



# **Police Service Administration Act 1990**

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## Queensland

# Police Service Administration Act 1990

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# Police Service Administration Act 1990

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

### Part 1 Preliminary

#### 1.1 Short title

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

#### 1.2 Commencement

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

#### 1.3 Objects

The objects of this Act are to provide for the following—

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

#### 1.4 Definitions

In this Act—

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

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

**approved agency**—

- (a) for part 10, division 1A—see section 10.2G; or
- (b) for part 10, division 1B—see section 10.2S.

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

**approved information**, for part 10, division 1A, see section 10.2G.

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

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

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

**child-related employment screening**, for part 10, division 1B, see section 10.2S.

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

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

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

**condition**, for part 10, division 1A, see section 10.2G.

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

**conviction**, for a provision of part 5AA or part 10, division 1B, means a finding of guilt, or the acceptance of a plea of guilty, by a court for an offence—

- (a) whether or not a conviction is recorded; and

- (b) whether in Queensland or elsewhere; and
- (c) whether before or after the commencement of the provision.

**corrupt conduct** see the *Crime and Corruption Act 2001*, section 15.

**criminal history**, of a person—

- (a) for part 5AA and the schedule—see section 5AA.1A; or
- (b) for part 10, division 1, subdivision 2—see section 10.2AA; or
- (c) for part 10, division 1A—see section 10.2G; or
- (d) for part 10, division 1B—see section 10.2S.

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

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

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

**declared agency** see the *Police Powers and Responsibilities Act 2000*, schedule 6.

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

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

**disciplinary declaration**—

- (a) for a disciplinary declaration made under a public sector disciplinary law, means—
  - (i) a disciplinary declaration made under—
    - (A) section 7A.2(2); or
    - (B) the *Public Service Act 2008*, section 188A(6); or
    - (C) the *Misconduct Tribunals Act 1997* or QCAT Act; or
  - (ii) a declaration under another public sector disciplinary law that states the disciplinary action

that would have been taken against the person if the person's employment had not ended; or

- (b) otherwise, means a disciplinary declaration made under section 7A.2(2).

***disciplinary finding*** means a finding that a disciplinary ground exists.

***disciplinary ground*** means a ground for disciplinary action prescribed under a regulation.

***end user***, for part 10, division 1A, see section 10.2G.

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

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

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

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

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

***face matching services***, for part 10, division 1AA, see section 10.2FA.

***former officer***, for part 7A and any reference to a disciplinary declaration, see section 7A.1(1)(b).

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

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

***head***, for part 10, division 1A, see section 10.2G.

**host agency**, for an identity matching service, for part 10, division 1AA, see section 10.2FA.

**identity document**, for part 10, division 1AA, see section 10.2FA.

**identity information**, for part 10, division 1AA, see section 10.2FA.

**identity matching services**, for part 10, division 1AA, see section 10.2FA.

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

**industrial instrument** means an industrial instrument under the *Industrial Relations Act 2016*.

**information**, for part 10, division 1AA, see section 10.2FA.

**interstate screening unit**, for part 10, division 1B, see section 10.2S.

**IPSP**, for part 10, division 1A, see section 10.2G.

**law enforcement agency**, for part 10, division 1A, see section 10.2G.

**law enforcement purpose**, for part 10, division 1A, see section 10.2G.

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

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

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

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

**member**, for part 10, division 1A, see section 10.2G.

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

**MINDA**, for part 10, division 1A, see section 10.2G.

**misconduct** means conduct that—

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

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

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

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

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

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

***participating entity***, in relation to an identity matching service, for part 10, division 1AA, see section 10.2FA.

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

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

*Example—*

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

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

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

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

***policing purpose***, for part 10, division 1A, see section 10.2G.

***prescribed responsibility*** means the responsibility of the commissioner under section 4.8(1).

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



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**PSBA** means the Public Safety Business Agency established under the *Public Safety Business Agency Act 2014*.

**PSBA chief operating officer** means the chief operating officer of the PSBA.

**PSBA employee**—

- (a) means a person employed in the PSBA; but
- (b) does not include a seconded officer.

**public sector disciplinary law** means—

- (a) this Act or any repealed Act regulating police; or
- (b) the *Public Service Act 2008* or any repealed Act regulating the public service; or
- (c) the *Misconduct Tribunals Act 1997* or QCAT Act; or
- (d) a disciplinary provision of an industrial instrument under the *Industrial Relations Act 2016*; or
- (e) another Act prescribed under a regulation.

**public service employee** see the *Public Service Act 2008*, schedule 4.

**QPS database** means any of the following—

- (a) the database known as QPRIME;
- (b) the register of enforcement acts kept under the *Police Powers and Responsibilities Act 2000*;
- (c) another database kept by or on behalf of the commissioner.

**Queensland Transport** means the department in which the *Transport Operations (Road Use Management) Act 1995* is administered.

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

**recruit** means a police recruit.

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

*relevant person*, for part 5A, see section 5A.3.

*relevant PSBA employee*, for part 5A, see section 5A.2.

*seconded officer* means an officer—

- (a) on a secondment from the service to the PSBA under section 5.13C(1)(a); or
- (b) performing work for the PSBA under a work performance arrangement under section 5.13C(1)(b).

*service* means the police service.

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

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

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

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

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

*use*, for part 10, division 1A, see section 10.2G.

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

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

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

## 1.6 Notes in text

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

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## **Part 2**                      **Queensland Police Service**

### **2.1**      **Maintenance of service**

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

### **2.2**      **Membership of service**

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

### **2.3**      **Functions of service**

The functions of the police service are the following—

- (a) the preservation of peace and good order—
  - (i) in all areas of the State; and
  - (ii) in all areas outside the State where the laws of the State may lawfully be applied, when occasion demands;
- (b) the protection of all communities in the State and all members thereof—
  - (i) from unlawful disruption of peace and good order that results, or is likely to result, from—

- (A) actions of criminal offenders;
- (B) actions or omissions of other persons;
- (ii) from commission of offences against the law generally;
- (c) the prevention of crime;
- (d) the detection of offenders and bringing of offenders to justice;
- (e) the upholding of the law generally;
- (f) the administration, in a responsible, fair and efficient manner and subject to due process of law and directions of the commissioner, of—
  - (i) the provisions of the Criminal Code;
  - (ii) the provisions of all other Acts or laws for the time being committed to the responsibility of the service;
  - (iii) the powers, duties and discretions prescribed for officers by any Act;
- (g) the provision of the services, and the rendering of help reasonably sought, in an emergency or otherwise, as are—
  - (i) required of officers under any Act or law or the reasonable expectations of the community; or
  - (ii) reasonably sought of officers by members of the community.

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

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

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*fire authority officer* means a fire service officer under the *Fire and Emergency Services Act 1990*.

*incident* means—

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

## **2.4 Community responsibility preserved**

- (1) The prescription of any function as one of the functions of the police service does not relieve or derogate from the responsibility and functions appropriately had by the community at large and the members thereof in relation to—
  - (a) the preservation of peace and good order; and
  - (b) the prevention, detection and punishment of breaches of the law.
- (2) In performance of the functions of the police service, members of the service are to act in partnership with the community at large to the extent compatible with efficient and proper performance of those functions.

## **2.5 Administration of staff members**

- (1) Staff members are—
  - (a) officers of the public service assigned to perform duties in the police service; and
  - (b) persons appointed as staff members by the commissioner under—
    - (i) section 8.3(5); or
    - (ii) the *Public Service Act 2008*, chapter 5, part 5.
- (2) While performing duties in the service, a staff member is subject to the commissioner's directions.

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

The following persons are to be employed under this Act, and not under the *Public Service Act 2008*—

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

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

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

In this part—

*officer* includes a special constable.

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

- (1) Subject to section 7.1 where it applies, in performance of the duties of office, an officer is subject to the directions and orders of the commissioner and to the orders of any superior officer.
- (2) A noncommissioned officer or a constable has and may exercise the powers, and has and is to perform the duties of a constable at common law or under any other Act or law.
- (3) An officer other than one referred to in subsection (2) has and may exercise the powers of a constable at common law or under any other Act or law.
- (4) Except as prescribed by this section and section 6.4, this Act does not, in relation to any officer, derogate from the powers, obligations and liabilities of a constable at common law or under any other Act or law.

### **3.3 Oath of office**

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

### **3.4 Proof of office**

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

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

### **3.7 Termination of powers**

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

## **Part 4 Commissioner of the Queensland Police Service**

### **4.1 Establishment of office**

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

### **4.2 Appointment**

- (1) The Governor in Council may, on a recommendation agreed to by the chairperson of the Crime and Corruption

Commission, appoint an appropriate person as commissioner of the police service.

- (2) The appointment is to be made by gazette notice.

### **4.3 Conditions of appointment**

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

### **4.4 Term of appointment**

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



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## 4.5 Removal and suspension of commissioner

- (1) The office of the commissioner becomes vacant if the commissioner—
  - (a) dies; or
  - (b) resigns the office by writing signed by the commissioner and accepted by the Governor in Council; or
  - (c) is removed from office in accordance with this section.
- (2) The commissioner may be removed from office pursuant to the contract that governs the commissioner's employment or if the commissioner has breached the contract of employment.
- (3) Additional grounds on which the commissioner may be removed from office are the following—
  - (a) incapacity, because of physical or mental infirmity, to properly perform the duties of office, or other unfitness to hold office;
  - (b) incompetence in performing, or neglect of the duties of office;
  - (c) a finding by QCAT of corrupt conduct being proved against the commissioner if QCAT orders the commissioner's dismissal;
  - (d) conviction in the State of an indictable offence (whether on indictment or summarily);
  - (e) imprisonment for any offence.
- (4) If 1 or more of the grounds prescribed by subsection (3) exists, the commissioner may be removed from office by—
  - (a) the Governor in Council, on a recommendation in which the chairperson of the Crime and Corruption Commission concurs; or
  - (b) in default of exercise of the authority conferred by paragraph (a), the Governor, on an address from the Legislative Assembly praying for the commissioner's removal from office.

- (5) If satisfied that 1 or more of the grounds prescribed by subsection (3) exists, or that the commissioner is charged with corrupt conduct or an offence referred to in subsection (3)(d), the Governor in Council may suspend the commissioner from office.
- (6) If the commissioner is suspended from office, the commissioner is entitled to be reinstated in office, unless, upon action taken forthwith following the suspension and pursued diligently to its conclusion, the commissioner is removed from office in accordance with subsection (4).

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

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

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## 4.7 Recording and publication of communications

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

## 4.8 Commissioner's responsibility

- (1) The commissioner is responsible for the efficient and proper administration, management and functioning of the police service in accordance with law.
- (2) Without limiting subsection (1), a regulation may prescribe—

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- (a) particular matters within the scope of the prescribed responsibility; or
  - (b) additional responsibilities of the commissioner.
- (3) The commissioner is authorised to do, or cause to be done, all such lawful acts and things as the commissioner considers to be necessary or convenient for the efficient and proper discharge of the prescribed responsibility.
- (4) In discharging the prescribed responsibility, the commissioner—
- (a) is to comply with all relevant industrial instruments and determinations and rules made by an industrial authority; and
  - (b) subject to this Act, is to ensure compliance with the requirements of all Acts and laws binding on members of the police service, and directions of the commissioner; and
  - (c) is to have regard to section 4.6 and ministerial directions duly given thereunder; and
  - (d) is to discharge the responsibility in relation to such matters as are prescribed for the time being.

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

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

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

#### 4.10 Delegation

- (1) The commissioner may delegate powers of the commissioner under this Act or any other Act to any of the following—
- (a) a police officer;
  - (b) a staff member;
  - (c) the PSBA chief operating officer;
  - (d) the Inspector-General of Emergency Management under the *Disaster Management Act 2003*;
  - (e) the commissioner of the Queensland Fire and Emergency Service;
  - (f) an appropriately qualified person employed in—
    - (i) the PSBA; or
    - (ii) the Office of the Inspector-General of Emergency Management under the *Disaster Management Act 2003*; or
    - (iii) the Queensland Fire and Emergency Service.

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- (2) Without limiting subsection (1), the commissioner may also, under subsection (1), delegate powers of the commissioner to discharge the prescribed responsibility.
- (3) A delegation of a power of the commissioner may permit the subdelegation of the power to another person mentioned in subsection (1).
- (4) Proof of a delegation by the commissioner under subsection (1) is not required in a proceeding unless the defendant gives the entity responsible for prosecuting the proceeding a notice of intention to challenge the delegation at least 10 business days before the hearing date.
- (5) The notice must be in the approved form.

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

- (1) The Minister may appoint an appropriate person to act as commissioner—
  - (a) whenever there is a vacancy in the office of commissioner; or
  - (b) during a period when the commissioner is suspended from office or can not perform the duties of office because of physical or mental incapacity.
- (2) The commissioner may appoint an appropriate person to act as commissioner during another period when the commissioner is absent from duty or can not perform the duties of the office.
- (3) The remuneration payable to a person who acts as commissioner must not be more than the remuneration payable to the commissioner.

