

Queensland



**POLICE POWERS AND
RESPONSIBILITIES AND
OTHER ACTS (REGISTERS)
AMENDMENT ACT 1999**

Act No. 22 of 1999

Queensland



POLICE POWERS AND RESPONSIBILITIES AND OTHER ACTS (REGISTERS) AMENDMENT ACT 1999

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Queensland



Police Powers and Responsibilities and Other Acts (Registers) Amendment Act 1999

Act No. 22 of 1999

An Act to amend the *Police Powers and Responsibilities Act 1997* and certain other Acts to clarify requirements relating to the keeping of registers under those Acts, and for other purposes

[Assented to 30 April 1999]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Police Powers and Responsibilities and Other Acts (Registers) Amendment Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

Acts amended

3.(1) This Act (other than the schedule) amends the *Police Powers and Responsibilities Act 1997*.

(2) The schedule amends the Acts it mentions.

Amendment of s 28 (Search warrant)

4.(1) Section 28(4)(b), after ‘about any’—

insert—

‘search’.

(2) Section 28—

insert—

‘(4A) Subsection (4)(b) applies only to—

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

Amendment of s 32 (Notice to produce documents)

5. Section 32—

insert—

‘**(3A)** Subsection (3)(b) applies only to—

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

Amendment of s 68 (Surveillance warrants)

6. Section 68—

insert—

‘**(5A)** Subsection (5)(b) only applies to—

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

Omission of s 72 (Register to be kept)

7. Section 72—

omit.

Amendment of s 74 (Covert search warrants)

8. Section 74—

insert—

‘**(2A)** Subsection (2)(b) applies only to—

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

Omission of s 78 (Register of surveillance and covert search warrants and applications)

9. Section 78—

omit.

Relocation of s 82A (Protection from liability)

10. Section 82A—

relocate to part 10, after section 82.

Amendment of s 100 (Provision of information relating to a person in custody)

11. Section 100(2)—

insert—

‘(c) the whereabouts of the person in custody—

- (i) are not in a register that the police officer may inspect; and
- (ii) are otherwise not actually known to the police officer.’

Amendment of s 112 (Supplying police officer’s details etc.)

12.(1) Section 112, heading, ‘etc.’—

omit.

(2) Section 112(5) and (7)—

omit.

(3) Section 112(6), ‘(5)’—

omit, insert—

‘(4)’.

(4) Section 112(6) and (8)—

renumber as section 112(5) and (6).

Omission of s 117 (Persons to be given copy of information in register)

13. Section 117—

omit.

Insertion of new pt 12A

14. After part 12—

insert—

‘PART 12A—REGISTERS

‘Division 1—Application and purpose

‘Application of pt 12A

‘119A.(1) This part applies to covert acts and enforcement acts done by a police officer whether for the CJC, QCC, the NCA or the police service.

‘(2) Also, this part applies to covert acts and enforcement acts done by a police officer at the request of a declared law enforcement agency other than the CJC or QCC.

‘(3) However, divisions 2 and 3 do not apply to covert acts and enforcement acts done by a police officer performing a function for the NCA.

‘Purpose and explanation of pt 12A

‘119B.(1) The purpose of this part is—

- (a) to establish who is responsible for keeping registers under this Act and recording information in them; and
- (b) to ensure, as far as possible, police officers record information about covert acts and enforcement acts in the correct register; and
- (c) to state who may inspect each register.

‘(2) Police officers sometimes do covert acts and enforcement acts for

declared law enforcement agencies but do not stop being police officers only because the act is not done for the police service.

‘(3) In some cases, these acts are done as part of a joint operation involving 2 or more declared law enforcement agencies.

‘(4) If this part applies to a declared law enforcement agency, the agency must ensure information about the acts is recorded in a register as required under this part.

‘(5) This part also provides a mechanism for ensuring information incorrectly recorded in a particular register is removed from the register and recorded in the relevant register.

‘Division 2—Register of surveillance and covert search warrants

‘Application of div 2

‘119C.(1) This division applies to covert acts.

‘(2) In this division—

“**covert act**” includes an enforcement act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

‘Particular Acts do not apply to this division

‘119D. The *Libraries and Archives Act 1988* and the *Freedom of Information Act 1992* do not apply to information kept in a register under this division.

‘Register of covert acts

‘119E.(1) The CJC, QCC and the police service must keep a register of covert acts.

