime scene.

## **7 Crime scene warrant application**

An application for a crime scene warrant under section 170(1) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to which the application relates;
- (c) for an occupied place, the name of the occupier of the place, if known, and—
- (i) when the occupier was given notice of the application; or
  - (ii) if the occupier has not been given notice, why notice has not been given;
- (d) information or evidence being relied on to reasonably satisfy the issuer of the warrant that—
- (i) a seven year imprisonment offence or an offence involving deprivation of liberty happened at the place; or
  - (ii) there may be at the place evidence of a significant probative value of the commission of a serious violent offence that happened somewhere else;
- (e) whether the application—
- (i) is to establish a crime scene; or

- 
- (ii) relates to a crime scene established under section 165 of the Act;
  - (f) the suspected offence to which the application relates;
  - (g) if the crime scene is a secondary crime scene, when and where the relevant offence was committed, if known;
  - (h) why it is necessary to protect the place to search for and gather evidence of the commission of the suspected offence;
  - (i) information about any proceeding started against a person for the offence for which the crime scene is, or is to be, established.

## **8 Crime scene warrant extension application**

An application for the extension of a crime scene warrant under section 173(2) of the Act must be accompanied by a copy of the original warrant and state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) when and where the crime scene was established;
- (c) for a crime scene that is an occupied place—
  - (i) when the occupier was given notice of the application; or
  - (ii) if the occupier has not been given notice, why notice has not been given;
- (d) what investigations have been conducted at the crime scene;
- (e) why it is necessary to extend the warrant;
- (f) information about any proceeding started against a person for the offence for which the crime scene was established;
- (g) the time for which the extension is sought.

## **Division 4                      Production notices and access orders**

### **9                      Production notice application**

An application for a production notice under section 180(2) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the cash dealer to be given the notice;
- (c) the offence, suspected offence or confiscation related activity to which the application relates or, for a forfeiture proceeding, the Act under which the proceeding may be started;
- (d) the nature of the documents sought;

*Examples for paragraph (d)—*

- documents relating to transactions conducted by B between 31 December 1993 and 1 July 1995
  - documents relating to mortgages or property sales to which B is a party
- (e) information or evidence being relied on to support a reasonable suspicion documents held by the cash dealer may be—
    - (i) evidence of the commission of the offence; or
    - (ii) confiscation related evidence in relation to the confiscation related activity;
  - (f) the applicant suspects that someone other than the cash dealer committed the offence or suspected offence or was involved in the confiscation related activity;
  - (g) for each production notice issued within the previous year in relation to the person suspected of being involved in the commission of the offence or suspected offence or the confiscation related activity to which the application relates—
    - (i) when and where the notice was issued; and

- (ii) the type of offence or confiscation related activity to which the notice related; and
- (iii) whether anything was seized or a proceeding started because of the notice.

## **10 Access order application**

- (1) An application for an access order under section 185(1) of the Act must state the following—
  - (a) the applicant's name, rank, registered number and station;
  - (b) the name of the cash dealer to whom the application relates;
  - (c) the nature of the document sought under the production notice to which the application relates;
  - (d) the cash dealer has produced a document it claims contains privileged communications;
  - (e) the person for whom the cash dealer claims the document contains privileged communication, if known;
  - (f) the grounds the cash dealer claims the document contains privileged communication, if known;
  - (g) when notice of the application was given to the cash dealer;
  - (h) why access to the document is necessary;
  - (i) the type of order sought.
- (2) The application must be accompanied by the following—
  - (a) a copy of the application for the production notice;
  - (b) a copy of the production notice given to the cash dealer;
  - (c) the sealed container or envelope containing the document to which the application relates.

## **Division 5                      Production orders**

### **11            Production order application**

An application for a production order under section 189(2) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the person to whom the application relates (the *named person*);
- (c) the name of the person to be given the production order;
- (d) the confiscation offence or serious crime related activity to which the application relates;
- (e) the nature of the property tracking document sought under the production order;
- (f) the information or evidence being relied on to support a reasonable suspicion the named person possesses a document that may be a relevant property tracking document;
- (g) for each production order issued within the previous year in relation to the named person—
  - (i) when and where the order was issued; and
  - (ii) how long the order was in force; and
  - (iii) the type of confiscation offence or serious crime related activity to which the order related; and
  - (iv) how the order helped in the investigation or another investigation; and
  - (v) information about any proceeding started because of the use of the order.

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## **Part 3**                      **Powers and responsibilities relating to gathering covert evidence**

### **Division 1**                **Monitoring orders and suspension orders—Act, chapter 8, parts 2 and 3**

#### **12**      **Monitoring order or suspension order application**

- (1) Subsection (2) applies to an application for—
  - (a) a monitoring order under section 199 of the Act; or
  - (b) a suspension order under section 205 of the Act.
- (2) The application must state the following—
  - (a) the applicant's name, rank, registered number and station;
  - (b) the name of the financial institution to be given the order;
  - (c) the named person to whom the application relates;
  - (d) the confiscation offence, serious crime related activity or serious crime derived property to which the application relates;
  - (e) the information or evidence being relied on to support a reasonable suspicion that the named person—
    - (i) has committed, or is about to commit, the confiscation offence; or
    - (ii) was involved in the commission, or is about to be involved in the commission, of the confiscation offence; or
    - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of the confiscation offence; or

- (iv) has been, or is about to be, involved in the serious crime related activity; or
- (v) has acquired directly or indirectly, or is about to acquire directly or indirectly, the serious crime derived property;
- (f) the name or names in which each relevant account is believed to be held;
- (g) the type of information the institution is to be required to give;
- (h) for each monitoring order or suspension order issued in the previous year in relation to an account held with the financial institution by the named person—
  - (i) when and where the order was issued; and
  - (ii) how long the order was in force; and
  - (iii) the type of confiscation offence, serious crime related activity or serious crime derived property to which the order related; and
  - (iv) how the order helped in the investigation or another investigation; and
  - (v) information about any proceeding started because of the use of the order.

