

POLICE POWERS AND RESPONSIBILITIES BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objective of the Legislation

The legislation has a number of objectives. First, the Bill seeks to provide powers necessary for modern effective policing, so that police may properly serve the community. Secondly, the Bill provides a central reference point for police and the community, enabling them to understand the nature and extent of police powers. A central reference point is achieved by consolidating police powers into one statute. This consolidation results in the added benefit of consistency both in the extent of police powers and in the respective safeguards.

Means of Achieving Policy Objectives

The legislation will substantially confer in one Act the powers and responsibilities of police officers.

Alternative Means of Achieving Policy Objectives

The policy objectives cannot be achieved in any way other than the introduction of the Bill.

Estimated Cost of Implementation for Government

It is considered that these will not be significant. The greatest cost will be associated with training members of the Queensland Police Service. A training package has yet to be formulated.

Consistency with Fundamental Legislative Principles

The Bill allows a police officer enter and search a place in a range of circumstances without the consent of the occupier. Unless a police officer is entering a place to prevent the imminent injury or an offence involving damage, the entry and search of the place must be approved by a justice. Ordinarily this approval will be obtained before the search. However, in circumstances where immediate entry is required, for example to preserve evidence, the approval may be given after the search.

The authority to install a listening or visual surveillance device for the investigation of serious indictable offences, or the conduct a covert search of a place for evidence relating to organised crime, are extraordinary but necessary powers. As the level of intrusiveness may be extensive, the community expects respective safeguards also to be extensive to ensure the proper use of such powers. The Bill introduces the new concept of a public interest monitor. The monitor will perform an independent role, and will be able overview applications to a Supreme Court judge for a surveillance warrant or covert search warrant. This overwatching function will include the authority to ask the applicant police officer questions and make submissions to the judge with respect to the application. Due to the clandestine use of surveillance devices and covert search warrants applying the principles of natural justice is not appropriate.

The Bill recognises the importance of privacy and protection of law abiding citizens, by ensuring that investigative powers into prescribed offences are properly balanced with an individuals rights to privacy. A judge before issuing the warrant must consider a number of matters, including the privacy of the person.

Consultation conducted in Development of the Bill

Consultations have involved all Government Ministers and Government Members and officers of the Department of the Premier and Cabinet, the Department of Justice, the Office of Women's Affairs and the Queensland Police Service. Additionally, a Joint Working Party on Police Powers was formed comprising officers of the Queensland Police Service and the Department of Justice. Officers from the Department of Premier and Cabinet and the Office of Women's Affairs also became members the Joint Working Party. The Queensland Council for Civil Liberties has been involved significantly in ongoing consultations relating to the development

of the proposed Bill.

In 1997, a public Discussion Paper was released by the Government seeking the views of the community on the use of police powers. The Paper discussed a range of police powers that are included in this Bill. Additionally, public forums were held at major population centres around Queensland.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clauses 1 and 2 specify the short title of the Bill and provides for its commencement on a date to be fixed by proclamation or on 6 April 1998, whichever ever occurs first.

Clause 3 provides for a dictionary in schedule 3, to define certain terms.

Clause 4 provides for the purposes of the Bill. These are to:

- (a) consolidate and rationalise certain existing powers and responsibilities;
- (b) provide for additional powers considered necessary;
- (c) provide for consistency in the nature and extent of police powers and responsibilities;
- (d) standardise the manner in which powers and responsibilities are to be exercised by police;
- (e) ensure fairness to, and protect the rights of persons against whom the powers are exercised; and
- (f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers.

Clause 5 is designed to ensure police comply with the provisions of the Bill when exercising any of the powers contained therein. Non-compliance renders the officer liable to be dealt with according to law. Action may range from cautioning to the imposition of criminal penalties, depending upon the seriousness of the circumstances.

Clause 6 retains a police officer's common law powers, obligations and liabilities, except where specific areas of the common law have been incorporated into this Bill, e.g. the *chance discovery rule*. Also, the clause preserves the powers a police officer may exercise as an individual, e.g. powers for protecting property.

Clause 7 makes a clear statement that the Bill does not affect the common law right of a court to exclude evidence sought to be admitted in a criminal proceeding.