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

- (1) The commissioner has an official seal.
- (2) All courts and persons acting judicially are to take judicial notice of the following—

- (a) the signature of the commissioner or any person who at any time was the commissioner;
  - (b) the fact that the commissioner has, or any such person had, an official seal;
  - (c) the official seal of the commissioner or any such person;
- if the signature or seal appears on a document made for the purposes of judicial proceedings or on a document purporting, or seeming, to have been made for the purposes of this Act.

## **Part 5                      Appointment of personnel**

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

#### **5.1      Ranks**

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

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

- (1) In this section—  
*transfer* of a police officer to a position means the appointment of a police officer to a position in which the police officer will hold the same rank and be entitled to at least the same level of salary.
- (2) A decision to appoint a person as a police recruit or to a police officer position must be made by fair and equitable procedures that—
  - (a) include inviting applications and selection on the basis of the merit of applicants; and
  - (b) prevent unjust discrimination, whether in favour of or against a person.

- (3) However, if a decision is made to transfer a police officer on a basis prescribed by regulation, the decision need not involve the procedures mentioned in subsection (2)(a).
- (4) Written notice to a police officer of a transfer because of a decision under subsection (3) must specify the prescribed basis used for the transfer.
- (5) For the purposes of this section merit of an officer comprises—
  - (a) the integrity, diligence and good conduct of the officer; and
  - (b) the potential of the officer to discharge the duties of the position in question; and
  - (c) the industry shown by the officer in performance of the duties of office in the course of the officer's career; and
  - (d) the physical and mental fitness of the officer to perform the duties of the position in question.
- (6) For the purpose of determining the potential of an officer to discharge the duties of a position the following factors must be taken into account—
  - (a) the performance of duties of office in the course of the officer's career;
  - (b) the range of practical experience of the officer in the service or outside the service;
  - (c) the ability, aptitude, skill, knowledge and experience determined by the commissioner to be necessary for the proper performance of the duties of the position in question;
  - (d) any relevant academic, professional or trade qualifications of the officer.



### **5.3 Executive officers**

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

### **5.4 Conditions of employment**

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

## **5.5 Acting as executive officer**

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

## **5.6 Other appointments**

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

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

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

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

## **5.8 Acting as commissioned officer**

- (1) The commissioner may appoint an appropriate person to act as a commissioned officer during—

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

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

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

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

- (1) If an officer who holds a position in the service on a contract basis or for a limited duration of tenure ceases to hold the position because—
  - (a) the contract or tenure has expired and has not been renewed; or
  - (b) the contract or tenure is terminated otherwise than by reason of—
    - (i) the officer's resignation from the service or retirement from the service; or
    - (ii) disciplinary action against the officer;

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

- (2) The requirements referred to in subsection (1) are—
  - (a) the employment in the service before acceptance of the position referred to in subsection (1) must have been on a tenure not limited by time;
  - (b) the employment in the service before acceptance of the position referred to in subsection (1) must have been, or be taken to have been, continuous.
- (3) If a person makes an election under subsection (1), the commissioner may appoint the person at a rank determined by the commissioner—being a rank not lower than that at which the person was employed in the service immediately before the person first accepted employment in the position referred to in subsection (1), or a rank prescribed for the time being to be equivalent to that rank.
- (4) If a person makes an election under subsection (1), the person thereby renounces all entitlements secured to the person by the contract of employment in the event of its termination as referred to in subsection (1).
- (5) An election made under subsection (1)—

- (a) must be made in writing signed by the elector and given to the commissioner within 14 days following—
    - (i) expiry of the contract or tenure in question; or
    - (ii) notice of termination of the contract or tenure being given to the holder of the position in question; and
  - (b) when duly made, has the effect that the elector's service as an officer is taken not to have been terminated by the expiry or termination of the contract or tenure in question, but to have continued in accordance with the foregoing provisions of this section.
- (6) If the regulations prescribe requirements to be met, if service as an officer is to be taken as continuous, service of an officer referred to in this section is not continuous unless it accords with the requirements of the regulations, and subsection (5)(b) has operation subject to this subsection.

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

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

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

### **5.12 Appointment on probation**

- (1) This section does not apply in relation to an appointment as an officer made on a contract basis.
- (2) An appointment as an officer of a person who was not an officer immediately before the appointment is an appointment on probation—
  - (a) for a period not less than 12 months determined by the commissioner; or
  - (b) in the absence of such a determination, for a period of 12 months.
- (3) Unless the position as an officer is advertised in the Queensland Police Gazette as one to which appointment is to be made without a period of probation, an appointment of an officer to a position on promotion is an appointment on probation—
  - (a) for a period not less than 6 months determined by the commissioner; or
  - (b) in the absence of such a determination—for a period of 6 months.
- (4) The commissioner may—
  - (a) in respect of an appointee referred to in subsection (2)—
    - (i) at any time during the initial period of probation or during any extension of a period of probation, terminate the employment of the appointee; or
    - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate the employment of the appointee; or
  - (b) in respect of an appointee referred to in subsection (3) whose appointment is on probation—

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- (i) at any time during the initial period of probation or during any extension of a period of probation, terminate that appointment; or
  - (ii) at the end of any period of probation, confirm the appointment, extend or further extend the period of probation or terminate that appointment.
- (5) If an appointment is terminated under subsection (4)(b), the person who was the appointee is to be retained in employment as an officer at a level of salary not less than the level of salary of the person immediately before the appointment that is terminated until—
  - (a) the person is appointed to another position in the service; or
  - (b) the person is otherwise dealt with under this Act.

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

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

#### **5.13A Objection to transfer**

- (1) If a police officer is transferred to a position without applying for the transfer, the officer may object to the transfer by giving the commissioner written reasons for the objection within 14 days of receiving written notice of the transfer.
- (2) The commissioner may allow or reject the objection.
- (3) If the commissioner allows the objection, the transfer stops having effect.
- (4) If the commissioner rejects the objection, the commissioner must give the officer written reasons for the rejection.



- (5) This section—
- (a) does not limit the right of an officer to apply to a commissioner for police service reviews for a review of the transfer (a *transfer review*); but
  - (b) does limit the right of an officer to object to a transfer under this section once the officer has applied for a transfer review.
- (6) If an officer objects to a transfer under this section, the time allowed by regulation for an application for a transfer review does not start to be counted until the day the commissioner gives the officer written reasons under subsection (4).
- (7) If an officer applies for a transfer review, the officer can not start or proceed further with an objection under this section.

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

- (1) If a police officer is transferred to a position, the commissioner can not direct the officer to attend for duty in the position until—
- (a) after the time allowed for an objection under section 5.13A(1) has ended; and
  - (b) if the officer objects to the transfer—the commissioner decides the objection.
- (2) If—
- (a) the officer objects to the transfer under section 5.13; and
  - (b) the commissioner rejects the objection;
- the commissioner can not direct the police officer to attend for duty until after the time allowed by regulation for an application to a commissioner for police service reviews for a review of the transfer has ended.
- (3) Despite section 9.2, if the officer applies to a commissioner for police service reviews for a review of the transfer, the commissioner can not direct the officer to attend for duty—

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- (a) if the officer then withdraws the application—until at least 14 days after the withdrawal; or
  - (b) if the officer does not withdraw the application and the commissioner decides under section 9.5 to proceed with the transfer—until at least 14 days after the day the officer receives written notice of the commissioner’s decision.
- (4) This section does not limit the commissioner’s powers to direct an officer to attend for duty in a position in circumstances the commissioner considers are urgent.

### **5.13C Secondment etc. of officers to PSBA**

- (1) The commissioner may enter into an arrangement with the PSBA chief operating officer—
- (a) for the services of an officer to be made available to the PSBA (a *secondment*); or
  - (b) under which an officer performs work for the PSBA (a *work performance arrangement*).

*Note—*

For a secondment of, or work performance arrangement for, a person appointed to a position under section 8.3(5), see section 8.3(6A).

- (2) An officer on secondment to the PSBA, or providing services or performing work for the PSBA under a work performance arrangement—
- (a) is subject to the direction and control of the PSBA chief operating officer to the extent the officer is providing services or performing work for the PSBA; but
  - (b) otherwise continues to be an officer for all purposes and to have the functions, powers and responsibilities of an officer.

### **5.14 Calculation of continuous service as officer**

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

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

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

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

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

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

- (a) to be an employee of the Crown; and
- (b) to be within the application of the *Industrial Relations Act 2016* to employees of the Crown as provided by that Act.

### **5.16 Special constables**

- (1) The commissioner may, in writing, appoint on such terms and conditions as the commissioner thinks fit such number of persons to be special constables as, in the commissioner's opinion, is necessary for the effectual administration of this Act and the efficient and proper discharge of the prescribed responsibility.
- (2) A special constable—

[s 5.17]

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

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

- (1) This section applies if the commissioner reasonably believes—
- (a) a terrorist act has been committed or there is an imminent threat of a terrorist act; and
  - (b) the help of a non-State police officer is urgently needed to enable the Queensland Police Service to continue to perform its functions effectively while responding to the terrorist act or threat; and
  - (c) it is impracticable in the circumstances to appoint the officer as a special constable.
- (2) The commissioner may authorise the non-State police officer to exercise the powers of a police officer under the *Police Powers and Responsibilities Act 2000* (the ***Police Act***).
- (3) The authorisation must name the non-State police officer.
- (4) The authorisation—
- (a) may be limited to stated powers; and
  - (b) may be limited to a stated time; and
  - (c) may be given on conditions.

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

- (a) the nature of the act or threat;
  - (b) the number of non-State police officers authorised and the police force or service of which they were members;
  - (c) when the authorisations started and ended;
  - (d) the functions performed by the officers;
  - (e) the results of the authorisations, including benefits and problems.
- (16) This section does not purport to confer a duty on a federal police officer to perform a function, or to exercise a power, if the conferral of the duty would be beyond the legislative power of the Parliament of the State.

- (17) In this section—

*authorisation power* means the power to give or revoke an authorisation under this section.

*federal police officer* means a member of the Australian Federal Police.

*non-State police officer* means a police officer of a police force or service of another State or a federal police officer.

*State police officer* means a police officer of the Queensland Police Service.

*terrorist act* see the *Police Powers and Responsibilities Act 2000*, section 211.

## Division 2                      Watch-house officers

### 5.18      Appointment of watch-house officers

- (1) This section applies if the commissioner proposes to appoint a person who is or is to become a staff member to be a watch-house officer.
- (2) The commissioner may appoint the person only if the commissioner is satisfied the person has appropriate

qualifications and experience for performing the functions of a watch-house officer.

- (3) A person has appropriate qualities and experience for appointment as a watch-house officer only if the commissioner is satisfied the person—
- (a) has completed a course of training approved by the commissioner for the purpose; or
  - (b) possesses appropriate qualifications, standing and experience for performing the functions of a watch-house officer.

*Note—*

Staff members are appointed under the *Public Service Act 2008* or section 8.3(5) and are not police officers. Also, this section does not affect the powers of the commissioner to appoint watch-house managers. For the definition *watch-house manager*, see the *Police Powers and Responsibilities Act 2000*, schedule 6.

## **Part 5A                      Alcohol and drug tests**

### **Division 1                      General**

#### **5A.1    Object of pt 5A**

The objects of this part are—

- (a) to ensure appropriate steps are taken in the interests of the health and welfare of relevant persons; and
- (b) to enhance the public's confidence in the service and the integrity of the service in which relevant persons, including persons who are not members of the service, perform functions associated with, or ancillary to, the functions of the service.

#### **5A.2    Definitions for pt 5A**

In this part—

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

***analyst*** means a person who, under section 5A.4A, is appointed as an analyst.

***authorised person*** means—

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



- (ii) otherwise—the assistant commissioner or a commissioned officer who holds rank above the rank of the person to be tested.

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

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

**critical incident** means—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

***relevant PSBA employee*** means a PSBA employee whose duties include performing functions—

- (a) in a critical area; or

(b) prescribed by regulation.

**targeted substance** means—

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

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

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

- (1) This part, other than to the extent specified in section 5A.21A, applies only to a person (**relevant person**) who is—
  - (a) an officer, whether or not the officer is a seconded officer; or
  - (b) a staff member whose duties include performing functions in a critical area; or
  - (c) a watch-house officer; or
  - (d) a police radio and electronics technician; or
  - (e) a recruit; or
  - (f) a relevant PSBA employee.
- (2) However, for subsection (1)(b) and (f), if the critical area in which the functions are performed is a driver training facility, this part applies to the staff member or relevant PSBA employee only if the member or employee is a driver, instructor or mechanic at the facility.