## **Division 2**

### **Surveillance device warrant applications and use of surveillance devices**

#### **13 Applications to Supreme Court judge to be made with help of lawyer**

An application under section 328 of the Act to a Supreme Court judge for a surveillance device warrant must, if reasonably practicable, be made with the help of a lawyer approved by the commissioner.



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**14 Security of facilities used under a surveillance device warrant**

- (1) This section applies to premises containing equipment being used by an interceptor to electronically record a conversation or visual images under a surveillance device warrant.
- (2) The premises must—
  - (a) be capable of being locked; and
  - (b) have suitable facilities for securely storing recordings made under the warrant; and
  - (c) be used in a way that prevents anyone outside it from hearing or seeing anything being listened to or monitored.
- (3) The interceptor must take reasonable steps to ensure—
  - (a) when the premises are unattended, the premises are locked and any recordings made under the warrant are securely stored at the premises or another secure place; and
  - (b) only the following enter the premises—
    - (i) police officers helping or involved in the investigation;
    - (ii) other interceptors;
    - (iii) the police officer who applied for the surveillance device warrant;
    - (iv) a person responsible for the management of the premises;
    - (v) a person appointed by the commissioner to investigate misconduct;
    - (vi) any other person the interceptor permits to be present for helping in or monitoring the investigation.
- (4) This section does not apply to the exercise of powers in Queensland under a corresponding warrant or corresponding emergency authorisation.

(5) In this section—

*interceptor* means a person authorised by the commissioner to intercept and record communications under a surveillance device warrant.

## **Division 3                      Covert search**

### **15            Applications to be made with help of lawyer**

An application under section 212(1) of the Act for a covert search warrant must, if reasonably practicable, be made with the help of a lawyer approved by the commissioner.

### **16            Covert search warrant application**

An application for a covert search warrant under section 212(1) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to be searched;
- (c) the type of designated offence, organised crime or terrorism to which the application relates;
- (d) for an occupied place—the name of the occupier of the place and any person reasonably suspected of being involved in the designated offence, organised crime or terrorism, if known;
- (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of a designated offence, organised crime or terrorism;
- (f) the information or evidence being relied on to satisfy a judge there are reasonable grounds for believing there is evidence of the designated offence, organised crime or terrorism at the place;
- (g) for each warrant issued in the previous year in relation to the place or person suspected of being involved in the

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designated offence, organised crime or terrorism to which the application relates—

- (i) the type of warrant; and
- (ii) when and where the warrant was issued; and
- (iii) for a surveillance device warrant or covert search warrant, how long the warrant was in force; and
- (iv) whether the warrant related to a person or a place; and
- (v) the type of designated offence, organised crime or terrorism to which the warrant related; and
- (vi) any evidence seized during a search carried out under the warrant; and
- (vii) how a previous covert search or surveillance device warrant helped in relation to the investigation related to the previous covert search or surveillance device warrant; and
- (viii) information about any proceeding started as a result the execution of the warrant.

## **17 Covert search warrant extension application**

An application for an extension of a covert search warrant under section 217(2) of the Act must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the place to be searched;
- (c) for an occupied place—the name of the occupier of the place and any person reasonably suspected of being involved in the offence, if known;
- (d) the type of designated offence, organised crime or terrorism to which the warrant relates;
- (e) a description of the nature of the thing sought that is reasonably suspected of being evidence of the commission of a designated offence, organised crime or terrorism;

- (f) information or evidence being relied on to satisfy a judge there are reasonable grounds for believing there is evidence of a designated offence, organised crime or terrorism at the place;
- (g) information included in the application for the covert search warrant about each warrant issued in the previous year in relation to the place or person suspected of being involved in the designated offence, organised crime or terrorism to which the application relates.

## **18 Report on covert search warrant**

A report made under section 220(2) must be accompanied by a copy of the warrant and state the following—

- (a) the reporting police officer's name, rank, registered number and station;
- (b) the designated offence, organised crime related offence or terrorism to which the warrant relates;
- (c) when the powers under the warrant were exercised;
- (d) the facts and circumstances of compliance with the warrant and the conditions of its issue;
- (e) particulars of anything seized, inspected or photographed under the warrant;
- (f) a description of any order sought in relation to anything seized or photographed under the warrant and the reason for the order.

*Examples of an order for this section—*

- 1 An order that anything seized and any photograph taken be retained for the purpose of the investigation of the designated offence, organised crime or terrorism related offence or another serious indictable offence.
- 2 An order that anything seized and any photograph taken be retained for the purpose of a proceeding started under the *Criminal Proceeds Confiscation Act 2002* relating to an offence arising out of the investigation.

- 3 An order that anything seized and any photograph taken be retained for use as evidence in the prosecution of the persons named in the application.
- 4 An order that a thing seized be destroyed in a way the commissioner considers appropriate.