‘(2) The register may form part of another register whether kept under this or another Act.

‘(3) Each entity—

- (a) may keep its register in the way the entity's chief executive officer considers appropriate; and
- (b) must ensure its register is kept in a secure place.

Example for subsection (3)(a)—

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

'Information to be recorded in register

'119F.(1) The following information about applications for covert search warrants must be recorded in the register—

- (a) when and where the application for the warrant was made;
- (b) the name of the suspect and the description of the place mentioned in the application;
- (c) the type of indictable offence mentioned in the application;
- (d) whether or not the warrant was issued;
- (e) if a warrant was issued—how long the warrant was in force.

'(2) The following information about covert search warrants must be recorded in the register—

- (a) if and when powers were exercised under the warrant;
- (b) when the initial search under the warrant was completed or, if the place was not searched, why it was not searched;
- (c) whether anything was seized, inspected or photographed under the warrant;
- (d) the benefits derived from the warrant, including, for example—
 - (i) any proceeding started; and
 - (ii) anything seized during a search;
- (e) information about the return, destruction or disposal of anything seized.

'(3) For other covert acts, the information to be recorded in the register is the information specified in the responsibilities code.

‘Who must record information in register

‘119G.(1) A police officer who does a covert act must cause the information required under section 119F to be recorded in the register of covert acts to be so recorded.

‘(2) If 2 or more police officers do a covert act, the senior police officer involved in doing the act must cause the information to be recorded.

‘(3) The information must be recorded as soon as reasonably practicable after the act is done or the information becomes available.

‘Which register to be used

‘119H.(1) Information that must be recorded in a register under this division must be recorded in the relevant register.

‘(2) For this section, the relevant register for covert acts is—

- (a) for acts done by a police officer performing functions for the CJC—the CJC’s register; or
- (b) for acts done by a police officer performing functions for QCC—QCC’s register; or
- (c) if paragraph (a) or (b) does not apply—the police service register.

‘(3) However, if a police officer does a covert act as part of a joint operation involving 2 or more entities, the information must be recorded in a register kept by at least 1 of the entities participating in the operation.

‘Who may inspect police service register

‘119I.(1) The register of covert acts kept by the police service is not open to inspection by anyone other than—

- (a) the commissioner; or
- (b) a monitor; or
- (c) the chairperson of the CJC.

‘(2) However, the chairperson of the CJC must give the commissioner reasonable notice of intention to inspect the register.

‘Who may inspect CJC’s register

‘119J. The register of covert acts kept by the CJC is not open to inspection by anyone other than—

- (a) the chairperson of the CJC;
- (b) a monitor; or
- (c) the parliamentary commissioner.

‘Who may inspect QCC’s register

‘119K. The register of covert acts kept by the QCC is not open to inspection by anyone other than—

- (a) QCC; or
- (b) a monitor; or
- (c) the parliamentary commissioner.

‘Other authorised inspections

‘119L.(1) If the chief executive officer of an entity that must keep a register of covert acts under this division considers it appropriate, the chief executive officer may, in writing, authorise a person who may not otherwise inspect the entity’s register to inspect the register on the conditions the chief executive officer considers appropriate.

‘(2) However, the chief executive officer may authorise the person to inspect the register only if the officer is satisfied the inspection is necessary—

- (a) for an investigation into a serious indictable offence, official misconduct, misconduct or a relevant criminal activity in which information in the register may be relevant; or
- (b) for maintaining the register; or
- (c) for preparing a part 10 application; or
- (d) for monitoring compliance with this Act.

‘(3) The person authorised to inspect the register may only inspect it to the extent necessary for the purpose for which the authority is given.¹

‘General restrictions on inspections by monitor

‘119M. The monitor may inspect a register under this division only to the extent necessary for performing the monitor’s functions under this Act.

‘Division 3—Enforcement registers

‘Application of div 3

‘119N.(1) This division only applies to enforcement acts.

‘(2) In this division—

“**enforcement act**” does not include an act done by a police officer while exercising powers under a surveillance warrant or covert search warrant.

‘Register of enforcement acts

‘119O.(1) The CJC, QCC and the police service must keep a register of enforcement acts.

‘(2) The register may form part of another register whether kept under this or another Act.