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

This part applies only in relation to the following substances—

- (a) alcohol;
- (b) a dangerous drug;

[s 5A.4A]

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

### 5A.4A Analysts

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

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

This part does not affect the commissioner's powers under section 8.3.

## Division 2 Provisions about alcohol testing

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

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

- (a) a specified number of grams of alcohol in 210L of breath; or
- (b) a specified number of grams in 210L.

*Example for subsection (2)—*

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

### **5A.7 Alcohol limits**

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

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

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

- (a) the person has been involved in a critical incident; or
- (b) the test is authorised under section 5A.9; or
- (c) an authorised person reasonably suspects the person is contravening or has contravened section 5A.7; or

- (d) for an officer who is an applicant to become an operative, the person is required to undergo a medical examination for deciding the person's suitability to be an operative.

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

- (1) An authorised person may require a relevant person to submit to a random alcohol test.
- (2) However, an authorised person other than the commissioner or deputy commissioner may require the relevant person to submit to the test—
  - (a) only with the written approval of the commissioner or deputy commissioner; or
  - (b) only if the test is conducted in accordance with criteria prescribed under a regulation for conducting random alcohol tests without the approval of the commissioner or deputy commissioner.
- (3) For subsection (2)(b), a regulation may prescribe the criteria for deciding—
  - (a) when and where a random alcohol test may be conducted; and
  - (b) when a random alcohol test may be conducted without the approval of the commissioner or deputy commissioner.
- (4) Also, the commissioner or deputy commissioner may, in writing, exempt a relevant person or class of relevant person from random alcohol testing, either generally or in particular circumstances.

*Examples—*

- 1 The relevant person may be an operative.
- 2 The relevant person may be required to consume alcohol at a hotel when keeping a person suspected of engaging in criminal activities under surveillance.

- (5) The power to approve random alcohol testing under this section can not be delegated.

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

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

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

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

## **Division 3 Provisions about drug testing**

### **5A.12 Targeted substance levels**

- (1) A relevant person must not have evidence of a dangerous drug present in the person's urine at any time.
- (2) A relevant person, who is lawfully taking a targeted substance mentioned in section 5A.4(c) or (d), must not perform duties

in or involving an operational capacity or critical area if the substance impairs the person's capacity to perform the duties without danger to the person or someone else.

- (3) A relevant person must not have present in the person's urine—
  - (a) evidence of a targeted substance mentioned in section 5A.4(c) that the person may not lawfully take; or
  - (b) evidence of having taken a targeted substance mentioned in section 5A.4(c) or (d) in a way contrary to a direction of a doctor or a recommendation of the manufacturer of the substance.

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

- (1) An authorised person may require a relevant person to submit to a targeted substance test if—
  - (a) the relevant person—
    - (i) has been involved in a critical incident; or
    - (ii) is an operative; or
    - (iii) is an officer who is an applicant to become an operative and is required to undergo a medical examination or test for deciding the person's suitability to be a covert operative; or
  - (b) an authorised person reasonably suspects the relevant person is contravening or has contravened section 5A.12.
- (2) Also, an authorised person may require a person who has been notified of the person's appointment as a recruit to submit to a targeted substance test before the person starts the training necessary to become an officer.

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

- (1) An authorised person may require a relevant person to provide a specimen of urine to a doctor or registered nurse for a



targeted substance test at a place and time specified by the authorised person.

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

**registered nurse** means a person registered under the Health Practitioner Regulation National Law—

  - (a) to practise in the nursing and midwifery profession as a nurse, other than as a student; and
  - (b) in the registered nurses division of that profession.

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

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

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

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

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

- (f) take disciplinary or other action against the relevant person under whichever of the following is relevant—
  - (i) this Act;
  - (ii) the *Public Service Act 2008*;
- (g) require the relevant person to submit to further testing from time to time until the commissioner is satisfied the reason for making the requirement no longer exists.

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

action that may be taken under section 6.1

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

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

- (1) This section applies if a relevant person—
  - (a) fails to attend or complete counselling or rehabilitation under a requirement under section 5A.16(2)(c); or
  - (b) fails to attend a government medical officer for medical examination under a requirement under section 5A.16(2)(d).
- (2) The commissioner may take disciplinary action against the person under whichever of the following is relevant—
  - (a) this Act;
  - (b) the *Public Service Act 2008*.

## **Division 5                      General**

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

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

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

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

Maximum penalty—100 penalty units.

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

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

- (a) a proceeding for a charge of an offence arising from a critical incident; or
  - (b) an inquest in a Coroners Court into the death of a person in a critical incident; or
  - (c) a proceeding on an application under the *Industrial Relations Act 2016*, section 317 for reinstatement because of unfair dismissal.
- (5) Also, this section does not prevent the commissioner giving a witness identity protection certificate under the *Evidence Act 1977*, section 21F that includes matters mentioned in section 21G(1)(h) of that Act in relation to a person who has been found guilty of misconduct or a breach of discipline because of the testing of the person under this part.

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

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

- (a) at a stated time a stated officer performed duties in an operational capacity in a critical area;
- (b) at a stated time a stated staff member performed duties involving a critical area.

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

- (1) Any member of the service, whether or not the member is a relevant person or a seconded officer, and any relevant PSBA employee may make a written request to the prescribed person for the provision of counselling or rehabilitation about the member's or employee's personal use of alcohol or a drug.
- (2) If a prescribed person receives a request under subsection (1), the prescribed person must forward the written request to the member or employee who may enter into an agreement for providing counselling or rehabilitation.
- (3) If the request is from a member of the service, the commissioner may enter into an agreement to provide to the member the counselling or rehabilitation approved by the commissioner.
- (4) If the request is from a relevant PSBA employee, the PSBA chief operating officer may enter into an agreement to provide to the employee the counselling or rehabilitation approved by the PSBA chief operating officer.
- (5) The commissioner or the PSBA chief operating officer must not use information disclosed by a member or employee under this section for the purposes of disciplinary or other action against the member or employee under this Act or the *Public Service Act 2008*.
- (6) Also, the commissioner or the PSBA chief operating officer must not disclose information in the possession of the commissioner or PSBA chief operating officer because of a request or agreement made under this section other than—
  - (a) for the purposes of the agreement; or
  - (b) to the extent the commissioner or PSBA chief operating officer considers reasonably necessary to prevent or

lessen a serious threat to the public or to health or safety of the member or employee who disclosed the information; or

- (c) for the purposes of a claim for compensation under the *Workers' Compensation and Rehabilitation Act 2003*; or
  - (d) if the information relates to a member who is an officer—for the purposes of section 6.1(1)(c) or 8.3.
- (7) A regulation may prescribe the matters that must be included in an agreement under this section.
- (8) In this section—

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

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

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

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

### **Division 1                      Preliminary**

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

The purpose of this part is to ensure the commissioner—

- (a) may gather all the relevant information the commissioner needs about a person engaged or seeking to be engaged by the service; and
- (b) may use the information to assess the person's suitability to be, or continue to be, engaged by the service.

### **5AA.1A Definition for pt 5AA**

In this part—

*criminal history*, of a person—

- (a) means the person's convictions in relation to offences committed in Queensland or elsewhere; and
- (b) includes information about offences of any kind alleged to have been committed, in Queensland or elsewhere, by the person.

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

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

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

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

- (a) a police officer;
- (b) a staff member;



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

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

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

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

- (1) Before a person, other than a PSBA employee or an external service provider, is engaged by the service, the commissioner must, if the commissioner considers the terms of the engagement require it—
  - (a) tell the person—
    - (i) of the person's duty to disclose relevant information under division 2; and
    - (ii) that the commissioner may obtain and consider relevant information about the person under divisions 3 and 4; and
  - (b) give the person a copy of the guidelines for dealing with relevant information obtained by the commissioner under this part.
- (2) Subsections (3) and (4) apply if—
  - (a) the PSBA chief operating officer (a *relevant CEO*) is intending to employ a person in the PSBA; or

- (b) the chief executive officer (also a *relevant CEO*) of another entity becomes aware a person employed or engaged by the entity is an external service provider.
- (3) The relevant CEO must—
- (a) tell the person—
    - (i) the person is or, if employed, will be engaged by the service for this part; and
    - (ii) of the person's duty to disclose relevant information under division 2; and
    - (iii) that the commissioner may—
      - (A) obtain and consider relevant information about the person under divisions 3 and 4; and
      - (B) disclose relevant information to the relevant CEO under division 4; and
  - (b) give the person a copy of the guidelines issued by the commissioner for dealing with relevant information obtained by the commissioner under this part.
- (4) The information required to be given to the person under subsection (3) must be given—
- (a) if the relevant CEO is the PSBA chief executive—before the person is employed by the PSBA; or
  - (b) otherwise—as soon as practicable after the relevant CEO becomes aware the person is an external service provider.

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

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

- (1) Each of the following must, if required by the commissioner, disclose to the commissioner any relevant information known to the person that may affect the person's suitability to be engaged by the service—

- (a) a person engaged by the service;
  - (b) a person seeking to be engaged by the service.
- (2) A person required to disclose information under subsection (1)(b) must disclose the information before being engaged by the service.

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

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

*Note—*

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

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

- (1) To comply with section 5AA.6 or 5AA.7, a person must give the commissioner a disclosure in the approved form.
- (2) Without limiting subsection (1), the approved form must make provision for the disclosure of the following relevant information—
  - (a) the existence of a conviction or charge;
  - (b) when an offence was committed or alleged to have been committed;
  - (c) details of an offence or alleged offence;
  - (d) for a conviction—whether or not a conviction was recorded and other details of the sentence;
  - (e) disciplinary action under a public sector disciplinary law involving—
    - (i) termination of employment; or
    - (ii) reduction of classification level or rank; or

- (iii) transfer or redeployment to other employment; or
- (iv) reduction of remuneration level; or
- (v) a disciplinary declaration that states a disciplinary action mentioned in subparagraph (i) or (ii) as the disciplinary action that would have been taken against the person if the person's employment had not ended.

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

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

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

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

- (1) This section applies if a person is charged with an indictable offence and the director of public prosecutions is aware that the person is engaged by the service.

- (2) The director of public prosecutions must give the commissioner written notice of the person's name and the following particulars within 7 days after the director of public prosecutions becomes aware of the particulars—
- (a) if the person is committed by a court for trial for an indictable offence—
    - (i) the court committing the person for trial; and
    - (ii) particulars of the offence with which the person is charged; and
    - (iii) the date of the committal; and
    - (iv) the court to which the person was committed;
  - (b) if the person is convicted before the Supreme Court or the District Court of an indictable offence—
    - (i) the court convicting the person; and
    - (ii) particulars of the offence; and
    - (iii) the date of the conviction; and
    - (iv) the sentence imposed by the court;
  - (c) if the person is convicted of an indictable offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended—
    - (i) particulars of the offence of which the person is convicted; and
    - (ii) the date the appeal was decided or otherwise ended; and
    - (iii) if the appeal was decided—
      - (A) the court in which it was decided; and
      - (B) particulars of the decision;
  - (d) if the prosecution process ends without the person being convicted of an indictable offence—
    - (i) if relevant—the court in which the prosecution process ended; and

- (ii) particulars of the offence with which the person was charged; and
  - (iii) the date the prosecution process ended.
- (3) For subsection (2)(d), a prosecution process ends if—
  - (a) an indictment is presented against the person and—
    - (i) a nolle prosequi is entered on the indictment; or
    - (ii) the person is acquitted; or
  - (b) the prosecution process has otherwise ended.
- (4) A reference in this section to a conviction of an indictable offence includes a summary conviction of an indictable offence.
- (5) Subsection (1) does not apply if the person is charged by a police officer.
- (6) Subsection (2)(a) does not apply if the prosecutor appearing is a police officer.
- (7) Subsection (2)(d) does not apply if the prosecution process ends while a police officer is in charge of the prosecution.

### **5AA.10A Information about disciplinary action to be given by chief executive**

- (1) This section applies if—
  - (a) the commissioner asks the chief executive of another department (the *chief executive*) for disciplinary information the chief executive has about a person who is or was a public service employee; and
  - (b) the information is reasonably necessary for the commissioner to make a decision about the suitability of the person to be engaged, or continue to be engaged, as a member of the service.
- (2) The other chief executive must give the disciplinary information to the commissioner unless the other chief executive is reasonably satisfied that giving the information

may prejudice the investigation of a contravention or possible contravention of the law in a particular case.

(3) In this section—

*disciplinary information*, in relation to a request made of a chief executive about a person, means information about the following made or taken against the person under a public sector disciplinary law by the chief executive or another entity—

- (a) a current investigation into whether the person should be disciplined;
- (b) a finding that the person should be disciplined;
- (c) possible disciplinary action under consideration;
- (d) disciplinary action, including a disciplinary declaration.