## **Part 4 Powers and responsibilities relating to arrest and custody powers**

### **19 DNA sample order application—child—Act, s 488(2)**

An application under section 488(2) of the Act for an order of a Childrens Court authorising a DNA sampler to take a DNA sample from a child for DNA analysis must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) the name of the child;
- (c) that a stated indictable offence has been committed;
- (d) the information or evidence that may be relied on to support a reasonable suspicion the child has committed the indictable offence;
- (e) that taking a DNA sample for DNA analysis may tend to prove or disprove the child's involvement in the offence;
- (f) that notice of the making of the application has been given under the Act, section 488(3) and when the notice was given.

### **20 Disease test order application**

An application under section 540(2) of the Act for a disease test order must state the following—

Schedule 9

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- (a) the applicant's name, rank, registered number and station;
- (b) the name of the person to whom the application relates (the *named person*);
- (c) that the police officer reasonably suspects the named person has committed a chapter 18 offence;

*Note—*

For the definition of *chapter 18 offence*, see section 538 of the Act.

- (d) that taking a blood and urine sample may help find out whether the named person may have transmitted a relevant disease to the victim of the offence;
- (e) information supporting the application and indicating semen, blood, saliva or another bodily fluid may have been transmitted to another person during or soon after the commission of the offence;
- (f) the named person has been advised of the person's right to have a lawyer present at the hearing of the application;
- (g) if the person is a child—notice of the application has been given under the Act, section 541(2) and when the notice was given.

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## **Part 5**                      **Powers and responsibilities relating to investigations and questioning for indictable offences**

### **Division 1**                **Questioning relevant persons about indictable offences**

#### **21**      **Application of div 1**

This division only applies to indictable offences.

#### **22**      **Asking persons to attend for questioning**

(1) This section applies if a police officer wants to question a person as a suspect, other than a person mentioned in section 398 of the Act.

(2) If the police officer approaches the person when not at a police station or police establishment, the police officer must caution the person in a way substantially complying with the following—

‘I am (name and rank) of (name of police station or police establishment).

I wish to question you about (briefly describe offence).

Are you prepared to come with me to (place of questioning)?

Do you understand that you are not under arrest and you do not have to come with me?’.

(3) If the person is not in the company of a police officer and attends a police station or police establishment for questioning, the caution must substantially comply with the following—

‘I am (name and rank) of (name of police station or police establishment).

I wish to question you about (briefly describe offence).

Did you come here of your own free will?'.  
(4) Before the police officer starts to question the person, the police officer must caution the person in a way substantially complying with the following—

‘Do you understand you are not under arrest?

Do you understand you are free to leave at any time unless you are arrested?’.

- (5) If the police officer reasonably suspects the person does not understand the caution, the officer may ask the person to explain the meaning of the caution in the person’s own words.
- (6) If necessary, the police officer must further explain the caution.

## **23 Right to communicate with friend, relative or lawyer**

- (1) If a police officer is required to inform a relevant person of the matters mentioned in section 418(1)(a) or (b) of the Act, the police officer must inform the person in a way substantially complying with the following—

‘You have the right to telephone or speak to a friend or relative to inform that person where you are and to ask him or her to be present during questioning.

You also have the right to telephone or speak to a lawyer of your choice to inform the lawyer where you are and to arrange or attempt to arrange for the lawyer to be present during questioning.

If you want to telephone or speak to any of these people, questioning will be delayed for a reasonable time for that purpose.

Is there anyone you wish to telephone or speak to?’.

- (2) If the police officer reasonably suspects the relevant person does not understand the information, the police officer may ask the relevant person to explain the meaning of the information in the person’s own words.



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- (3) If necessary, the police officer must further explain the information.
  - (4) If the relevant person wants to speak to a lawyer, the police officer must, without unreasonable delay, make available to the person—
    - (a) if the police officer has available a list of lawyers for the region and the person has not asked to speak to a particular lawyer—the list; or
    - (b) a telephone directory for the region.
  - (5) A police officer must not do or say anything with the intention of—
    - (a) dissuading the relevant person from obtaining legal advice; or
    - (b) persuading a relevant person to arrange for a particular lawyer to be present.

## **24 Right to remain silent not affected**

- (1) This section applies if a person, the person's lawyer, or someone whose presence is required during questioning of a person indicates to the police officer questioning or intending to question the person—
  - (a) if questioning has not started—the person does not want to answer questions; or
  - (b) if questioning has started—the person does not want to answer any further questions.
- (2) The police officer must clarify the person's intention to exercise the person's right to silence by asking the person—
  - (a) whether the person does not want to answer any questions generally or only questions about the offence for which the person is being questioned; and
  - (b) if any further question was asked relating to the offence or another offence, whether the person would not answer the question.

- (3) If the person confirms the person does not want to answer any questions, the police officer must not question or continue to question the person.
- (4) However, if the person later indicates that the person is prepared to answer questions, a police officer must, before questioning or continuing to question the person, ask the person—
  - (a) why the person has decided to answer questions; and
  - (b) if a police officer or someone else in authority has told the person to answer questions.