‘(3) Each entity—

- (a) may keep its register in the way the entity’s chief executive officer considers appropriate; and
- (b) must ensure its register is kept in a way that enables police officers to comply with this Act; and

¹ Failure of a police officer to comply with subsection (3) may lead to disciplinary action against the officer. Also, improper disclosure of anything learnt when inspecting the register may be an offence.

- (c) may keep its register in a way the entity's chief executive officer considers—
- (i) prevents a police officer not performing a function for the entity inspecting all or part of the register; or
 - (ii) restricts access to all or part of the register to only specified police officers performing functions for the entity.

Example for subsection (3)(a)—

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

Example for subsection (3)(c)(ii)—

The chairperson of the CJC may keep the register in a way that prevents police officers other than those seconded to the CJC inspecting the register.

‘Who must record information in register

‘119P.(1) A police officer who does an enforcement act must cause the information required under the responsibilities code to be recorded in the register of enforcement acts.

‘(2) If 2 or more police officers do an enforcement act, the senior police officer involved in doing the act must cause the information to be recorded.

‘(3) The information must be recorded as soon as reasonably practicable after the act is done or the information becomes available.

‘Which register to be used

‘119Q.(1) Information about an enforcement act must be recorded in the relevant register.

‘(2) For subsection (1), the relevant register for enforcement acts is—

- (a) for acts done by a police officer performing functions for the CJC—the CJC's register; or
- (b) for acts done by a police officer performing functions for QCC—QCC's register; or
- (c) if paragraph (a) or (b) does not apply—the police service register.

‘(3) However, if a police officer does an enforcement act as part of a joint

operation involving 2 or more entities the information must be recorded in the register kept by at least 1 of the entities participating in the operation.

‘(4) Further, if an entity does an enforcement act for a declared law enforcement agency other than the NCA or another entity, information about the act must be recorded in the entity’s register.

‘Persons to be given copy of information in register

‘119R.(1) This section applies to information about a particular enforcement act recorded in a register of enforcement acts kept by the CJC, QCC or the police service.

‘(2) At any time within 3 years after the enforcement act is done, the person to whom the act was done may ask any police officer who is entitled to inspect the register to give the person a copy or print-out of the information recorded in the register about the act.

Example for subsection (2)—

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

‘(3) The police officer must comply with the request as soon as reasonably practicable.

‘Restriction on disclosure of certain information

‘119S.(1) This section applies if the chief executive officer of an entity is reasonably satisfied that making information in the entity’s register about a particular enforcement act available to anyone entitled to inspect it may not be in the public interest because—

- (a) it may prejudice or otherwise hinder an investigation to which the information may be relevant; or
- (b) it may cause embarrassment to, or otherwise adversely affect, a person to whom the information relates or someone else associated with the person including, for example, a family member.

‘(2) Despite section 119R, the chief executive officer may direct that the

information be recorded in the entity's register in a way that restricts inspection of the information until the chief executive officer is satisfied it is no longer necessary to restrict its inspection.

'(3) The chief executive officer must record the reasons for the direction.

'(4) Despite subsection (1), if, within 3 years after the enforcement act was done, the person to whom the act was done asks the chief executive officer for information restricted under subsection (2), the chief executive officer must give the person a copy or print-out of the information as soon as reasonably practicable.

Example for subsection (4)—

If information relating to a suspected offender is obtained because of a search warrant executed at a place belonging to a financial institution, the financial institution is entitled to ask for and receive a copy or print-out of the information.

'Division 4—Provisions about covert acts and enforcement acts done for the NCA

'Application of div 4

'119T. This division applies only to covert acts and enforcement acts done by a police officer performing a function for the NCA.

'Information to be given to NCA

'119U.(1) A police officer who does a covert act or an enforcement act for the NCA must give information about the enforcement act to the NCA as soon as reasonably practicable after the act is done.

'(2) The information must be the same information as the police officer would cause to be recorded under section 119G or 119P.

'(3) However, if the NCA requires the police officer to cause the information to be recorded in another entity's register under this part, the police officer must ensure the information is recorded in the register the NCA specifies.

‘Division 5—General provisions

‘Correcting registers

‘119V.(1) A failure of a police officer to cause information under section 119G or 119P to be recorded in the relevant register or give information under section 119U to the NCA does not affect anything done in relation to the act concerned, whether before or after the failure.

‘(2) However, as soon as possible after the police officer or someone else entitled to inspect the register becomes aware that the information is not recorded in the relevant register, the person must take the steps reasonably necessary to remove the information from the register and ensure it is recorded in the relevant register or given to the NCA.’.