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

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

- (1) This section applies to the commissioner in considering relevant information about a person under this part.
- (2) When making the assessment, the commissioner may have regard to all relevant information available to the commissioner, including, but not limited to—
  - (a) information that is disclosed to the commissioner under this part; and
  - (b) information that is made available by a declared agency or a law enforcement agency of another country because of a request made under this part; and
  - (ba) disciplinary information given to the commissioner by a chief executive of another department under section 5AA.10A; and

- (c) information that is stored on—
  - (i) a database kept by the commissioner; or
  - (ii) a database kept by another law enforcement agency to which the commissioner has access; and
- (d) information that is otherwise available to the commissioner.

*Examples for subsection (2)—*

- 1 information obtained from previous employment checks
  - 2 fingerprint checks
  - 3 DNA tests
- (3) In addition, information obtained under this part may be taken into account in deciding a question of merit under a merit provision.
  - (4) Subsection (3) is in addition to and does not limit a merit provision.
  - (5) In this section—

***merit provision*** means—

    - (a) section 5.2; or
    - (b) the *Public Service Act 2008*, chapter 1, part 4.

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

- (1) If, because of information relied on by the commissioner under this part, the commissioner considers a person, other than a PSBA employee or an external service provider, may not be suitable to be, or continue to be, engaged by the service, the commissioner must, before deciding the person is not suitable—
  - (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the commissioner about the information.



- (2) The commissioner must give reasons why the commissioner considers the person may not be suitable to be, or continue to be, engaged by the service unless the commissioner considers the disclosure of the information may—
  - (a) prejudice the investigation of a contravention or possible contravention of the law; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (f) prejudice national security; or
  - (g) be prohibited under a law of this or any other State or the Commonwealth.
- (3) If, after considering any representations made under subsection (1)(b), the commissioner decides the person is not suitable to be, or continue to be, engaged by the service, the commissioner must give the person a written notice stating that the person is not suitable to be, or continue to be, engaged by the service.
- (4) Information relied on under this section to decide that a person is not suitable to be engaged by the service can not be used for any other purpose, unless its disclosure is authorised under section 5AA.14(3).

### **5AA.13 PSBA employee or external service provider to be advised if person unsuitable**

- (1) If, because of information relied on by the commissioner under this part, the commissioner considers a person who is a

PSBA employee or an external service provider may not be suitable to be, or continue to be, engaged by the service, the commissioner must, before deciding the person is not suitable—

- (a) disclose the information to the person and the chief executive officer of the relevant entity; and
  - (b) allow the person and the chief executive officer a reasonable opportunity to make representations to the commissioner about the information; and
  - (c) allow the person a reasonable opportunity to make representations to the commissioner about any representations made to the commissioner by the chief executive officer.
- (2) The commissioner must give reasons why the commissioner considers the person may not be suitable to be, or continue to be, engaged by the service unless the commissioner considers the disclosure of the information may—
- (a) prejudice the investigation of a contravention or possible contravention of the law; or
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or
  - (c) endanger a person's life or physical safety; or
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or
  - (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or
  - (f) prejudice national security; or
  - (g) be prohibited under a law of this or any other State or the Commonwealth.
- (3) If, after considering any representations made under subsection (1)(b) or (c), the commissioner decides the person

is not suitable to be, or continue to be, engaged by the service, the commissioner must give the person and the chief executive officer of the relevant entity a written notice stating that the person is not suitable to be, or continue to be, engaged by the service.

- (4) If the person is already employed or engaged by the entity, the chief executive officer must—
  - (a) have regard to the commissioner’s decision that the person is not suitable to be engaged by the police service and the reasons for the decision; and
  - (b) consider whether appropriate steps may be taken to minimise—
    - (i) the potential adverse effects of the assessment; and
    - (ii) the person’s access to information in the possession of the commissioner; and
  - (c) advise the commissioner of the chief executive officer’s decision.
- (5) If the commissioner considers the steps taken do not adequately minimise the person’s access to information in the possession of the commissioner, the commissioner may ask the chairperson of the Crime and Corruption Commission to review the chief executive officer’s decision.
- (6) A review conducted under this section—
  - (a) must be conducted in private; and
  - (b) must be conducted in the way decided by the chairperson; and
  - (c) if the chairperson considers it appropriate, may be conducted on the papers, without hearing submissions from any person; and
  - (d) is not a hearing or investigation of a kind the chairperson may hold under the *Crime and Corruption Act 2001*.
- (7) The chairperson’s decision on the review—

- (a) is final and conclusive; and
  - (b) can not be challenged, appealed against, reviewed, quashed, set aside, or called in question in another way, under the *Judicial Review Act 1991* (whether by the Supreme Court, another court, a tribunal or another entity); and
  - (c) is not subject to any writ or order of the Supreme Court, another court, a tribunal or another entity on any ground.
- (8) Information disclosed to the chief executive officer of the entity under subsection (3) must not be disclosed to a member of a selection panel or to anyone else, unless this or another Act permits or requires the disclosure.

### **5AA.14 Secrecy**

- (1) This section applies to a person who—
- (a) is, or has been—
    - (i) a person engaged by the service; or
    - (ii) a selection panel member; and
  - (b) in that capacity acquired relevant information about someone else.
- (2) The person must not disclose the information to anyone else.  
Maximum penalty—100 penalty units or 2 years imprisonment.
- (3) Subsection (2) does not apply to the disclosure of information about a person, if—
- (a) the disclosure—
    - (i) is to a police officer, a public service employee in the service, or a selection panel member, for the purpose of assessing the person's suitability to be, or continue to be, engaged by the service; or
    - (ii) is with the person's consent; or

- (iii) is of information that is relevant to an existing investigation of an offence; or
- (iv) is for a proceeding started because of an investigation mentioned in subparagraph (iii); or
- (v) is information the person may disclose to a person who is entitled to ask for it under another Act; or

*Example for subparagraph (v)—*

*Public Service Act 2008, section 188B*

- (b) the information discloses evidence of the commission or suspected commission of an offence and an investigation is started or facilitated because of the information.
- (4) Also, a person involved in any way in anything done under this part can not be compelled to produce to a court any document kept, or to disclose to a court any information obtained, because of the doing of the thing.
- (5) Other than to the extent the *Police Powers and Responsibilities Act 2000*, section 803 applies to the document or information, subsection (4) does not affect the operation of the *Judicial Review Act 1991*.
- (6) In this section—

***disclose***, in relation to information about a person, includes give access to information about a person.

***selection panel member*** means a member of a panel formed to make a recommendation to the commissioner about a person's engagement by the service.

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

- (1) The commissioner must make guidelines, consistent with this part, for dealing with relevant information obtained by the commissioner under this part.
- (2) The purpose of the guidelines is to ensure—

[s 6.1]

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

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

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

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

- (e) suspend the officer from duty.
- (2) The commissioner may at any time revoke a standing down or suspension imposed under subsection (1).

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

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

## **6.3 Salary entitlement if suspended**

- (1) An officer suspended from duty under section 6.1 is entitled to be paid salary and allowances at the rate at which the officer would have received salary and allowances had the suspension not occurred, unless the commissioner otherwise determines in a particular case.
- (1A) Except that an officer suspended under section 6.1(1)(c) is to be entitled to the salary and allowances to which that officer was previously entitled.
- (2) An officer suspended from duty who is not entitled to be paid salary during the suspension—
  - (a) may receive and retain salary, wages, fees or other remuneration from any lawful source during the suspension, unless the commissioner otherwise determines in a particular case; and
  - (b) if the officer resumes duty as an officer on the revocation of the suspension—is entitled to receive a sum equivalent to the amount of salary and allowances the officer would have received had the suspension not occurred, reduced by a sum equivalent to the amount of salary, wages, fees and other remuneration to which the officer became entitled from any other source during the suspension, unless the commissioner otherwise determines in a particular case.

[s 6.4]

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- (3) An officer suspended from duty without salary who enters into employment whereby the officer will become entitled to salary, wages, fees or other remuneration is to inform the commissioner immediately of the particulars of the employment.
- (4) An officer suspended from duty who during the suspension becomes entitled to salary, wages, fees or other remuneration from a source incompatible with assessment of the officer as a fit and proper person to be an officer and who fails to satisfy the commissioner that there are reasonable grounds for not dismissing the officer, may be dismissed from the service.

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

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

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

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

### **7.1 Responsibility for command**

- (1) At any incident—
  - (a) that calls for action by police; and



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

## 7.2 Duty concerning misconduct or breaches of discipline

- (1) In this section—
- conduct* means conduct of an officer, wherever and whenever occurring, whether the officer whose conduct is in question is on or off duty at the time the conduct occurs.
- officer* includes a police recruit.
- (2) If any officer or staff member—
- (a) knows or reasonably suspects that conduct to which this section refers has occurred; or
  - (b) is one in respect of whom it can be reasonably concluded that the officer or staff member knew or reasonably suspected that conduct to which this section refers has occurred;
- it is the duty—
- (c) of the officer or staff member, in the case of conduct that is misconduct, to report the occurrence of the conduct, as soon as is practicable, to the commissioner and to the chairperson of the Crime and Corruption Commission; and

- (d) of the officer, in the case of conduct that is misconduct or a breach of discipline, to take all action prescribed by the regulations as action—
  - (i) to be taken in the circumstances of the case; and
  - (ii) to be within the authority of an officer of the rank or description to which that officer belongs.
- (3) The commissioner may, by written instrument, exempt stated officers or staff members who have or are likely to have knowledge of conduct that is an alleged contravention of the *Anti-Discrimination Act 1991* from compliance with subsection (2), generally or on stated conditions.
- (4) The commissioner may give an exemption under subsection (3) only if the commissioner is reasonably satisfied giving the exemption will not adversely affect the welfare of the officers or staff members affected by or involved in the conduct.
- (5) However, if a person is given an exemption generally because the person is likely to have knowledge of an alleged contravention of the *Anti-Discrimination Act 1991* and the person is the person against whom the complaint for the contravention is made, the exemption does not operate in relation to the complaint against the person.
- (6) Also, the commissioner may, by written instrument, exempt an officer or staff member from compliance with subsection (2), generally or on stated conditions, if the officer or staff member—
  - (a) is appointed to provide confidential counselling services to officers and staff members; or
  - (b) is a prescribed person under section 5A.21A.
- (7) An exemption under subsection (6) only operates while the officer or staff member is providing professional counselling services in an official capacity.
- (8) If a person is not required to report misconduct under subsection (2) because of an exemption under subsection (3),

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the commissioner also is not required to report the misconduct.

### 7.3 Offence of victimisation

A person who—

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

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

Maximum penalty—100 penalty units.

### 7.4 Disciplinary action

- (1) In this section—

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

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

*QCAT information notice* means a notice complying with the QCAT Act, section 157(2).

- (2) An officer is liable to disciplinary action in respect of the officer's conduct, which the prescribed officer considers to be misconduct or a breach of discipline on such grounds as are prescribed by the regulations.
- (2A) If the prescribed officer—

[s 7A.1]

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- (a) decides an allegation of misconduct brought against the officer; or
- (b) when deciding an allegation of breach of discipline brought against the officer, finds that misconduct is proved against the officer;

the commissioner must give a QCAT information notice to the officer and the Crime and Corruption Commission for the decision or finding within 14 days after the making of the decision or finding.

- (3) Without limiting the range of disciplines that may be imposed by the prescribed officer by way of disciplinary action, such disciplines may consist of the following—
  - (a) dismissal;
  - (b) demotion in rank;
  - (c) reprimand;
  - (d) reduction in an officer's level of salary;
  - (e) forfeiture or deferment of a salary increment or increase;
  - (f) deduction from an officer's salary payment of a sum equivalent to a fine of 2 penalty units.
- (4) Every order made by way of disciplinary action takes effect in law and is to be given effect.
- (5) To remove any doubt, it is declared that a reference in the QCAT Act, section 157(2) to a decision includes a reference to a finding.

## **Part 7A                                  Disciplinary declarations   against former officers**

### **7A.1   Power to conduct disciplinary investigation against a           former officer**

- (1) This section applies if—

- (a) a disciplinary ground arises in relation to a police officer; and
  - (b) after the disciplinary ground arises the employment of the person (the *former officer*) as a police officer ends for any reason.
- (2) A disciplinary ground arises when the conduct constituting the ground happens.
- (3) The commissioner may continue or start an investigation to decide whether the former officer is liable to disciplinary action in relation to the former officer's conduct at any time when he or she was a police officer.

*Note—*

Under section 4.10 the commissioner may delegate powers under this part.

- (4) The investigation and disciplinary action must be taken within a period of 2 years after the end of the former officer's employment mentioned in subsection (1)(b).
- (5) However, subsection (4) does not stop disciplinary action being taken following an appeal or review.
- (6) Subsection (4) does not affect—
- (a) an investigation of a suspected criminal offence; or
  - (b) an investigation of a matter for the purpose of notifying the Crime and Corruption Commission of suspected corrupt conduct under the *Crime and Corruption Act 2001*.
- (7) In deciding whether to continue or start a disciplinary investigation the commissioner may have regard to the matters the commissioner reasonably considers to be relevant including matters prescribed under a regulation.