## **25 Questioning of Aboriginal people and Torres Strait Islanders**

- (1) A police officer who is about to question a relevant person the police officer reasonably suspects is an adult Aboriginal person or Torres Strait Islander must first ask questions necessary to establish the person's level of education and understanding.
- (2) Subsection (1) does not apply if the police officer already knows the relevant person.
- (3) The questions the police officer may ask include questions, not related to the relevant person's involvement in the offence, that may help the police officer decide if the person—
  - (a) is capable of understanding the questions put to the person, what is happening to the person and the person's rights at law; and
  - (b) is capable of effectively communicating answers to the questions; and
  - (c) is aware of the reason the questions are being asked.
- (4) If the police officer considers it is necessary to notify a representative of a legal aid organisation that the relevant person is about to be questioned in relation to an offence, the police officer must inform the relevant person of the intention to notify the legal aid organisation, in a way substantially complying with the following—

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‘As you have not arranged for a lawyer to be present, a legal aid organisation will be notified you are here to be questioned about your involvement in an indictable offence.’

- (5) If the relevant person has indicated the person does not wish to telephone or speak to a support person or arrange for a support person to be present during questioning, the police officer conducting the questioning must inform the relevant person that the person may have a support person present during the questioning.

- (6) The information given under subsection (5) must substantially comply with the following—

‘Is there any reason why you don’t want to telephone or speak to a support person and arrange for a person to be present during questioning?

Do you understand that arrangements can be made for a support person to be present during the questioning?

Do you also understand that you do not have to have a support person present during questioning?

Do you want to have a support person present?’.

- (7) If the police officer reasonably suspects the relevant person is at a disadvantage in comparison with members of the Australian community generally, and the person has not arranged for a support person to be present during the questioning, the police officer must arrange for a support person to be present.

## **26 Cautioning relevant persons about the right to silence**

- (1) A police officer must caution a relevant person about the person’s right to silence in a way substantially complying with the following—

‘Before I ask you any questions I must tell you that you have the right to remain silent.

This means you do not have to say anything, answer any question or make any statement unless you wish to do so.

However, if you do say something or make a statement, it may later be used as evidence.

Do you understand?'

- (2) If the police officer reasonably suspects the relevant person does not understand the caution, the police officer may ask the person to explain the meaning of the caution in the person's own words.
- (3) If necessary, the police officer must further explain the caution.
- (4) If questioning is suspended or delayed, the police officer must ensure the relevant person is aware the person still has the right to remain silent and, if necessary, again caution the person when questioning resumes.
- (5) If a police officer cautions a relevant person in the absence of someone else who is to be present during the questioning, the caution must be repeated in the other person's presence.

## **27 Provision of information relating to a relevant person**

- (1) If a person who is a relative, friend or lawyer of a relevant person asks for information about the relevant person's whereabouts, the police officer receiving the request must, if the person asking for the information is not known to the police officer, ask the person—
  - (a) if the person is a relative or friend of the relevant person and their name and address; and
  - (b) if the person is the relevant person's lawyer and if so, the person's place of business; and
  - (c) if the person makes the request personally—for proof of identity.
- (2) The police officer may also ask any other question the police officer considers necessary to establish that the person is a relative, friend or lawyer of the relevant person.
- (3) Also, the police officer must make or cause to be made a check of the register for information about the relevant person.

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**28 Right to interpreter**

- (1) This section applies, for section 433 of the Act, to a police officer for—
  - (a) forming a reasonable suspicion about whether a relevant person is able to speak with reasonable fluency in English; and
  - (b) arranging for the presence of an interpreter during questioning of a relevant person.
- (2) The police officer may ask the relevant person questions, other than a question related to the person's involvement in the offence for which the person is to be questioned, that will help the police officer form the reasonable suspicion.
- (3) In particular, the police officer may ask questions that may help the police officer decide whether or not the relevant person—
  - (a) is capable of understanding the questions; and
  - (b) is capable of understanding what is happening; and
  - (c) is capable of understanding the person's rights at law; and
  - (d) is capable of effectively communicating answers to the questions; and
  - (e) is aware of the reason the questions are being asked.

**29 Right of visiting foreign national to communicate with embassy etc.**

- (1) This section applies, for section 434 of the Act, if a police officer reasonably suspects a relevant person is not—
  - (a) an Australian citizen; or
  - (b) a foreign national with a right of residence in Australia.
- (2) For deciding whether the relevant person is or is not an Australian citizen or a foreign national with a right of residence in Australia the police officer may ask the relevant person questions, other than a question related to the person's

involvement in the offence for which the person is to be questioned.

- (3) If the police officer reasonably suspects the person is not an Australian citizen or a foreign national with a right of residence in Australia the police officer must inform the relevant person of the person's rights under section 434 of the Act in a way substantially complying with the following—

‘Before I ask you any questions I must tell you that you have the right to telephone, or attempt to telephone, the embassy or consular office of the country of which you are a citizen.

Do you want to telephone your embassy or consular office?’.

- (4) If the police officer reasonably suspects the relevant person does not understand the information, the police officer may ask the person to explain the information in the person's own words.
- (5) If necessary, the police officer must further explain the information.

### **30 Rights of a person to be electronically recorded**

- (1) If it is not reasonably practicable for a police officer to electronically record the giving to a relevant person of information, including a caution, the police officer must make a written record of the giving of the information and the person's response.
- (2) The police officer must make the record as if section 437 of the Act applied to the giving of the information and the response.

### **31 Procedure for reading back a written record—Act, s 437(5)**

- (1) This section applies if a police officer is required under section 437(5) of the Act to give an explanation to a relevant person of the procedure to be followed to comply with the section.