Clause 8 describes the relationship of the Bill to other Acts. Subclauses (1) and (3) clearly provide that the provisions of this Bill do not affect the powers or responsibilities a police officer has under an Act included in schedule 1, or an Act prescribed in a regulation for this clause. Consequently, where an investigation is to be made under any of the listed or prescribed Acts, the powers provided to police in those Acts are to be used and the responsibilities adhered to. The Acts contained in schedule 1 are:

- (a) the *Traffic Act 1949*, other than the powers under section 42 and the powers under section 35(2) and section 37(5). Police officers are now to use the powers under clauses 25 and 35 of this Bill;
- (b) the *Mental Health Act 1974*;
- (c) the *State Counter Disaster Organisation Act 1975*;
- (d) the *Noise Abatement Act 1978*;
- (e) the *Bail Act 1980*;
- (f) the *Public Safety Preservation Act 1986*;
- (g) the *Domestic Violence (Family Protection) Act 1989*;
- (h) the *Criminal Justice Act 1989*;
- (i) the *Juvenile Justice Act 1992*, other than the extent to which section 35(2) and parts 8 and 12 of this Bill apply to children.
- (j) the *Crime Commission Act 1997*.

Examples—

1. A police officer who receives a complaint that domestic violence is occurring at an address will be required to use the powers under the *Domestic Violence (Family Protection) Act* rather than

the powers under this Bill

2. A police officer who administers a breath test to a motorist will do so under the provisions of the Traffic Act. However, if the motorist commits an offence by being over the legal blood/alcohol limit and the police officer wishes to arrest the person, the officer will do so under this Bill.

Example 2 indicates that the intent of the Bill is to ensure (other than in the exceptions listed) there is ‘across the board’ consistency in prerequisites to arrest and the exercise of the power to arrest.

Subclauses (2) and (4) provide that a police officer is not prevented from exercising a power or responsibility under this Bill, where the officer does not have the power or the responsibility under the listed or prescribed Acts.

Examples—

1. A police officer may use reasonable force under this Bill to enter a place to detain a person under the *Mental Health Act 1984* because that Act does not include a provision allowing the officer to use reasonable force to enter the place.
2. A police officer who arrests a person for failing to provide his or her name and address under the *Public Safety Preservation Act 1986* may discontinue the arrest under this Bill in appropriate circumstances. This is so even though the power to arrest was exercised under the *Public Safety Preservation Act 1986* and not under this Bill, and the *Public Safety Preservation Act 1986* is silent on the duty to unarrest.

Clause 9 provides that if there is inconsistency between the powers and responsibilities contained in this Bill and those contained in another Act (other than a listed or prescribed Act referred to in clause 8), then the provisions of this Bill are to prevail to the extent of that inconsistency.

Example—

Section 140 of the *Weapons Act 1990* provides police with the power to arrest for offences under that Act, e.g. fail to provide name and address. However, clause 35 of this Bill provides a power of arrest, with safeguards, for offences against the statute law of Queensland. The terms of the section and clause are different. Therefore, an inconsistency exists between section 140 and clause 35. Consequently, section 140 of the *Weapons Act* cannot

apply. The arrest must be made under clause 35.

Clause 10 restricts the appointment by the Chief Executive Officer of another Government department, of a police officer as a public official for the purposes of enforcing the provisions of an Act administered by that department. The appointment cannot be made unless the written approval of the commissioner of police has been obtained. This will ensure that any police officer appointed as a public official has the experience and expertise to perform the duties. Where under another Act, the commissioner has the power to appoint a police officer as a public official for the purpose of enforcing the provisions of that Act, then this ‘appointment’ power remains and the power of the appointed officer continues.

Clause 11 allows a police officer (who is not a public official appointed in accordance with clause 10) to exercise the powers of a public official under another Act, where that public official has requested the assistance of the police officer and has explained the relevant powers. In exercising these powers, the police officer has the same protections as the public official.

Example—

An inspector under the *Brands Act 1915* may call on a police officer to assist where the inspector envisages there may be physical resistance from the owner to the inspector entering onto a farm and seizing cattle. In this instance the inspector may wish to take police officers along in order to avoid a violent confrontation. Police may assist the inspector, however, the inspector will first have to advise police of the powers available to enter and seize the cattle under section 23 of the *Brands Act*. This being done, police assume the powers of the inspector and can assist the inspector.

Clause 12 renders ineffective any provision in another Act passed before the commencement of clauses (10) and (11) of the Bill, that authorises a police officer to perform a function of a public official for the purposes of that Act. This clause is subject to the transitional provision in clause 135.

Example—

Section 127(4) of the *Nature Conservation Act*, automatically appoints all police officers to be conservation officers. Clause 10 will nullify this section. In future, appointments will need to be sanctioned by the commissioner of police under clause 10.

PART 2—POWERS FOR ENTRY, INSPECTION,

INQUIRIES, ARREST AND CRIME SCENES

General power to enter to make inquiries, investigations or serve documents

Clause 13(1) provides that this clause does not authorise entry to a private place if in the particular circumstances entry should be gained under a search warrant obtained under this Bill or another Act. Access may be gained to that part of a place open to the public, eg a night club.