Insertion of pt 16, div 1 hdgs

15. After section 135—

insert—

‘PART 16—TRANSITIONAL PROVISIONS

‘Division 1—Provisions for Act No. 67 of 1997’.

Insertion of new pt 16, div 2

16. After section 138—

insert—

***‘Division 2—Provisions for Police Powers and Responsibilities and
Other Acts (Registers) Amendment Act 1999***

‘Transitional provision relating to registers

‘139. A failure, before the commencement of this section, to keep or record information in the way required by this Act before the

commencement does not and never did affect anything done in relation to the act concerned before or after the failure.’.

Amendment of schedule 3 (Dictionary)

17.(1) Schedule 3, definition “**commissioner**”—

omit.

(2) Schedule 3—

insert—

‘ **“chief executive officer”** means—

- (a) for the CJC—the chairperson of the CJC; or
- (b) for the police service—the commissioner; or
- (c) for QCC—the crime commissioner.

“CJC” means the criminal justice commission.

“commissioner” means the commissioner of the police service.

“covert act” means any of the following acts—

- (a) the making of a part 10 application;
- (b) the exercise of powers under this Act under a surveillance warrant or a covert search warrant;
- (c) the disclosure of information under section 71(2)(d)(ii) or (e).²

“enforcement act” means any of the following acts—

- (a) the search of a person;
- (b) the search of a vehicle, other than at a roadblock;
- (c) the search of premises, other than a vehicle or a public place;
- (d) the taking or seizing of a thing, other than under section 56(4);³
- (e) the arrest of a person;

² Section 71 (Disclosure of information obtained using surveillance warrant)

³ Section 56 (Search of persons in custody)

- (f) the detention of a person for investigations or questioning under part 8;⁴
- (g) the questioning of a person in custody within the meaning of section 94;⁵
- (h) the exercise of powers under this Act relating to a search warrant or notice to produce;
- (i) the giving of a direction under section 88.⁶

“entity”, in part 12A, means the CJC, QCC or the police service.

“NCA” means the national crime authority established under the *National Crime Authority Act 1984* (Cwlth).

“parliamentary commissioner” see the *Criminal Justice Act 1989*, section 3.⁷

“part 10 application” means an application under part 10 for a surveillance warrant or a covert search warrant or an extension of a surveillance warrant or a covert search warrant.

“QCC officer” see the *Crime Commission Act 1997*, schedule, dictionary.

“relevant criminal activity” see the *Crime Commission Act 1997*, section 9.⁸.

⁴ Part 8 (Investigations and questioning)

⁵ Section 94 (When is a person “in custody” for this part)

⁶ Section 88 (Direction may be given to person)

⁷ *Criminal Justice Act 1989*, section 3 (Definitions)

⁸ *Crime Commission Act 1997*, section 9 (Meaning of “relevant criminal activity”)

SCHEDULE

OTHER ACTS AMENDED

section 3(2)

CRIME COMMISSION ACT 1997

1. Section 35(1), after ‘powers’—

insert—

‘under this or another Act’.

2. Section 92—

insert—

‘(3) However, if QCC considers it appropriate, QCC may, in writing, authorise a person who may not otherwise inspect the register to inspect the register on conditions QCC considers appropriate.

‘(4) QCC may authorise a person to inspect the register under subsection (3) only if it is satisfied the inspection is necessary—

- (a) for an investigation into relevant criminal activity, a major crime, official misconduct or misconduct for which information in the register may be relevant; or
- (b) for maintaining the register; or
- (c) for preparing an application under division 2 or 3 for a warrant or for an extension of a warrant; or
- (d) to monitor compliance with this Act.

‘(5) A QCC officer may inspect the register under subsection (2) only to the extent necessary for making an application under division 2 or 3.

‘(6) A person authorised under subsection (3) to inspect the register may

SCHEDULE (continued)

only inspect it to the extent necessary for the purpose for which the authority is given.’.

3. Section 98—

insert—

‘(3) Also, this Act does not prevent a QCC officer who is a police officer from exercising powers a police officer may exercise under another Act when exercising powers under this Act.’.

CRIMINAL JUSTICE ACT 1989

1. Section 140(1), after ‘this Act’—

insert—

‘or the *Police Powers and Responsibilities Act 1997*, part 12A (other than section 119I(1)(c)),’.