## **7A.2 Disciplinary action that may be taken against a former officer**

- (1) The commissioner may make a disciplinary finding and take disciplinary action against the former officer.

[s 7A.3]

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- (2) In disciplining the former officer, the commissioner may make a disciplinary declaration and may not take any other disciplinary action.
- (3) The commissioner may only make a disciplinary declaration if the disciplinary action that would have been taken against the former officer if the former officer's employment had not ended would have been—
  - (a) termination of employment; or
  - (b) reduction of rank.
- (4) The making of a disciplinary declaration against a former officer does not affect the way in which the former officer's employment ends, or any benefits, rights or liabilities arising because the employment ends.
- (5) In this section—

*disciplinary declaration* means a declaration of—

  - (a) a disciplinary finding against the former officer; and
  - (b) the disciplinary action that would have been taken against the officer under section 7.4(3) if the former officer's employment had not ended.

### **7A.3 Procedure**

- (1) Before making a disciplinary declaration against a former officer, the commissioner must do 1 or both of the following—
  - (a) give the former officer a notice in relation to the disciplinary ground asking the former officer to respond in writing within 28 days;
  - (b) hold a disciplinary hearing in relation to the disciplinary ground after giving the former officer a notice asking the former officer to attend the hearing.
- (2) A notice under subsection (1) must be in the form approved by the commissioner and include a statement of the disciplinary ground alleged.

- (3) A notice under subsection (1)(b) must be given at least 28 days before the hearing.
- (4) The commissioner may take disciplinary action against the former officer after complying with subsection (1) whether or not the former officer responds in writing to the commissioner's notice or attends the disciplinary hearing.

#### **7A.4 Commissioner to notify former officer of decision**

- (1) This section applies if—
  - (a) the commissioner makes a disciplinary declaration against a former officer; or
  - (b) otherwise makes a decision in relation to the disciplinary matter after giving notice under section 7A.3.
- (2) The commissioner must give written notice of the disciplinary declaration or decision to the former officer.
- (3) The notice must be—
  - (a) if the allegation is of misconduct or there is a finding of misconduct—a QCAT information notice; or
  - (b) otherwise—in a form approved by the commissioner.

#### **7A.5 Notice of misconduct finding to Crime and Corruption Commission**

- (1) This section applies if the commissioner—
  - (a) decides an allegation of misconduct brought against a former officer; or
  - (b) when deciding an allegation of a breach of discipline brought against a former officer, finds the former officer is guilty of misconduct.
- (2) The commissioner must give a QCAT information notice for the decision, including any disciplinary declaration made against the officer, to the Crime and Corruption Commission within 14 days after making the decision.

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

### **8.1        Resignation**

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

### **8.2        Retirement**

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

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

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

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



performing the duties of office, or any other duties as an officer that the commissioner might reasonably direct the officer to perform, the commissioner is to advise the officer, in writing, of the suspicion and if upon receipt of such advice the officer does not accept the truth of the commissioner's suspicion, the commissioner is to obtain medical opinion on the matter.

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

[s 9.1]

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commissioner's powers in relation to the officer, the commissioner may—

- (a) in writing, appoint the officer to a position as a staff member, at a rate of salary not less than that of the officer immediately before such appointment; and
  - (b) direct the officer to report for and perform duty in the position to which the officer is so appointed.
- (6) The person appointed to a position under subsection (5) thereby ceases to be an officer and is relieved of all powers and duties of a constable at common law or under any Act or law.
- (6A) To remove any doubt, it is declared that the following arrangements between the commissioner and the PSBA chief operating officer must be made under the *Public Service Act 2008* and not under this Act—
- (a) an arrangement for the services of a person appointed to a position under subsection (5) to be made available to the PSBA;
  - (b) an arrangement under which a person appointed to a position under subsection (5) performs work for the PSBA.
- (7) In subsections (3) and (4)—
- prescribed authority*** means—
- (a) the Governor in Council, in respect of an officer appointed to office by the Governor in Council;
  - (b) the commissioner, in respect of an officer appointed to office by the commissioner.

## Part 9 Review of decisions

### 9.1 Operation of part

This part does not confer an entitlement to seek a review under this part, of a decision of a description referred to in

section 9.3 on a person who has a right to seek a review of the decision in question under the *Crime and Corruption Act 2001*, section 219G.

### **9.1A Relationship with Industrial Relations Act 2016**

The Industrial Court and the Industrial Relations Commission do not have jurisdiction in relation to a matter that has been, is being, or may be reviewed under this part even though it may be, or be about, or arise out of, an industrial matter within the meaning of the *Industrial Relations Act 2016*.

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

An application for review of a decision under this part—

- (a) does not affect the operation and effect of the decision pending disposal of the application; and
- (b) does not have the effect of deferring the liability of the applicant to implementation of the decision.

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

- (1) A person is a commissioner for police service reviews—
  - (a) if the person is nominated under subsection (2)(a)—without further appointment; or
  - (b) if the person is nominated under subsection (2)(b) to (d)—on appointment by the Governor in Council under subsection (3).
- (2) The chairperson of the Crime and Corruption Commission may nominate any of the following persons to be a commissioner for police service reviews—
  - (a) a commissioner or former commissioner of the Crime and Corruption Commission;
  - (b) a former member of the Criminal Justice Commission;

- (c) a person qualified for appointment as chairperson of the Crime and Corruption Commission;
  - (d) a person who has community service experience, or experience of community standards and expectations, relating to public sector officials and public sector administration.
- (3) The Governor in Council may appoint as a commissioner for police service reviews a person who—
- (a) is nominated for appointment under subsection (2)(b) to (d); and
  - (b) is not an ineligible person under the *Crime and Corruption Act 2001*.
- (4) The person's appointment must be notified by gazette notice.
- (5) The appointment is for the term, not longer than 3 years, and on the conditions, including conditions of remuneration, stated in the instrument of appointment.
- (6) More than 1 person may hold office as a commissioner for police service reviews at any time.

### **9.3 Application for review**

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

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

- (1A) An application for the review of a decision mentioned in subsection (1)(a) may only be made by a person who properly applied for appointment to the position concerned and was unsuccessful.
- (1B) An application for the review of a decision mentioned in subsection (1)(b) may only be made by a police officer who was transferred to the position concerned without applying for the transfer.
- (1C) Also, a former officer who is aggrieved by a disciplinary declaration made against the former officer under section 7A.2(2) for a breach of discipline may apply to have the disciplinary decision reviewed by a commissioner for police service reviews.
- (2) An application for review of a decision that relates to action for breach of discipline may seek the review in respect of—
  - (a) the decision that such action should be taken; or
  - (b) the nature of the discipline imposed;or both, and a review may be conducted accordingly.
- (3) Authority is hereby conferred on a commissioner for police service reviews—
  - (a) to hear and consider all applications for review under this part duly made;
  - (b) to make recommendations relating to any matters relevant to a review under this part.

## **9.4 Procedures**

- (1) An application for review under this part must be made as prescribed by the regulations or, where the regulations do not make any or sufficient provision, in accordance with directions of a commissioner for police service reviews.

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

## **9.5 Result of review**

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

## **9.6 Effect of rescission of decision**

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

## **9.7 Protection of commissioners for police service reviews from liability**

- (1) This section applies to each of the following persons (each a *protected person*)—
  - (a) a commissioner for police service reviews;

- (b) a person acting under the direction of a commissioner for police service reviews;
  - (c) a person who was a person of a type mentioned in paragraph (a) or (b) at the time the person engaged in conduct in an official capacity.
- (2) A protected person does not incur civil liability for engaging, or for the result of engaging, in conduct in an official capacity.
- (3) If subsection (2) prevents liability attaching to a protected person, the liability attaches instead to the State.
- (4) If liability attaches to the State under subsection (3), the State may recover contribution from the protected person but only if the conduct was engaged in—
- (a) other than in good faith; and
  - (b) with gross negligence.
- (5) In a proceeding under subsection (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) In this section—
- civil liability***, of a protected person for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the protected person because of—
- (a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or
  - (b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or
  - (c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or

result, unless the proceeding was for an offence by the protected person.

*Examples of types of liability—*

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to rectify damage to a building or to publish an apology in a newspaper

***conduct*** means an act or an omission to perform an act.

***engage in conduct in an official capacity*** means engage in conduct as part of, or otherwise in connection with, a person's role as a protected person, including, for example, engaging in conduct under or purportedly under this Act.

## 9.8 Other protection from liability for a review

- (1) A person does not incur civil liability for engaging, or for the result of engaging, in any of the following conduct in good faith and without negligence—
  - (a) applying for or otherwise being involved in a review of a decision under this part;
  - (b) giving oral, written or other matter to a commissioner for police service reviews, or a person acting at the direction of a commissioner for police service reviews, for a review of a decision under this part.
- (2) In this section—

***civil claim***, in relation to conduct or the result of engaging in conduct—

- (a) means a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation; and
- (b) for a fatal injury, includes a claim for the deceased's dependants or estate.



*civil liability*, in relation to a person, means liability of any type for the payment of an amount by the person because of a civil claim.

## Part 9A Police prints

### 9A.1 Payment for prints

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

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

### 9A.2 Entitlement to prints

- (1) This section applies if the State or a police officer performing the police officer's duties tenders a print as an exhibit in a proceeding before a court or tribunal.
- (2) A person who satisfies the person who has custody of the print that the person requires a print identical to the print tendered for a prescribed purpose is entitled to a print identical to the print tendered.

*Note—*

See section 9A.4.

- (3) This section does not entitle a person to a print the person requires for a proceeding started in a court or tribunal because of something alleged to have been done or not done by a police officer or a State employee in the performance of his or her duties, unless a print identical to the print required has been tendered as an exhibit in the proceeding.

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

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

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

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

- (a) to answer a charge of an offence, the subject matter of or arising out of a proceeding in which a print identical to the print required is an exhibit;
- (b) for a proceeding started in a court or tribunal, whether it is the proceeding in which a print identical to the print required is an exhibit or another proceeding;

- (c) for deciding whether to start a proceeding in a court or tribunal or to make a particular claim in the proceeding;
- (d) for deciding whether to defend a proceeding that may be started in a court or tribunal or to make or resist a particular claim in the proceeding.

## **Part 10                      Miscellaneous provisions**

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

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

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

- (1) Any officer or staff member or person who has been an officer or a staff member who, except for the purposes of the police service, discloses information that—
  - (a) has come to the knowledge of, or has been confirmed by, the officer or staff member or person through exercise, performance or use of any power, authority, duty or access had by the officer or staff member or person because of employment in the service; or
  - (b) has come to the knowledge of the officer or staff member or person because of employment in the service;commits an offence against this Act, unless—
  - (c) the disclosure is authorised or permitted under this or another Act; or
  - (d) the information is about a person offered an opportunity to attend a drug diversion assessment program under the *Police Powers and Responsibilities Act 2000*, section 379 and the disclosure is made to the chief executive of

the department within which the *Health Act 1937* is administered; or

- (e) the disclosure is made under due process of law; or
- (f) the information is not of a confidential or privileged nature; or
- (g) the information would normally be made available to any member of the public on request.

Maximum penalty—100 penalty units.

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

## **10.2 Authorisation of disclosure**

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

Maximum penalty—40 penalty units.

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

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

### 10.2AA Definitions for sdiv 2

In this subdivision—

*criminal history* has the meaning given by the *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 3.

*relevant agency* means the ACC or the police force or service of another jurisdiction.

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

- (1) This section applies in relation to the disclosure of the criminal history of a person (*relevant person*) if—
  - (a) the disclosure is to be made to a relevant agency; and
  - (b) the purpose of the disclosure is to facilitate the release of the relevant person's criminal history by the relevant agency to someone else (the *third party*) under an arrangement; and
  - (c) the arrangement provides for the use of the relevant person's criminal history only for employment screening purposes.
- (2) The commissioner may disclose the relevant person's criminal history to the relevant agency as a function of the service.
- (3) However, the commissioner may disclose the relevant person's criminal history to the relevant agency for disclosure to the third party only with the person's written consent and only if the commissioner is satisfied the disclosure—
  - (a) is for a national criminal history check for employment screening purposes under a service provided by the relevant agency; and
  - (b) is, or is likely to be, of benefit to the community or a section of the community.

(4) In this section—

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

*employment* includes engagement on a voluntary basis.

### **10.2BA Disclosure of criminal history to assess suitability of records for s 10.2A purposes**

(1) For the purpose of enabling disclosure under section 10.2A, the commissioner may disclose a person's criminal history to a relevant agency if—

(a) the criminal history has been given to the ACC under section 10.2I; and

(b) the disclosure is for the purpose of assessing the suitability of records for release under section 10.2A.