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- (2) The police officer must explain the procedure in a way substantially complying with the following—
- ‘Some of the questions I have asked you and your responses have not been electronically recorded.
- I have made a written record of the unrecorded conversation. This is your copy of the record. I will now read the written record aloud.
- If you consider there is an error in the record or there is something left out of the record, you should say so after I read that part of the record aloud.
- You will then be asked to say what the record should read.
- Do you understand this is your opportunity to disagree with anything in the written record?
- Do you understand this procedure?’.
- (3) If the police officer reasonably suspects the relevant person does not understand the explanation, the police officer may ask the person to explain the procedure in the person’s own words.
- (4) If necessary, the police officer must further explain the procedure.

## **Division 2                      Questioning detained persons**

### **32            Removal order application**

An application under section 399(2) of the Act for a removal order must state the following—

- (a) the applicant’s name, rank, registered number and station;
- (b) the name and age of the person to whom the application relates;
- (c) the location of the person or detention centre;

- (d) whether the person is in custody for an offence that has not been decided, or under sentence for a term of imprisonment or, for a child, under a detention order;
- (e) the type of indictable offence to which the questioning or investigation relates;
- (f) whether the removal of the person into police custody is for questioning the person or for a stated investigative procedure;
- (g) whether the person has been advised of the application;
- (h) information or evidence about the nature and seriousness of the offence;
- (i) information or evidence that may be relied on—
  - (i) to support a suspicion the person has committed the offence mentioned in the application; and
  - (ii) to satisfy a magistrate removal of the person from the prison or detention centre is necessary for questioning the person or the investigation of the offence.

### **33 Detention period extension application**

- (1) An application under section 405(1) of the Act for the extension of a detention period must be made in a way that allows the relevant person or the person's lawyer to make submissions about the application.

*Example for subsection (1)—*

If the application is faxed to a magistrate, the relevant person may speak to the magistrate by telephone.

- (2) Before the application is made, the police officer must—
- (a) tell the relevant person or the person's lawyer that the police officer intends to make the application; and
  - (b) give the relevant person or the person's lawyer a copy of the application; and
  - (c) ask the person or the person's lawyer if the person—



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- (i) agrees to the proposed application or wants to oppose it; and
  - (ii) wants to make submissions or say anything to the justice or magistrate hearing the application.
- (3) The application must state the following—
- (a) the applicant's name, rank, registered number and station;
  - (b) the following information about the person to whom the application relates—
    - (i) the person's name, age and address;
    - (ii) whether the person is in custody under the *Corrective Services Act 2006* or the *Youth Justice Act 1992* for an offence that has not been decided or under a sentence for a term of imprisonment or, for a child, a detention order;
    - (iii) whether the person is an Aboriginal person, a Torres Strait Islander, a child, or a person with impaired capacity;
    - (iv) if the person is a child—whether a parent of the child has been advised of the child's detention;
  - (c) whether, since the questioning or detention started, the person has asked to telephone or speak to a relative, friend, lawyer or support person and has since spoken to a relative, friend, lawyer or support person;
  - (d) when the detention period started, how long the person has been questioned, and what delays to questioning have happened;
  - (e) the offence to which the questioning or investigation relates and information and evidence about the nature and seriousness of the offence;
  - (f) information or evidence supporting a reasonable suspicion the relevant person has committed the offence mentioned in the application;
  - (g) what investigations have taken place;

- (h) why further detention of the person is necessary;
  - (i) the time sought for time out, the purpose of the time out, and the period of time sought for questioning.
- (4) The applicant must tell the justice or magistrate whether or not the relevant person or the person's lawyer wants to make submissions or say anything to the justice or magistrate.

## **Division 3                      Provisions about support persons**

### **34            Ensuring support persons understand role**

- (1) Before a police officer questions a relevant person in the presence of a support person, the police officer must—
- (a) give the support person information in the approved form about the role of support persons during questioning; and
  - (b) ensure, as far as practicable, that the person understands the nature of the support person's role; and
  - (c) if the support person asks, give an explanation of anything relevant to the person's role as a support person; and
  - (d) inform the support person of the identity of the relevant person and why the person is being questioned.
- (2) The information must include the following—
- (a) a summary of sections 427, 428, 429 and 430 of the Act;
  - (b) a statement that the support person must act in the best interests of the relevant person;
  - (c) a statement that, unless the support person is a lawyer, the support person must not provide legal advice to the relevant person but may ask the relevant person questions to ensure the relevant person understands—
    - (i) that the person may ask for a lawyer to be present during questioning or at any time before questioning ends; and

- (ii) that the person is not obliged to say anything during questioning; and
- (iii) that anything the relevant person says during questioning may be used in evidence in a court; and
- (iv) what is said by a police officer during questioning.

## **Part 6**                      **Responsibilities relating to persons in custody**

### **Division 1**                **General requirements for identification procedures**

#### **35**            **Management of witnesses during identification procedure**

- (1) The way an identification procedure is conducted must allow only 1 witness involved in the procedure to see or hear the procedure at a time.
- (2) After taking part in the procedure, the witness must, as far as reasonably practicable, be prevented from speaking about the identification procedure to any other witness until the procedure ends.
- (3) The way a witness identifies a person during an identification procedure must, if reasonably practicable, be electronically recorded.
- (4) A police officer must not stop a person being present during the procedure to support the witness unless—
  - (a) the other person is a witness involved in the procedure; or
  - (b) the officer suspects the person will influence the witness's decision or disrupt the procedure.

