

Queensland



ANNO TRICESIMO QUINTO

ELIZABETHAE SECUNDAE REGINAE

**No. 25 of 1986**

**An Act to provide protection for members of the public in situations of emergency that create or may create danger of death, injury or distress to any person, loss of or damage to any property or pollution of the environment and for related purposes**

[ASSENTED TO 8TH APRIL, 1986]

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BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. **Short title.** This Act may be cited as the *Public Safety Preservation Act 1986*.

2. **Arrangement of Act.** This Act is arranged as follows:—

PART I—PRELIMINARY (ss. 1-4);

PART II—EMERGENCY SITUATION (ss. 5-11);

PART III—POWERS OF POLICE (ss. 12-15);

PART IV—GENERAL PROVISIONS (ss. 16-18).

3. **Crown bound.** This Act binds the Crown.

4. **Interpretation.** In this Act, unless the contrary intention appears—

“Commissioned Officer” means any member of the police force of the State of Queensland of or above the rank of Inspector;

“emergency situation” means—

(a) any explosion or fire;

(b) any oil or chemical spill;

(c) any escape of gas, radioactive material or flammable or combustible liquids;

(d) any accident involving an aircraft, or a train, vessel or vehicle;

(e) any incident involving a bomb or other explosive device or a firearm or other weapon;

or

(f) any other accident,

that causes or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment.

The term also includes a situation arising from any report in respect of any of the matters referred to in provisions (a) to (f) which if proved to be correct would cause or may cause a danger of death, injury or distress to any person, a loss of or damage to any property or pollution of the environment;

“member of the police force” has the meaning assigned to it in the *Police Act 1937-1985*;

“Minister” means the Minister of the Crown for the time being administering this Act and includes any Minister of the Crown who is temporarily performing the duties of the Minister;

“premises” includes a building or structure or any part thereof, any tent, caravan, railway rolling stock, motor vehicle or other vehicle, ship, aircraft, vessel, messuage, land, easement and tenement of any tenure;

“resource” means any animal or anything which may provide aid or be of assistance in an emergency situation.

## PART II—EMERGENCY SITUATION

**5. Declaration of emergency situation.** (1) Subject to section 6, if at any time a Commissioned Officer is satisfied on reasonable grounds that an emergency situation has arisen or is likely to arise he may declare that an emergency situation exists in respect of an area specified by him.

(2) The Commissioned Officer who declares that an emergency situation exists shall be hereinafter referred to as the “Incident Co-ordinator”.

(3) The Incident Co-ordinator, as soon as practicable after he declares that an emergency situation exists, shall issue a certificate to this effect signed by him which certificate shall set out the nature of the emergency situation, the time and date it was declared to exist and the area in respect of which it exists.

(4) The declaration that an emergency situation exists shall continue until revoked by the Incident Co-ordinator or the acting Incident Co-ordinator referred to in section 7. The Incident Co-ordinator shall as soon as practicable thereafter, note the time and date of the revocation on the certificate issued pursuant to subsection (3).

(5) The certificate issued in respect of an emergency situation shall be forwarded to the office of the Commissioner of Police within 14 days of the revocation of the declaration of the emergency situation and shall be held in that office for a period of at least 6 years.

**6. State Counter-Disaster Organization Act.** (1) A declaration pursuant to section 5 shall not be made in respect of an emergency situation which is being dealt with under a state of disaster declared pursuant to the *State Counter-Disaster Organization Act 1975-1978*.

(2) A declaration pursuant to section 5 which is in force when a state of disaster is declared pursuant to the *State Counter-Disaster Organization Act 1975-1978*, shall be revoked by the Incident Co-ordinator or the acting Incident Co-ordinator when the emergency situation can be effectively dealt with under that Act.

**7. Power to delegate.** (1) The Incident Co-ordinator, during any period of time when he for any reason ceases to act as Incident Co-ordinator, may delegate all of his powers under this Act (including this power of delegation, but not including the power to issue the certificate referred to in subsection (3) of section 5 or make the notations thereon referred to in subsection (4) of section 5 and subsection (3) of section

7) to any other member of the police force who during the period of such delegation shall be acting Incident Co-ordinator and may exercise all of the powers so delegated.

(2) The delegation by the Incident Co-ordinator or the acting Incident Co-ordinator shall remain in force until revoked by him or until the revocation of the declaration referred to in subsection (4) of section 5, whichever event first occurs.