(2) To remove any doubt, it is declared that there is no requirement to comply with section 10.2A(3) before the commissioner can disclose a person's criminal history under subsection (1).

(3) In this section—

*criminal history* has the meaning given by section 10.2G.

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

(1) This section applies for helping a person (the *decision-maker*) decide whether another person is suitable to take part in a diversion program.

(2) The commissioner may, for the purpose of assessing the person's suitability for the program and with the person's written consent, disclose the person's criminal history to the chief executive officer of the entity responsible for assessing the person's suitability.

(3) The commissioner may disclose the person's criminal history as a function of the service and the relevant chief executive

officer may use the information for the purpose of the assessment and, if required, in any report given to a decision-maker on the person's suitability.

(4) In this section—

***diversion program*** means a government-sponsored program for diverting alleged offenders from court proceedings that is prescribed under a regulation under this Act or a regulation under the *Bail Act 1980*, section 11(9).

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

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

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

Maximum penalty—100 penalty units.

- (3) Subsection (4) applies in relation to a disclosure of information made to a relevant agency under section 10.2BA.
- (4) The relevant agency must not use the information for a purpose other than the purpose for which the information is disclosed.

Maximum penalty—100 penalty units.

## **Subdivision 2A Disclosure provisions about disciplinary information**

### **10.2CA Information about disciplinary action to be given by commissioner**

- (1) This section applies if—
  - (a) the chief executive of a department asks the commissioner for disciplinary information the commissioner has about a person who is or was a member of the service; and
  - (b) the information is reasonably necessary for the chief executive to make a decision about an appointment or continued employment of the person to the chief executive's department.
- (2) The commissioner must give the disciplinary information to the chief executive unless the commissioner is reasonably satisfied that giving the information may prejudice the investigation of a suspected contravention of the law in a particular case.
- (3) In this section—

***disciplinary information***, in relation to a request made of the commissioner about a person who is or was a member of the service, includes the following made or taken against the person—

  - (a) a disciplinary finding;
  - (b) disciplinary action, including a disciplinary declaration.



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## Subdivision 3 Information disclosure by direct data feed

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

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

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

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

- (1) To remove any doubt, it is declared that this division is subject to any other Act that—
  - (a) requires or permits the commissioner to disclose information in the possession of the service about a person; or
  - (b) prevents or restricts the commissioner from disclosing information in the possession of the service about a person.
- (2) However, subsection (1)(b) does not apply to a disclosure made to a relevant agency under section 10.2BA.

### **10.2F Declarations about particular information disclosures**

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

## **Division 1AA      National identity matching services**

### **10.2FA Definitions for division**

In this division—

*face matching services* means the following services involving facial biometric matching—

- (a) the service (known as the face verification service) enabling the comparison of a facial image associated with an individual against a facial image held on a

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specific government record associated with the individual to verify the individual's identity;

- (b) the service (known as the face identification service) enabling the comparison of a facial image against multiple images held on a database of government records to establish an individual's identity;
- (c) the service (known as the one person one licence service) enabling the comparison of an individual's facial image against other facial images used on driver licences and other identity documents to identify whether the individual holds multiple licences, in the same or a different identity, in 1 or more jurisdictions.

**host agency**, for an identity matching service, means the Commonwealth agency responsible for maintaining the service under an agreement between the Commonwealth and the States.

**identity document** means a document that—

- (a) contains or incorporates identity information; and
- (b) is capable of being used as evidence of identity.

**identity information** means information relating to an individual, whether living, dead, real or fictitious, that is capable of being used, alone or in conjunction with other information, to identify or purportedly identify the individual.

*Examples—*

- a photo of, or other information about, an individual on a drivers licence, passport or other identity document
- other information about an individual submitted to verify the individual's identity

**identity matching services** means the following services administered by the Commonwealth under an agreement entered into by the Commonwealth and the States—

- (a) the service (known as the document verification service) enabling biographical information on identity documents to be verified against corresponding records held by a participating entity for the service;

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- (b) the service (known as the identity data sharing service) enabling the sharing of identity information between the Commonwealth and the States to ensure the accuracy and integrity of identity-based records;
- (c) the face matching services;
- (d) any other service prescribed by regulation, to the extent the operation of the service relates only to a permitted purpose within the meaning of section 10.2FF(2).

*information* includes a document.

*participating entity*, in relation to an identity matching service, means an entity—

- (a) participating in the service; and
- (b) with whom the commissioner has entered into an agreement in relation to the use of the service.

### **10.2FB Division binds all persons**

This division binds all persons, including the State and, to the extent the legislative power of the Parliament permits, the Commonwealth and the other States.

### **10.2FC Disclosure of identity information by commissioner**

For a purpose related to the operation of an identity matching service, the commissioner may disclose identity information lawfully in the commissioner's possession to—

- (a) the host agency for the service; or
- (b) a participating entity for the service.

### **10.2FD Collection and use of identity information by commissioner**

The commissioner may collect and use identity information, by the operation of an identity matching service, from—

- (a) the host agency for the service; or

- (b) a participating entity for the service.

### **10.2FE Collection, use and disclosure by host agency**

The host agency may, for a purpose related to the operation of an identity matching service—

- (a) collect or use identity information disclosed to it under this division; or
- (b) disclose the identity information to the commissioner or a participating entity for the service.

### **10.2FF Disclosure, use or collection must be for permitted purpose**

- (1) Despite sections 10.2FC, 10.2FD and 10.2FE, identity information may be disclosed, collected or used under this division only for a permitted purpose.
- (2) Each of the following purposes is a *permitted purpose*—
- (a) preventing, detecting, investigating or prosecuting crimes involving fabricated, manipulated, stolen or otherwise assumed identities;
- (b) preventing, detecting, investigating or prosecuting other offences against Commonwealth or State laws;
- (c) conducting investigations or gathering intelligence for purposes related to national security within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004* (Cwlth);
- (d) promoting the security of a participating entity's assets, facilities or personnel;

*Examples—*

- protecting and managing legally assumed identities
  - security or background checking
- (e) identifying individuals who are at risk of, or have experienced, physical harm;

*Examples—*

- investigating individuals reported as missing
  - identifying individuals reported as dead, or unidentified human remains
  - identifying individuals when addressing significant risks to public health or safety
  - identifying individuals in relation to disaster events or major events
- (f) improving road safety, including the detection of unlicensed and disqualified drivers and individuals who hold multiple licences;
- (g) verifying an individual's identity with the individual's consent or as authorised or required by law.

## **10.2FG Inconsistency with other laws**

To the extent this division is inconsistent with another law, this division prevails to the extent of the inconsistency.

## **Division 1A            Provisions about exchange of                                   policing information**

### **Subdivision 1        Preliminary**

#### **10.2G Definitions for div 1A**

In this division—

***approved agency*** means an entity established under the law of the Commonwealth or a State prescribed under a regulation as an approved agency.

***approved information*** means information in a QPS database of a kind that is prescribed under a regulation.

***condition*** includes prohibition or restriction.

***criminal history***, of a person—

- (a) means the person's convictions in relation to offences committed in Queensland or elsewhere; and
- (b) includes information about—
  - (i) offences of any kind alleged to have been committed, in Queensland or elsewhere, by the person; and
  - (ii) cautions administered to the person under the *Youth Justice Act 1992*, part 2, division 2; and
  - (iii) referrals of offences to the chief executive of the department in which the *Youth Justice Act 1992* is administered for restorative justice processes under that Act.

***end user*** means the following entities—

- (a) an approved agency;
- (b) a law enforcement agency;
- (c) a police force or service of the Commonwealth or another State.

***head***, of an entity, means—

- (a) for an approved agency or a law enforcement agency—the chief executive officer of the agency; or
- (b) for an IPSP—the chief executive officer of the IPSP; or
- (c) for a police force or service of the Commonwealth or another State—the commissioner of the police force or service; or
- (d) for Queensland Transport—the chief executive of Queensland Transport; or
- (e) for any other entity established under the law of the Commonwealth or a State—the chief executive officer of the entity.

***IPSP*** means—

- (a) the ACC; or

- (b) an entity established under the law of the Commonwealth or a State prescribed under a regulation as an information processing service provider.

***law enforcement agency*** means an entity established under the law of the Commonwealth or a State prescribed under a regulation as a law enforcement agency.

***law enforcement purpose***, in relation to the use of information by an approved agency or law enforcement agency, means a purpose for which the agency is authorised to use the information under a law of the Commonwealth or a State.

***member***, of an entity, includes a person employed or engaged by the entity.

***MINDA*** means the system administered by Queensland Transport that is known as the Mobile Integrated Network Data Access system.

***policing purpose***, in relation to the use of information by a police force or service of the Commonwealth or another State, means a purpose substantially similar to a purpose for which the Queensland Police Service is authorised to use the information under an Act.

***use***, in relation to information, includes the following—

- (a) disclose;
- (b) give;
- (c) give access to;
- (d) make available;
- (e) publish;
- (f) record.



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## **Subdivision 2 Giving of policing information**

### **10.2I Giving information to an IPSP to enable use of approved information by police services and law enforcement agencies for particular purposes**

- (1) The commissioner may give to the head of an IPSP all or any information in a QPS database for inclusion in a database administered by the IPSP for the purpose of the IPSP giving approved information to—
  - (a) the head of a police force or service of the Commonwealth or another State to enable the police force or service to use the approved information for a policing purpose; or
  - (b) the head of a law enforcement agency to enable the law enforcement agency to use the approved information for a law enforcement purpose.
- (1A) The commissioner may use information given under this section to the head of an IPSP for a purpose for which the information may be used under an Act whether or not the purpose is the same purpose for which the information was given under this section to the head of the IPSP.
- (1B) The head of an IPSP may transfer information from the database mentioned in subsection (1) administered by the head of the IPSP to another database administered by the head of the IPSP for a purpose permitted under an Act.
- (2) To remove any doubt, it is declared that this section does not limit section 10.2J.

### **10.2J Giving approved information to police services and law enforcement agencies to enable use of approved information for particular purposes**

The commissioner may give approved information in a QPS database to—

- (a) the head of a police force or service of the Commonwealth or another State to enable the police

force or service to use the approved information for a policing purpose; or

- (b) the head of a law enforcement agency to enable the law enforcement agency to use the approved information for a law enforcement purpose.

### **10.2K Giving information to Queensland Transport to enable Queensland Transport to administer MINDA**

The commissioner may give the head of Queensland Transport all or any information in a QPS database to enable Queensland Transport to administer MINDA for the Queensland Police Service.

### **10.2L Giving information to approved agencies to enable use of information for particular purposes**

- (1) The commissioner may give the head of an approved agency all or any information in a QPS database to enable the approved agency to use the information for a law enforcement purpose.
- (2) Without limiting subsection (1), the commissioner may give the information to the head of the approved agency by allowing an authorised member of the approved agency to have direct access to a QPS database.
- (3) In this section—

*authorised member*, of an approved agency, means a member of the approved agency authorised in writing by the commissioner to have direct access to a QPS database.

### **10.2M Commissioner may impose conditions**

The commissioner may give information to the head of an entity under this subdivision on the conditions the commissioner considers appropriate.

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## **Subdivision 3 Relationship with other provisions**

### **10.2N Use of information permitted despite other provisions**

- (1) Information may be given to the head of an entity by the commissioner or an IPSP as mentioned in subdivision 2 despite a prescribed provision.
- (2) Despite a prescribed provision—
  - (a) the police force or service of the Commonwealth or another State may use, for a policing purpose, information given to the commissioner of the police force or service by the commissioner or an IPSP as mentioned in subdivision 2; and
  - (b) the law enforcement agency or an approved agency may use, for a law enforcement purpose, information given to the chief executive officer of the agency by the commissioner or an IPSP as mentioned in subdivision 2.
- (3) In this section—

*prescribed provision* means—

  - (a) part 5A; or
  - (b) part 5AA; or
  - (c) part 10, division 1; or
  - (d) any other Act imposing a condition on the use of information.

### **10.2O Condition imposed under another Act may apply**

- (1) This section applies in relation to information a member of an end user has because it has been given to the head of the end user by the commissioner or an IPSP as mentioned in subdivision 2.
- (2) If the information is subject to a condition on use imposed under another Act when in the possession of the Queensland Police Service, the same condition or a condition of the same

kind applies to the information when in the possession of the member.

*Examples of conditions on use imposed under another Act—*

- *Youth Justice Act 1992*, section 289 (Recording, use or disclosure for authorised purpose)
- *Youth Justice Act 1992*, section 295 (Disclosure by police of information about cautions and restorative justice processes and restorative justice agreements)
- *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 6 (Non-disclosure of convictions upon expiration of rehabilitation period)
- *Criminal Law (Rehabilitation of Offenders) Act 1986*, section 7 (Section 6 not applicable in certain cases)

## **Subdivision 4      General**

### **10.2P Misuse of information given under this division**

- (1) This section applies in relation to information a member of an entity has because it has been given to the head of the entity by the commissioner or an IPSP as mentioned in subdivision 2.
- (2) The member must not use the information—
  - (a) for a purpose other than—
    - (i) the purpose mentioned in subdivision 2 for which the information has been given to the head of the entity by the commissioner or the IPSP; or
    - (ii) a purpose that is authorised or permitted under an Act; or

*Note—*

See the *Acts Interpretation Act 1954*, section 6 (References to Act).