- (5) If a police officer stops someone being present during the identification procedure to support a witness, the police officer must—
- (a) give the witness the reasons for stopping the person being present; and
  - (b) advise the witness that the witness may arrange for someone else to be present to support the witness; and
  - (c) if asked, allow someone else to be present.

## **Division 2                      Identification parades**

### **36            Application of div 2**

This division applies if a police officer conducts an identification parade that includes a suspect.

### **37            Recording of identification parade**

If reasonably practicable, a police officer must cause the behaviour and position of each person in an identification parade to be photographed or otherwise electronically recorded.

### **38            Explanation of procedure**

- (1) A police officer must explain the procedure for an identification parade to a suspect before conducting the identification parade.
- (2) If the police officer reasonably suspects the suspect does not understand the procedure, the police officer must ask the suspect to explain the procedure in the suspect's own words.
- (3) If necessary, the police officer must further explain the procedure.
- (4) The explanation must include the police officer telling the suspect the following—

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- (a) the identification parade can not be conducted unless the suspect agrees;
  - (b) the suspect may have a friend, relative or lawyer present at the identification parade if the friend, relative or lawyer can attend within a reasonable time;
  - (c) anyone present may not interfere with the procedure in any way;
  - (d) the suspect may choose a position in the parade and change position in the parade after each witness has viewed the parade;
  - (e) the suspect's identity will not be given to a witness unless the witness identifies the suspect and a proceeding is started against the suspect.

### **39 Identification parade conditions**

A police officer conducting an identification parade must, as far as reasonably practicable, replicate the conditions, described by the witness, when the witness saw a person involved in the offence, for example, by—

- (a) changing the lighting in the room; or
- (b) varying the distance from which the witness views the identification parade; or
- (c) concealing aspects of the participants.

### **40 Conducting the identification parade**

- (1) Each witness must view the identification parade separately.
- (2) The police officer conducting the identification parade must ask the witness to carefully view the parade and to state whether the witness recognises any participant.
- (3) The police officer must ask the question in a way that does not suggest the identity of any participant.
- (4) If the witness indicates that the witness recognises a participant, the police officer must ask the witness to clearly identify the participant recognised by, for example—

- (a) stating the participant's number; or
- (b) describing the participant's position in the parade.

#### **41 Use of suitable persons in the identification parade**

An identification parade must include the suspect and at least 11 other people of similar physical appearance and wearing similar clothing.

### **Division 3 Identification using photographs**

#### **42 General requirements for identification using photographs**

To avoid directing the attention of the witness to a particular photograph, the police officer must ensure nothing is marked on—

- (a) any photograph; or
- (b) the photo board.

#### **43 Conducting a photo board identification**

- (1) A police officer showing witnesses a photo board must show the photo board to each witness separately.
- (2) Also, the police officer must ask each witness to carefully view the photo board and state whether the witness recognises anyone whose photo is on the photo board.
- (3) The police officer must ask the question in a way that does not suggest the identity of a person whose photograph is on the photo board.
- (4) If a witness indicates that the witness recognises a person in a photo on the photo board, the police officer must ask the witness to—
  - (a) clearly state the number of the photograph the witness has identified as being that of the person alleged to be responsible for committing the relevant offence; and

- (b) write the photograph number and the date the photo board was shown to the witness—
  - (i) on the front of an unmarked photocopy of the photo board; or
  - (ii) on the back of the photo board or the selected photograph; and
- (c) sign the photo board, photocopy or photograph where the person has written on it.

## **Part 7                               Responsibilities relating to enforcement registers**

### **Division 1                    Register of enforcement acts**

#### **44       Searches of persons—Act, s 679(1)**

The following information about an enforcement act consisting of a search of a person must be included in the register of enforcement acts—

- (a) the name of the person, if known;
- (b) when and where the person was searched;
- (c) the purpose of the search;
- (d) whether the search involved the removal of outer clothing in circumstances requiring the search to be conducted out of public view;
- (e) for a search because of a reasonable suspicion—how long the person was detained for the search;
- (f) a description of anything seized because of the search;
- (g) information about the return, destruction or disposal of anything seized.

**45 Searches of vehicles—Act, s 679(1)**

The following information about an enforcement act consisting of a search of a vehicle must be included in the register of enforcement acts—

- (a) the name of the person in possession of the vehicle and anyone detained, if known;
- (b) the registration number or a description of the vehicle;
- (c) when and where the search took place;
- (d) the purpose of the search;
- (e) how long the vehicle was detained for the search;
- (f) a description of anything seized because of the search;
- (g) whether anything was damaged because of the search;
- (h) information about the return, destruction or disposal of anything seized.

**46 Searches of places other than vehicles—Act, s 679(1)**

The following information about an enforcement act consisting of a search of a place other than a vehicle must be included in the register of enforcement acts—

- (a) the name of the person in possession of the place and anyone detained, if known;
- (b) when and where the search took place;
- (c) the purpose of the search;
- (d) a description of anything seized because of the search;
- (e) whether anything was damaged because of the search;
- (f) information about the return, destruction or disposal of anything seized.