(3) The Incident Co-ordinator shall note details of each delegate, the powers delegated to him and the period of each delegation in writing on the certificate referred to in subsection (3) of section 5 as soon as practicable after each delegation is revoked or after the revocation of the declaration referred to in subsection (4) of section 5 as the case may be.

**8. Powers of Incident Co-ordinator.** Where during the period of and in the area specified in respect of an emergency situation the Incident Co-ordinator or the acting Incident Co-ordinator is satisfied on reasonable grounds that it is necessary to effectively deal with that emergency situation he (and any other member of the police force acting on his instructions) may—

- (a) direct the owner or the person for the time being in charge or in control of any resource to surrender it and place it under his control;
- (b) take control of any resource, whether it is in the charge or control of any person or not;
- (c) in respect of any resource under his control, direct any person who is capable of operating that resource to operate it as directed by him, provided that a direction shall not be given to any person to operate any resource where the operation of the resource would expose that person to imminent danger;
- (d) direct the evacuation and exclusion of any person or persons from any premises and for this purpose may remove or cause to be removed (using such force as is necessary for that purpose) any person who does not comply with a direction to evacuate or any person who enters, attempts to enter or is found in or on any premises in respect of which a direction for the exclusion of persons has been given;
- (e) close or cause to be closed to traffic and pedestrians, any road, street, motorway, private road, private way, service lane, footway, right of way, access way or other way or close

- any place to which members of the public have access whether on payment of a fee or otherwise;
- (f) enter or cause to be entered (using such force as is necessary for that purpose) any premises;
  - (g) search or cause to be searched (using such force as is necessary for that purpose) any premises and anything found therein or thereon;
  - (h) remove or cause to be removed from any premises (using such force as is necessary for that purpose) any animal or anything;
  - (i) direct any person to assist him in the manner specified by him, provided that a direction to assist shall not be given to any person where to provide assistance as directed would expose that person to imminent danger.

**9. Protection of employment rights.** (1) A person shall not dismiss from employment any employee by reason only of his absence during the period of an emergency situation where the absence of the employee is as a result of a direction given to him pursuant to section 8.

(2) This Act shall not be construed to prejudice any right of action by any person in respect of wrongful dismissal.

(3) For the purpose of calculating the entitlement of any employee to long service leave, sick leave, recreation leave or other benefits to which he is entitled, the continuity of service of the employee shall be deemed not to have been broken by reason only of his absence as a result of a direction given to him pursuant to section 8.

(4) Where an employee has operated a resource as directed pursuant to paragraph (c) of section 8 or assisted as directed pursuant to paragraph (i) of section 8 his employer shall pay him wages in respect of the period of that operation or assistance that takes place during his normal working hours as if the employee was acting in the course of his usual employment for that employer.

(5) Subsections (1), (2), (3) and (4) apply whether or not the employer in question has consented to the absence of the employee in the circumstances set out therein.

**10. Compensation for personal injury.** Any person, other than a member of the police force, who is acting under the direction of the Incident Co-ordinator, the acting Incident Co-ordinator or any member of the police force pursuant to section 8, shall be deemed to be a worker (within the meaning of the *Workers' Compensation Act 1916-1983*) acting in the course of his employment and the provisions of that Act shall apply accordingly.

**11. Compensation for use of or damage to property.** (1) Where any property is used or damaged as a result of the exercise by the Incident Co-ordinator, the acting Incident Co-ordinator or any member of the police force of the powers set out in section 8, any person who has

suffered financial loss as a result of that use or damage (hereinafter in this section referred to as "the claimant") may make application to the Minister for compensation for that use or damage.

(2) The claimant shall provide details of his financial loss to the Minister within 28 days of the notation of the revocation of the emergency situation on the certificate pursuant to subsection (4) of section 5, and the Minister after making such enquiry and investigation in respect of the matter as he thinks fit shall report thereon with his recommendation to the Governor in Council.

(3) The Governor in Council shall consider the matter and may either approve an *ex gratia* payment to the claimant of such amount as the Governor in Council considers appropriate, or may reject the application for compensation.

(4) Compensation payable under this section shall be paid from the Consolidated Revenue Fund (which is hereby to the necessary extent appropriated accordingly).

### PART III—POWERS OF POLICE

**12. Name and address.** (1) Any member of the police force who—

(a) finds any person committing or reasonably suspects any person of having committed or being about to commit any offence against this Act;

or

(b) is making investigations with a view to establishing whether or not an offence against this Act has been or is about to be committed by any person,

may demand from that person such particulars of his name and address as are required by that member and if he has reasonable grounds to suspect that any particular given is false may require evidence of the correctness thereof.