- (b) in contravention of a condition, if any, imposed by the commissioner under section 10.2M.

Maximum penalty—100 penalty units.

- (3) Also, if the member has the information because it has been given to the head of an end user by the commissioner or an IPSP as mentioned in subdivision 2, the member must not use the information in contravention of a condition mentioned in section 10.2O(2).

Maximum penalty—100 penalty units.

### **10.2Q Extra-territorial application of offence provision**

A person commits an offence against section 10.2P(2) or (3) even if the person uses the information mentioned in section 10.2P(1) outside the State.

### **10.2R Protection from liability**

- (1) This section applies if a person, acting honestly and without negligence, gives information under this division.
- (2) The person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (3) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (4) Without limiting subsections (2) and (3)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.

## **Division 1B                      Provisions about exchange of criminal history for child-related employment screening**

### **10.2S Definitions for div 1B**

In this division—

*approved agency* means—

- (a) the ACC; or
- (b) a police force or service of the Commonwealth or another State.

*child-related employment screening* means using information about a person in a way that is authorised or required under a law of another State or the Commonwealth that relates to assessing whether a person poses a risk of harm to children.

*criminal history*, of a person, means—

- (a) the person's convictions for offences committed in Queensland or elsewhere; and
- (b) charges against the person for offences alleged to have been committed in Queensland or elsewhere; and
- (c) information about a conviction mentioned in paragraph (a) or a charge mentioned in paragraph (b), including, for example, a brief description of the circumstances of the conviction or charge.

*interstate screening unit* means an entity, established under a law of another State or the Commonwealth, that is—

- (a) prescribed under a regulation; or
- (b) prescribed under the *Crimes Act 1914* (Cwlth), section 85ZZGB, 85ZZGC or 85ZZGD.

### **10.2T Giving criminal history to interstate screening unit or approved agency for child-related employment screening**

The commissioner may give a person's criminal history to—

- (a) an interstate screening unit to enable the unit to use the history for child-related employment screening; or
- (b) an approved agency for the purpose of the approved agency giving the history to an interstate screening unit to enable the unit to use the history for child-related employment screening.

### **10.2U Use of criminal history permitted despite other provisions**

- (1) The commissioner may give a person's criminal history to an interstate screening unit or an approved agency as mentioned in section 10.2T despite a prescribed provision.

- (2) In this section—

*prescribed provision* means—

- (a) part 5A; or
- (b) part 5AA; or
- (c) part 10, division 1 or 1A; or
- (d) the *Criminal Law (Rehabilitation of Offenders) Act 1986*; or
- (e) the *Youth Justice Act 1992*, part 9.

### **10.2V Protection from liability**

- (1) This section applies if a person, acting honestly and without negligence, uses a person's criminal history under this division.
- (2) The person is not liable, civilly, criminally or under an administrative process, for using the history.
- (3) Also, merely because the person uses the history, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

- (4) Without limiting subsections (2) and (3)—
  - (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the history; and
  - (b) if the person would otherwise be required to maintain confidentiality about the history under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by using the history; and
    - (ii) is not liable to disciplinary action for using the history.

## **Division 2                    Other miscellaneous provisions**

### **10.3    Protection from liability for reports**

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



- (5) Except as prescribed by subsection (4), the burden of proving absence of good faith is upon the person who alleges such absence.

#### **10.4 Rejection of frivolous complaints**

- (1) This section relates only to a report, complaint or information concerning conduct of an officer that does not amount to misconduct.
- (2) The commissioner may reject, and direct that no action be taken in relation to, a report or complaint made, or information furnished, that appears to the commissioner to have been made, or furnished, frivolously or vexatiously.
- (3) A person who has been notified in writing by or on behalf of the commissioner that a report or complaint made, or information furnished, by the person—
- (a) appears to concern frivolous matter; or
  - (b) appears to have been made or furnished vexatiously;
- and who again makes a report or complaint, or furnishes information, to the same effect commits an offence against this Act.
- Maximum penalty—100 penalty units.
- (4) It is a defence to a charge of an offence defined in subsection (3) to prove—
- (a) that the report, complaint or information does not concern frivolous matter; or
  - (b) that the report, complaint or information was not made or furnished vexatiously.

#### **10.5 Civil liability of police officers and others for engaging in conduct in official capacity**

- (1) This section applies to each of the following—
- (a) an officer;

- (b) a staff member;
  - (c) a recruit;
  - (d) a volunteer;
  - (e) a person who, at the time the person engaged in conduct in an official capacity, was a person mentioned in any of paragraphs (a) to (d).
- (2) A person to whom this section applies does not incur civil liability for engaging, or the result of engaging, in conduct in an official capacity.
- (3) If subsection (2) prevents liability attaching to a person, the liability attaches instead to the Crown.
- (4) If liability attaches to the Crown under subsection (3), the Crown may recover contribution from the officer, staff member or recruit or former officer, staff member or recruit who engaged in the conduct, but only if the conduct was engaged in—
- (a) other than in good faith; and
  - (b) with gross negligence.

*Note for subsection (4)—*

There is to be no contribution from a volunteer or former volunteer.

- (5) In a proceeding under subsection (4) to recover contribution, the amount of contribution recoverable is the amount found by the court to be just and equitable in the circumstances.
- (6) In this section—

***civil liability***, of a person to whom this section applies for engaging, or for the result of engaging, in conduct in an official capacity, means liability of any type for the payment of an amount by the person because of—

- (a) a claim based in tort, contract or another form of action in relation to the conduct or result, including, for example, breach of statutory duty or defamation and, for a fatal injury, includes a claim for the deceased's dependants or estate; or

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- (b) a complaint made under a law that provides a person may complain about the conduct or result to an entity established under the law, other than a complaint to start criminal proceedings, including, for example, a complaint under the *Justices Act 1886*; or
- (c) an order of a court to pay costs relating to a proceeding for an offence against a law in relation to the conduct or result, unless the proceeding was for an offence by the person.

*Examples of types of liability—*

- a liability because of an agreement or an order under the *Anti-Discrimination Act 1991* or the *Australian Human Rights Commission Act 1986* (Cwlth) requiring payment of an amount to a complainant (however described) under the Act
- a liability because of an obligation under an agreement to settle a proceeding, or an order of a court or tribunal, to do something that involves paying an amount, including an obligation to publish an apology in a newspaper

**conduct** means an act or an omission to perform an act.

**engage in conduct in an official capacity**, by a person to whom this section applies, means engage in conduct as part of, or otherwise in connection with, the person's role as an officer, a staff member, a recruit or a volunteer (as is applicable), including, for example, engaging in conduct under or purportedly under an Act.

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

## 10.7 Provision of legal representation

- (1) The commissioner may provide legal representation on behalf of any officer, staff member or recruit against whom any action, claim or demand or proceeding in respect of an offence is brought or made otherwise than by or on behalf of the Crown in any of its capacities on account of any action done or omission made by the officer, staff member or recruit acting, or purporting to act, in the execution of duty.

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- (2) If it is found, or conceded, in relation to any such action, claim, demand or proceeding that the officer, staff member or recruit, was not acting in the execution of duty in doing the action or making the omission on which the action, claim, demand or proceeding is based, the commissioner may recover from the officer, staff member or recruit the amount of costs and expenses incurred by the commissioner in providing legal representation under subsection (1) in any court of competent jurisdiction as a debt due and payable by the officer, staff member or recruit to the commissioner and unpaid.

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

If an officer or recruit suffers injury or death in circumstances such that, had the injury or death occurred to a worker employed elsewhere than in the police service, compensation or expenses would have been payable under the *Workers' Compensation and Rehabilitation Act 2003* to or on account of the worker or the worker's dependants, the Crown is to indemnify the officer or recruit and, if the case requires, the dependants of the officer or recruit as if the officer or recruit were a worker covered by a policy under that Act.

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

- (1) Any document that an Act requires or authorises to be given to or served on the commissioner is taken to have been duly so given or served if it is given to—
  - (a) the holder of an office nominated by the commissioner for this section; or
  - (b) the holder of a position within the PSBA nominated by the commissioner for this section.
- (1A) The commissioner must, from time to time, notify in the gazette the offices and positions so nominated.
- (2) Any member of the service, or a PSBA employee whose duties include performing a function for the service, with

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the leave of the court or tribunal concerned, represent the commissioner in that court or tribunal to produce to that court or tribunal any document or thing required to be produced in response to the document referred to in subsection (1) and given or served as prescribed.

### 10.10 Police establishments

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

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

### 10.11 Ownership of official property

For the purpose of any legal proceedings—

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

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

## **10.12 Legal proceedings**

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

## **10.13 Surrender of equipment**

- (1) Upon a person ceasing to be an officer, it is lawful for the person to retain all items of equipment, gear or accoutrements issued to the person as an officer, except such items as the person is directed in writing by the commissioner to surrender.

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- (1A) If the commissioner gives such a direction, the commissioner may specify therein a date by which the items are to be surrendered and the person to whom the direction is given is to comply with the direction.
  - (2) The person must comply with a direction given to the person under subsection (1).  
Maximum penalty—100 penalty units.
  - (3) Upon a complaint of a commissioned officer a justice may issue a warrant authorising the commissioned officer—
    - (a) to search for and seize on behalf of the commissioner anything that, pursuant to a direction of the commissioner is required to be surrendered and has not been surrendered; and
    - (b) for that purpose to enter any place in which the thing sought is believed by the commissioned officer to be, and to break open any receptacle capable of containing the thing sought.
  - (4) Before executing a warrant in respect of any place, the commissioned officer is to show the warrant to the occupier (if any) of the place, if the occupier is present at the place, and seek the occupier's permission to enter and search the place and to seize anything that is sought and is found therein, but if the occupier is not present or refuses consent, the commissioned officer, and all persons acting in aid of the commissioned officer, may proceed to execute the warrant using such reasonable force as is necessary, and doing all other things reasonably required, to execute the warrant.

## **10.14 Vacating of premises**

- (1) If a person who is in possession of premises—
  - (a) that are the property of the commissioner; or
  - (b) of which the commissioner is entitled to possession;having been notified in writing, by the commissioner to vacate the premises, fails to vacate the premises within 28 days

following the giving of notification to vacate in the approved form, a magistrate, upon a complaint of the commissioner, or a person authorised in writing by the commissioner in that behalf, may issue a warrant authorising any officer—

- (c) to enter the premises and remove therefrom all persons (and their property) who are not authorised by the commissioner to be in or on the premises; and
  - (d) to deliver vacant, or other, possession (as the commissioner requires) to the commissioner.
- (1A) Notification to vacate premises may be given for the purposes of subsection (1) by any means calculated to bring the notification to the notice of the person to whom it is directed, including by advertisement in an appropriate newspaper.
- (2) An officer executing a warrant issued under subsection (1), and all persons acting in aid of the officer, may use such reasonable force as is necessary, and do all other things reasonably required, to execute the warrant.

## **10.16 Charges for police services**

- (1) A person for whom prescribed police services are provided is liable for payment to the commissioner of charges for those services in an amount determined by the commissioner.
- (2) Charges for provision of prescribed police services may be declared by regulation in which event the commissioner is not entitled to payment for the provision of particular services of any amount in excess of the charge so declared for the time being in relation to services of that description.
- (3) In a proceeding for the recovery of a service charge for the provision of a prescribed police service, a certificate purporting to be signed by the commissioner and stating that a specified amount is payable to the commissioner by a specified person for a specified police service is evidence of the matter stated.



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### **10.17 Exemption from tolls**

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

Maximum penalty—4 penalty units.

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

- (1) Except with the commissioner's consent thereto first obtained, a body or association of persons (whether incorporated or not) must not—
  - (a) have a prescribed expression as, or as part of, its name;
  - (b) use a prescribed expression in conjunction with its name, in any context.

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

## 10.19 Offences

A person—

- (a) who knowingly—
  - (i) harbours or entertains an officer in any place; or

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

[s 10.20]

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

commits an offence against this Act.

Maximum penalty—100 penalty units.

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

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

commits an offence against this Act.

Maximum penalty—100 penalty units.

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

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

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

Maximum penalty—100 penalty units.

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

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

- (1) A person must not unlawfully possess a prescribed article.

Maximum penalty—40 penalty units.

[s 10.21B]

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

Maximum penalty—40 penalty units.

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

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

Maximum penalty—40 penalty units.