Example where Bill or another Act requires entry under a warrant—

An entry without consent into the back room of an electrical business where stolen property is reasonably suspected of being stored.

Example where Bill or another Act does not require entry under a warrant—

Where a police officer enters a licensed premises to check for persons under the age of 18 years who are consuming liquor.

Subclause (2) identifies the purpose of the clause as being to ensure that a police officer performing a function of the police service may enter and stay on a place in circumstances that may otherwise constitute trespass.

Subclause (3) allows a police officer to enter and remain for a reasonable time on any place for the purpose of inquiring into, or investigating a matter.

Examples of ‘investigations’ or ‘inquiries’—

1. Investigation into whether an offence is being or has been committed on the place.
2. Inquiries as to whether a person reasonably suspected of being involved in the commission of an offence is on the place.
3. Inquiries as to whether a missing person is on the place.

Subclause (4) allows a police officer to enter and remain for a reasonable time on any place for the purpose of serving a document.

Examples—

1. A police officer wishing to serve a summons, notice to appear or a domestic violence order on a person may enter the yard of the person’s home and walk around the yard to find out if the person

is in the yard.

2. A police officer wishing to serve a summons, notice to appear or a domestic violence order on a person may enter the yard of the person's home and walk to the front or back door to knock on the door in order to gain the occupant's attention.

However, subclause (5) provides that if the place is a premises (or part thereof) used exclusively for residential purposes, a police officer may enter the land associated with the premises but may not enter that part of the premises used exclusively for residential purposes, unless the officer has the consent of the occupier.

Examples—

1. A police officer wishing to serve a summons, notice to appear or a domestic violence order on a person may only enter the person's home (used exclusively for residential purposes) if the occupier consents to such entry. Otherwise, the officer may only go as far as the front or back door of the home.
2. A police officer wishing to make an enquiry about a missing person at a house sees a person in the garage the police officer may enter the garage and approach the person.

Subclause (6) allows the officer to use minimal force to enter the place.

Example—

Turning a door handle to open an unlocked door and opening the door

Power to enter etc. for relevant Acts

Clause 14 allows a police officer to enter and remain for a reasonable time on any place of prescribed business which is open to the public for the purpose of inspecting records and articles held by that business.

Example—

Police regularly inspect jewellery held by a second-hand dealer or pawnbroker and compare an item with the relevant entry in the business register to ascertain who sold or pawned the jewellery. It is not unusual for a pawned item to be stolen. The register inspection may lead to the location of the person who stole the jewellery.

Subclause (2) requires a person to comply with a police requirement to produce documents or goods for inspection etc., and to give reasonable

help. Failure to comply constitutes an offence.

Subclause (3) allows an officer to enter a part of a place not used as business premises if the purpose of the entry is to gain access to the business premises.

Example—

Business premises located at the rear of the ground floor of a dwelling and accessible only through the front entry door and family room—the family room may be entered to gain access to that part of the premises used for business purposes.

Subclause (4) defines terms relevant to the section.

Power to enter to arrest or detain someone or execute warrant

Clause 15 provides for the power of police to enter a place for the purpose of arresting or detaining a person. Subclause (1) allows a police officer to enter and remain on a place (including a dwelling) for the purpose of arresting (with or without warrant) a person, or detaining a person under another Act.

Examples—

1. Entering a place to arrest a suspect for the purpose of questioning the person about an indictable offence.
2. Entering a place to arrest a person who is the subject of a warrant in the first instance.
3. Entering a place to detain a person who is on bail for an offence where there is an apprehended breach of the bail conditions, or where a surety for the person has died.

However, subclause (2) provides that a police officer can only enter the dwelling if the officer reasonably suspects that the person to be arrested or detained is in the dwelling.

Subclause (3) provides that after entering a place a police officer may search the place for the person named in the warrant, or intended to be arrested or detained.

Subclause (4) defines the term “arrest”, in relation to a person named in a warrant, to include apprehend, take into custody, detain and remove to another place for the purpose of examination or treatment.

Read in conjunction with clause 125, a police officer may use force to enter the place and search for the person.

Example—

If a police officer receives information that a person wanted on a warrant for failing to appear in court is at a particular address the police officer is entitled to cross the yard of the place and enter the place (whether it be a commercial building or a home) and ask for the person. If the police officer is advised that the person is not there but the officer still suspects that the person is in the place, the officer can search the place for the person. If a person refuses to open the door of the place a police officer can use force to get inside. Also, if a person physically resists the police officer entering the place, the officer can use force to overcome that resistance.

Gaining access to crime scenes

Clause 16 is designed to allow a police officer to get onto a place to decide whether a crime scene exists. In order to decide if a place is a crime scene, the police officer is permitted to stay on the place for a reasonable time.