If that person fails upon demand to give any particulars or such evidence, the member of the police force shall caution him, and, if he still persists in such failure, or gives any particular which in the opinion of the member of the police force is false, may arrest him without warrant, and take him as soon as practicable before a justice to be dealt with according to law.

(2) A person required under this section to give any particulars who fails to give those particulars or who gives any false particular or gives false evidence with respect thereto, commits an offence against this Act.

**13. Assault on police.** A person shall not—

(a) assault, resist, obstruct or hinder;

or

(b) aid or incite any other person to assault, resist, obstruct or hinder,

any member of the police force in the execution or discharge of any power, function or duty that he may exercise or is required to discharge pursuant to the provisions of this Act.

**14. Power of arrest.** (1) A member of the police force may arrest without warrant any person who he believes on reasonable grounds has committed or is committing an offence against this Act.

(2) A member of the police force who arrests a person under the authority of this Act shall take that person as soon as practicable before a justice to be dealt with accordingly to law.

(3) Subsection (1) shall not be construed to prejudice the taking of proceedings against an offender by way of complaint and summons under the *Justices Act 1886-1985*.

**15. Finger prints and other particulars.** (1) Where a person has been charged with an offence against this Act a member of the police force may take or cause to be taken all such particulars as may be considered necessary for the identification of that person, including his voice print, photograph, finger prints, palm prints, foot prints, toe prints and handwriting. Except in the case of his voice print and handwriting such force as is necessary may be used in the taking of those particulars.

(2) A court which convicts a person who appears personally before it, of an offence against this Act, may in its discretion order that person into the custody of a member of the police force for the purpose of obtaining any particulars referred to in subsection (1) and that member and any member acting in aid of him shall take (using such force as is necessary for that purpose) that person to a place where those particulars can adequately be taken and take those particulars. Except in the case of that person's voice print and handwriting such force as is necessary may be used in the taking of those particulars.

Whether or not the particulars are obtained, that custody shall cease at the expiration of one hour after the court makes its order.

(3) Where a person arrested and charged with an offence against this Act is found not guilty or is not proceeded against in respect of that offence, any voice print, photograph, finger prints, palm prints, foot prints, toe prints or specimens of handwriting taken from him pursuant to subsection (1) or (2) shall, at his request, be destroyed in his presence unless—

(a) he has been arrested upon a charge of any other offence, which charge is then pending;

(b) he has been convicted of any other offence;

or

(c) those particulars are required as evidence in respect of any other offence alleged to have been committed by that person.

- (4) A person shall not—
- (a) refuse or fail to provide;
  - or
  - (b) resist the taking of,
- any particular required to be provided or taken under this section.

#### PART IV—GENERAL PROVISIONS

**16. Offences generally.** (1) A person who contravenes or fails to comply with any provision of this Act commits an offence against this Act.

- (2) A person who—
- (a) fails to do that which he is directed or required to do;
  - or
  - (b) does that which he is forbidden to do,
- by a member of the police force acting under the authority of this Act commits an offence against this Act.

(3) A person who commits an offence against this Act is liable to a penalty not exceeding \$2000 or to imprisonment for a term not exceeding 12 months or to both such penalty and imprisonment.

(4) A prosecution for an offence against this Act may be by way of summary proceeding under the *Justices Act 1886-1985* upon the complaint of any member of the police force.

(5) In all proceedings under this Act any member of the police force, although not the informant or the complainant, may appear and act in court on behalf of the prosecution.

**17. Protection from liability.** Liability at law shall not attach to the Crown, the Minister, the Incident Co-ordinator, the acting Incident Co-ordinator, any member of the police force, or any other person on account of any act or thing—

- (a) done or omitted to be done pursuant to this Act;
- or
- (b) done or omitted to be done bona fide for the purposes of this Act and without negligence.

**18. Evidentiary provisions.** In a proceeding for the purpose of this Act—

- (a) it shall not be necessary to prove the appointment of the Minister, the Incident Co-ordinator, the acting Incident Co-ordinator or any member of the police force to do any act or take any proceeding;
- (b) a signature purporting to be that of the Minister, the Incident Co-ordinator, the acting Incident Co-ordinator or any

member of the police force shall be taken to be the signature it purports to be until the contrary is proved;

- (c) a document purporting to be a copy of a certificate declaring an emergency situation pursuant to section 5 shall, upon its production in that proceeding be evidence and in the absence of evidence to the contrary, conclusive evidence of that certificate and of the matters contained therein.