- (5) In this section—

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

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

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

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

Maximum penalty—40 penalty units or 2 years imprisonment.

- (2) A court that finds a person guilty of an offence against subsection (1) may, in addition to any penalty that may be imposed, order the person to pay to the commissioner a reasonable amount for—
- (a) the treatment, care, rehabilitation and retraining of the police dog or police horse concerned; or
  - (b) if it is necessary to replace the police dog or police horse—buying and training its replacement.

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

A local law does not apply in relation to—

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

### **10.23 Proceedings for offences**

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

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

- (3) Proceedings in respect of an offence against this Act may be commenced within 1 year following the commission of the offence or within 1 month after the commission of the offence first comes to the complainant's knowledge, whichever period is the later.

### 10.24 Representation in court

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

*Example for subsection (1)(a)—*

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

- (2) Also, any officer or service legal officer may appear and act for the prosecution in a proceeding—
  - (a) in a Magistrates Court or the Childrens Court for a charge of an offence, even though the officer is not the informant or complainant; or
  - (b) in a Magistrates Court, brought by a fire service officer under the *Disaster Management Act 2003* or the *Fire and Emergency Services Act 1990*, for an offence against the Act under which the prosecution is brought.

- (3) In this section—

***fire service officer*** see the *Fire and Emergency Services Act 1990*, schedule 6.



*service legal officer* means a government legal officer, within the meaning of the *Legal Profession Act 2007*, who is a staff member.

## 10.26 Annual report

- (1) As soon as is practicable after 30 June in each year the commissioner is to furnish to the Minister a report on—
  - (a) the administration and operations of the police service; and
  - (b) such other matters as are directed by the Minister;within the period of 12 months preceding that date.
- (2) The Minister is to lay the report before the Legislative Assembly within 14 sitting days after the day on which the Minister receives the report.

## 10.27 Review of Act

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

- (3) As soon as is practicable after completion of a review under subsection (1) the Minister is to prepare a report based on the review, and is to lay the report before the Legislative Assembly within 14 sitting days after the report is prepared.

## **10.28 Regulation-making power**

- (1) The Governor in Council may make regulations for the purposes of this Act.
  - (1A) A regulation may provide with respect to—
    - (a) management and control of the affairs of the police service; and
    - (b) the responsibilities of the commissioner; and
    - (c) powers, duties, entitlements, obligations and liabilities of officers and recruits; and
    - (d) powers and duties of staff members; and
    - (e) the institution and conduct of appeals or reviews about appointments, disciplinary action or related action within the police service.
- (2) The regulations may prescribe with respect to any matter, other than duties, obligations or liabilities of members of the police service, by reference to—
  - (a) determinations or rulings to be made from time to time by the commissioner;
  - (b) standards to be set or adopted from time to time by the commissioner.
- (3) The regulations may provide for offences against the regulations and in respect thereof impose a fine not exceeding 100 penalty units.

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## **Part 11**                      **Transitional and declaratory provisions**

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

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

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

#### **11.2 References to repealed Act**

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

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

### **11.3    Relevant information**

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

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

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

## **Division 4                      Transitional and declaratory provisions for the Criminal Code and Other Legislation (Misconduct, Breaches of Discipline and Public Sector Ethics) Amendment Act 2009**

### **11.8    Former officer**

For part 7A, a person is a former officer only if the person's employment ends after the commencement of the part.

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## **Division 5**                      **Transitional provisions for the State Penalties Enforcement and Other Legislation Amendment Act 2009**

### **11.9**    **Definition for div 5**

In this division—

*commencement* means the commencement of the *State Penalties Enforcement and Other Legislation Amendment Act 2009*, chapter 3.

### **11.11**   **Exchange of criminal history for child-related employment screening**

To remove any doubt, it is declared that for section 10.2S, definition *criminal history*, a reference to a charge against a person for an offence includes a charge for an offence alleged to have been committed by the person before the commencement.

## **Division 6**                      **Transitional provisions for Public Service and Other Legislation (Civil Liability) Amendment Act 2014**

### **11.12**   **Definitions**

In this division—

*civil liability* see new section 10.5(6).

*commencement* means the commencement of this section.

*conduct* see new section 10.5(6).

*engage in conduct in an official capacity* see new section 10.5(6).

*new section 10.5* means section 10.5 as in force immediately after the commencement.

[s 11.13]

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*previous sections 10.5 and 10.6* means sections 10.5 and 10.6 as in force immediately before the commencement.

*volunteer* see new section 10.5(6).

### **11.13 Application of ss 10.5 and 10.6 to acts and omissions before commencement**

- (1) If, immediately before the commencement, previous sections 10.5 and 10.6 applied to a tort committed, act done or omission made by an officer, staff member, recruit or volunteer before the commencement, those provisions as in force at the time the tort was committed, act was done or omission was made continue to apply in relation to the tort, act or omission.
- (2) If an officer, staff member, recruit or volunteer engaged in conduct in an official capacity after the commencement and the conduct is part of a course of conduct that also includes torts committed, acts done or omissions made before the commencement, new section 10.5 applies to all the conduct forming the course of conduct.
- (3) Subsection (1) is subject to subsection (2).

### **11.14 Relationship of s 10.5 if civil liability dealt with by another Act or provision of this Act**

- (1) This section applies if—
  - (a) another Act, or another provision of this Act other than new section 10.5, states a person does not incur civil liability for conduct or the result of conduct (however expressed), including, for example, if the person acts honestly and without negligence; and
  - (b) the result of the application of the other Act or other provision to conduct, or the result of conduct, engaged in by the person after the commencement is that the person would not be protected from civil liability under the other Act or other provision for the conduct or result; and

- (c) the person would not, under new section 10.5, incur civil liability for the conduct or the result of the conduct but the Crown would be liable in relation to the conduct or result.
- (2) New section 10.5 applies in relation to the conduct, or the result of the conduct, despite the other Act or other provision but does not limit the application of the other Act or other provision in relation to any other liability of the person.

## **Division 7                      Transitional provision for Public Safety Business Agency Act 2014**

### **11.15 Application of pt 5AA to particular current employees**

- (1) This section applies in relation to a person who—
  - (a) immediately before the commencement, was employed as a public service employee by the department known as the Public Safety Business Agency; and
  - (b) is a PSBA employee immediately after the commencement.
- (2) The relevant sections apply to or in relation to the person as if a requirement in the relevant sections for the person or the relevant CEO to do something before the person is engaged in the service were a reference to the person or relevant CEO being required to do the thing as soon as practicable after the commencement.

- (3) In this section—
  - commencement* means the commencement of this section.
  - relevant section* means sections 5AA.5(2) and 5AA.6(2).

## **Division 8**                      **Transitional provision for Counter-Terrorism and Other Legislation Amendment Act 2015**

### **11.16 Approved agency and law enforcement agency during interim period**

- (1) The immigration and border protection department is taken, during the interim period, to have been—
  - (a) an approved agency under part 10, division 1A; and
  - (b) a law enforcement agency under part 10, division 1A.

- (2) In this section—

*immigration and border protection department* means the Commonwealth department in which the following laws are administered—

- (a) the *Australian Border Force Act 2015* (Cwlth);
- (b) the *Customs Act 1901* (Cwlth), other than parts XVB and XVC;
- (c) the *Migration Act 1958* (Cwlth).

*interim period* means the period starting on 1 July 2015 and ending on the commencement of the *Police Legislation Amendment Regulation (No. 1) 2015*.

## **Division 9**                      **Transitional provision for Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018**

### **11.17 Transitional regulation-making power**

- (1) A regulation (a *transitional regulation*) may make provision about a matter for which—



- 
- (a) it is necessary to make provision to allow or facilitate the doing of anything to achieve the transition from the operation of this Act as it was in force immediately before the commencement to the operation of this Act as amended by the *Police and Other Legislation (Identity and Biometric Capability) Amendment Act 2018*; and
  - (b) this Act does not make provision or sufficient provision.
- (2) A transitional regulation may have retrospective operation to a day not earlier than the day of commencement.
  - (3) A transitional regulation must declare it is a transitional regulation.
  - (4) A transitional regulation may only be made within 2 years after the commencement.
  - (5) This division and any transitional regulation expire 3 years after the day of commencement.

## **Division 9                      Transitional provision for Crime and Corruption and Other Legislation Amendment Act 2018**

### **11.17 Liability of commissioners for police service reviews**

- (1) Current section 9.7 does not apply to conduct, or the result of conduct, engaged in by a protected person before the commencement.
- (2) Previous section 9.7 continues to apply to an act done or omitted to be done by a protected person before the commencement.
- (3) Also, the *Public Service Act 2008*, section 26C continues to apply to conduct engaged in by a commissioner for police reviews before the commencement.
- (4) However, if a protected person engages in conduct to which current section 9.7 applies after the commencement and the conduct is a part of a course of conduct that also includes conduct engaged in before the commencement, current

section 9.7 applies to all of the conduct as if it was all engaged in after the commencement.

(5) A term used in this section in relation to current section 9.7 or previous section 9.7 has the meaning it has under that section.

(6) In this section—

*current section 9.7* means section 9.7 as in force from the commencement.

*previous section 9.7* means section 9.7 as in force before the commencement.

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## Schedule                      Relevant information

section 1.4, definition *relevant information*

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

- 1 Information in a database kept by the ACC about—
  - the person’s criminal history
  - cautions or warnings administered or given to the person
  - the person’s involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - whether the person has had a weapons licence suspended or cancelled.
- 2 Information in a QPS database or other database kept by the commissioner about—
  - the person’s criminal history
  - the person’s traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate because, for example, the person is a suspect, an offender, a missing person, a victim or a witness
  - address checks for the person
  - the person’s driver licence details
  - any incidents, including traffic crash occurrences, involving the person
  - any offences involving the person
  - any complaints involving the person
  - the person’s domestic violence history

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

- checks made in relation to the person
  - the person's conduct as a member of the ADF
  - the person's medical history.
- 12 Information about the person supplied to the commissioner by a police force or service of another State, the Commonwealth, or another country, about the following if the person is serving, or has served, as a police officer in that jurisdiction and is an applicant to become a police officer—
- checks made in relation to the person
  - the person's conduct as a police officer
  - the person's medical history.
- 13 Information about the person supplied to the commissioner by a chief executive of a department if the person is or was a public service employee about—
- any disciplinary finding made against the person
  - disciplinary action taken against the person, including a disciplinary declaration under the *Public Service Act 2008*, section 188A.

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

- 1 Information in a database kept by the ACC about—
- the person's criminal history
  - cautions or warnings administered or given to the person
  - the person's involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - any known alias of the person.
- 2 Information in a QPS database or other database kept by the commissioner about—
- the person's criminal history

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- if the person is nominated for appointment to a position that involves significant driving duties—the person’s Queensland traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate because, for example, the person is a suspect, an offender, a missing person, a victim or a witness
  - charges laid against the person in Queensland
  - whether the person is wanted for questioning
  - any known alias of the person.
- 3 Information about the person’s Queensland traffic history in a database kept by the chief executive of Queensland Transport if the person is nominated for appointment to a position that involves significant driving duties.
- 4 Information about the person supplied to the commissioner by a declared agency about the following if the person has lived for an extensive period outside Queensland—
- charges laid against the person that have not been decided, dismissed or withdrawn
  - any known alias of the person.
- 5 Information about the person kept in a database of criminal intelligence, whether the database is kept by the commissioner or is one to which the commissioner has access.
- 6 Information about the person, if the person was employed in a unit of public administration or a local government within the last 10 years, that is supplied to the commissioner by the Crime and Corruption Commission.
- 7 For former employees of the service, information in the possession of the commissioner because of inquiries made by the unit of the service known as the Ethical Standards Command.

- 8 Information about the person that is in the possession of the commissioner and held in the drug occurrence records kept as part of the database known as QPRIME.
- 9 Information about the person supplied to the commissioner by a chief executive of a department if the person is or was a public service employee about—
  - any disciplinary finding made in relation to the person
  - disciplinary action taken against the person, including a disciplinary declaration made under the *Public Service Act 2008*, section 188A.

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

- 1 Information in a database kept by the ACC about—
  - the person’s criminal history
  - any warrants in relation to the person, in Queensland or interstate, that are outstanding
  - the person’s involvement in acts of domestic violence in Queensland or elsewhere and any orders made against the person
  - any restraining orders made against the person
  - any known alias of the person.
- 2 Information in a QPS database or other database kept by the commissioner about—
  - the person’s Queensland criminal history
  - the person’s traffic history
  - warrants issued in relation to the person
  - cautions or warnings administered or given to the person
  - whether the person is a person of interest in Queensland or interstate because, for example, the person is a suspect, an offender, a missing person, a victim or a witness
  - whether the person is wanted for questioning

- any known alias of the person.
- 3 Information about the person's traffic history kept by the chief executive of Queensland Transport.

**External service providers**

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