**47 Arrests and detentions—Act, s 679(1)**

- (1) Subsection (2) sets out the information that must be recorded in the register of enforcement acts for the following—



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- (a) an arrest;
  - (b) the detention of a person for investigation or questioning;
  - (c) the questioning of a person as a suspect about the person's involvement in the commission of an indictable offence.
- (2) The following is the prescribed information—
- (a) the name of the person, if known;
  - (b) the time the person was arrested or detained;
  - (c) for an arrest, where a person is held;
  - (d) for a person detained, each place to which the person is taken to or held for the investigation or questioning, and when;
  - (e) any significant event affecting the time for which questioning was suspended or delayed;  
*Example of a significant event for paragraph (e)—*  
a time out period and the purpose of the time out
  - (f) any apparent injury the person received during the arrest or detention.

#### **48 Search warrants—Act, s 679(1)**

The following details about a search warrant must be included in the register of enforcement acts—

- (a) when and where the warrant was issued;
- (b) the name of the person mentioned in the application for the search warrant as the person suspected of being involved in the offence, suspected offence or confiscation related activity to which the application relates, if known;
- (c) the type of offence or the confiscation related activity to which the warrant related;

- (d) if the search warrant related to an existing or proposed forfeiture proceeding—the type of forfeiture proceeding to which the warrant related;
- (e) the benefits derived from the warrant, including, for example, anything seized during the search and any proceeding started after the search.

**49 Production notices—Act, s 679(1)**

The following information about a production notice must be included in the register of enforcement acts—

- (a) when and where the production notice was issued;
- (b) the name of the person mentioned in the application for the production notice as the person suspected of being involved in the offence, suspected offence or confiscation related activity to which the application relates, if known;
- (c) the type of offence or the confiscation related activity to which the production notice related;
- (d) if the production notice related to an existing or proposed forfeiture proceeding—the type of forfeiture proceeding to which the production notice related;
- (e) the benefits derived from the production notice, including, for example, any document produced under the notice and any proceeding started and related to the document produced;
- (f) information about the return of any document produced under the notice.

**50 Production orders—Act, s 679(1)**

The following information about a production order must be included in the register of enforcement acts—

- (a) when and where the order was issued;
- (b) the name of the person mentioned in the application for the production order as the person who was found guilty

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of the confiscation offence, is suspected of having committed the confiscation offence or is suspected of having engaged in the serious crime related activity to which the application relates, if known;

- (c) the type of confiscation offence or serious crime related activity to which the production order related;
- (d) the benefits derived from the production order, including, for example, any document produced under the order and any proceeding started and related to the document produced;
- (e) information about the return of any document produced under the order.

#### **51 Things seized other than during a search—Act, s 679(1)**

The following information about a thing seized other than during a search must be included in the register of enforcement acts—

- (a) the name of the person from whom the thing was seized, if known;
- (b) when and where the thing was seized;
- (c) the reason the thing was seized;
- (d) a description of the thing seized;
- (e) information about the return, destruction or disposal of the thing.

#### **52 Directions given—Act, s 679(1)**

The following information about a direction given to a person under section 48 of the Act must be included in the register of enforcement acts—

- (a) when the direction was given;
- (b) the location of the person when given the direction;
- (c) the name of the person given the direction, if known;
- (d) the reason the direction was given;

- (e) the apparent demographic category of the person.

**53 Exclusions of support persons from questioning—Act, s 679(1)**

The following information about a support person excluded from questioning under the Act, chapter 15, part 3, division 5 must be included in the register of enforcement acts—

- (a) the person's name;
- (b) when and why the person was excluded;
- (c) whether an electronic record was made of the reason for the exclusion and if not, why not;
- (d) if questioning resumed after the person's exclusion—when questioning resumed;
- (e) if another support person was present during questioning when questioning resumed—that person's name.

**Division 2 Register of covert acts**

**54 Monitoring orders and suspension orders—Act, s 666(3)**

- (1) The following information about an application for a monitoring order or suspension order must be recorded in the register of covert acts—
  - (a) when and where the application for the order was made;
  - (b) the name of the financial institution mentioned in the application;
  - (c) the name of the person in relation to whom the application was made;
  - (d) whether or not the order was issued.
- (2) If the order was issued, the following information about the order must also be included in the register—

- 
- (a) the type of information the financial institution was required to give under the order;
  - (b) how long the order was in force;
  - (c) the benefits derived from the order, including, for example—
    - (i) any proceeding started; and
    - (ii) a brief description of how the order helped in—
      - (A) the investigation of the suspected confiscation offence or serious crime related activity; or
      - (B) identifying, locating or quantifying the suspected serious crime derived property in relation to which the order was issued.

## **Part 8**

# **Responsibilities relating to dealing with things in the possession of police service**

### **55 Receipt for seized property**

A receipt given under section 622 of the Act for a thing seized must include the following—

- (a) the date and time the thing was seized;
- (b) if the thing was taken from a person—the name, address and telephone contact number of the person, if known;
- (c) if the thing was taken from an occupied place—the name, address and telephone contact number of the occupier of the place, if known;
- (d) a description of the thing seized;
- (e) the name, rank, station and telephone contact number of the police officer who seized the thing;

- (f) where the thing will be taken, if known;
- (g) the date the receipt is issued.

## **56 Functions of property officer**

- (1) A property officer has the following functions in relation to things seized under the Act—
  - (a) to receive a thing seized by a police officer under the Act;
  - (b) to keep records of a thing received at the property point or by the property officer, including—
    - (i) the date the thing was received; and
    - (ii) the particulars of the police officer who seized the thing; and
    - (iii) a description of the thing seized; and
    - (iv) if it is removed from the property officer's custody—when and why it left the property officer's custody and when it was returned;
  - (c) to ensure the safe and secure storage at the property point of the thing seized;
  - (d) if appropriate, to transfer or arrange the transfer of the thing seized to—
    - (i) another property point for its safe and secure storage; or
    - (ii) another place for destruction or disposal; or
    - (iii) a declared agency;
  - (e) if required under the Act or any other Act—to destroy or dispose of the thing seized in the way decided by the commissioner;
  - (f) if the thing is money other than money that must be retained so it can be used as an exhibit in a court—depositing the money in a financial institution account operated by the police service.

- 
- (2) Also, as soon as reasonably practicable after the property officer receives a seized thing, the property officer must ensure the thing is capable of being easily identified.

*Example for subsection (2)—*

The thing may have attached to it a label or tag with a number or other identifier identical to the number or identifier the property officer has assigned to the thing in the record.

## **57 Order after property seized**

An application under section 694 or 695 of the Act for an order relating to a seized thing must state the following—

- (a) the applicant's name, rank, registered number and station;
- (b) a description of the thing;
- (c) the circumstances of the seizure, including, for example, if the thing was seized under a search warrant;
- (d) relevant information about the thing, including, for example, the following—
  - (i) the nature of any interest a person has in the thing;
  - (ii) the approximate value of the thing;
  - (iii) whether the thing may be needed as evidence in a proceeding and the type of offence or forfeiture proceeding for which it may be evidence;
- (e) the order sought;
- (f) the reasons for seeking the order.

## Schedule 10 Dictionary

### section 2

***Austrac*** means the Australian Transaction Reports and Analysis Centre under the *Financial Transaction Reports Act 1988* (Cwlth).

***crime scene index*** see section 5.

***ICAC*** means the Independent Commission Against Corruption under the *Independent Commission Against Corruption Act 1988* (NSW).

***missing persons index*** see section 6.

***New South Wales Crime Commission*** means the New South Wales Crime Commission under the *Crime Commission Act 2012* (NSW).

***Police Integrity Commission*** means the Police Integrity Commission under the *Police Integrity Commission Act 1996* (NSW).

***serious offenders index*** see section 7.

***statistical index*** see section 12.

***suspects index*** see section 8.

***unknown deceased persons index*** see section 9.

***volunteers (limited purpose) index*** see section 10.

***volunteers (unlimited purpose) index*** see section 11.



## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the *Reprints Act 1992*, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 November 2013. Future amendments of the *Police Powers and Responsibilities Regulation 2012* 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 version
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 2012
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

A new reprint of the legislation is prepared by the Office of the Queensland Parliamentary Counsel each time a change to the legislation takes effect.

The notes column for this reprint gives details of any discretionary editorial powers under the *Reprints Act 1992* used by the Office of the Queensland Parliamentary Counsel in preparing it. Section 5(c) and (d) of the Act are not mentioned as they contain mandatory requirements that all amendments be included and all necessary consequential amendments be incorporated, whether of punctuation, numbering or another kind. Further details of the use of any discretionary editorial power noted in the table can be obtained by contacting the Office of the Queensland Parliamentary Counsel by telephone on 3237 0466 or email [legislation.queries@oqpc.qld.gov.au](mailto:legislation.queries@oqpc.qld.gov.au).

From 29 January 2013, all Queensland reprints are dated and authorised by the Parliamentary Counsel. The previous numbering system and distinctions between printed and electronic reprints is not continued with the relevant details for historical reprints included in this table.

Reprint No.	Amendments included	Effective	Notes
1	none	21 December 2012	

Current as at	Amendments included	Notes
1 November 2013	2013 SL No. 201	

## 5 List of legislation

### *Regulatory impact statements*

For subordinate legislation that has a regulatory impact statement, specific reference to the statement is included in this list.

### *Explanatory notes*

All subordinate legislation made on or after 1 January 2011 has an explanatory note.

### **Police Powers and Responsibilities Regulation 2012 SL No. 251**

made by the Governor in Council on 20 December 2012

notfd gaz 21 December 2012 pp 599–602

commenced on date of notification

exp 1 September 2023 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

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**Police Powers and Responsibilities and Another Regulation Amendment Regulation  
(No. 1) 2013 SL No. 201 pts 1–2**

notfd <www.legislation.qld.gov.au> 18 October 2013

ss 1–2 commenced on date of notification

remaining provisions commenced 1 November 2013 (see s 2)

## 6 List of annotations

### **PART 4—DIRECTING TRAFFIC**

**pt hdg** amd 2013 SL No. 201 s 4

### **PART 4A—IMPOUNDING AND IMMOBILISING MOTOR VEHICLES**

**pt hdg** ins 2013 SL No. 201 s 5

### **Division 1—Prescribed type 2 vehicle related offences**

**div hdg** ins 2013 SL No. 201 s 5

### **Division 2—Impounding and immobilising notices**

**div hdg** ins 2013 SL No. 201 s 6

### **Application of div 2**

**s 20** sub 2013 SL No. 201 s 6

### **Impounding notices**

**s 20A** ins 2013 SL No. 201 s 6

### **Impounding notices for particular type 1 vehicle related offences**

**s 20B** ins 2013 SL No. 201 s 6

### **Impounding notices for particular type 2 vehicle related offences**

**s 20C** ins 2013 SL No. 201 s 6

### **Immobilising notices**

**s 20D** ins 2013 SL No. 201 s 6

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