Clause 16(a) allows a police office to gain access to a potential crime scene, by going through another place.

Examples—

1. A police officer can go through the yard of someone who is not involved in the matter in order to get to a crime scene.
2. In a block of units, a police officer can climb onto a first floor balcony in order to get to a second floor balcony where a potential crime scene exists.

Clause 16(b) allows a police officer to enter and then remain upon a place for a time reasonably necessary to decide whether or not to establish a crime scene on that place. It is intended that a reasonable time would be limited to the time taken to have a cursory look at the place to see if the crime scene powers should be exercised. Obviously, a police officer would be expected to remain on the place if he or she decided to use the other crime scene clauses of this Bill and establish a crime scene.

What is a “crime scene”

The Dictionary defines a ‘crime scene’ as a place that may be either a ‘primary crime scene’ or a ‘secondary crime scene’. A ‘primary crime scene’ exists where it is reasonably suspected that a 7 year imprisonment offence or a deprivation of liberty has been committed at that place and it is necessary to protect the place to allow the gathering of evidence. A ‘secondary crime scene’ is established for the same purpose, but relates to a place other than where the offence was committed, and is restricted to ‘serious violent offences’ (a 7 year imprisonment offence involving violence or a threat of violence to a person, or an offence involving deprivation of liberty).

Examples of crime scenes—

1. A primary crime scene may be a place where a person was murdered and the body found.
2. A secondary crime scene may be a place where a murdered body was left having been removed from the place where the murder was committed.

Initial establishment of crime scene

Clause 17 applies where a police officer:

- (i) having received information (anonymously or otherwise) has entered a place under clause 16 and determined there is a need to immediately preserve evidence relating to a crime scene or to commence a crime scene investigation; or

Example—

Having received information that a murder has been committed in a house a police officer enters the house under clause 15 and finds a body lying in a blood stained room. The police officer considers that should he or she leave the place unattended, evidence could be tampered with or destroyed.

- (ii) has entered a place with consent of the occupier, or under the authority of another power authorising entry, and discovers circumstances which dictate that a crime scene should be established immediately.

Example—

A police officer has been invited into a house to take a statement in relation to a traffic accident and while there sees, through a door which is ajar, a body lying on the floor of a room in a pool of blood.

If the police officer decides to establish a crime scene, an officer must as soon as is reasonably practicable make an application to a magistrate, or as the case may be, a judge, for an order to maintain a crime scene and exercise the powers in clause 18. The officer who applies for a crime scene approval need not be the officer who establishes the crime scene.

If the magistrate or the Supreme Court judge refuse to make an order approving the establishment of a crime scene, the powers provided under Clause 20 are no longer available to the police officer.

Crime scene warrant

Clause 18 allows a police officer to apply to a magistrate or, as the case may be, a judge, for a crime scene warrant where—

- (i) entry to a place is gained under clause 16 and the police officer does not consider it necessary to immediately establish a crime scene in order to commence to exercise powers under clause 20; or

Example—

A police officer receives information that circumstances exist in a house which necessitate a crime scene being established and the officer gains access to the crime scene under clause 16 in order to verify the information received. However, the circumstances of the offence are such that there is no immediate urgency in establishing a crime scene.

- (ii) a police officer is lawfully on a premises either by consent or under another power and does not consider it necessary to immediately establish a crime scene and commence to exercise powers under clause 20; or

Example—

A police officer is invited into a house to take a statement relating to a traffic accident and while there discovers, by chance, circumstances which dictate a crime scene should be established. However, the circumstances of the offence are such that there is no immediate urgency in establishing a crime scene.

- (iii) a police officer pre-determines the need to establish a crime scene and does not consider it necessary to immediately establish a crime scene and commence to exercise powers under clause 20;
or

Example—

A police officer receives a telephone call from a person which suggests that evidence relating to a crime scene offence exists in a building and the officer is in a position to obtain a crime scene warrant without unnecessarily delaying the commencement of an investigation at the crime scene.

- (iv) a police officer having established a crime scene under clause 17, applies for a warrant to comply with the provisions of subclause (2) of that clause.

Subclause (2) places an additional safeguard on the exercise of a power under clause 20. If the actions of police in conducting a search of a place are such that it is likely structural damage will be caused to a building, a crime scene warrant from a Supreme Court judge must be obtained prior to commencing the work. Subclause (3) provides that this requirement applies even if a crime scene warrant for the place has been issued by a magistrate. Should damage actually occur, compensation will be available to the aggrieved party to ensure that any damage is repaired.

‘Structure’ is that part of a building which supports the building and prevents it from collapsing. It is intended that ‘structural damage’ will be damage that is likely to result in a building collapsing. It does not include removal of sheets of gyprock from a wall.

Subclauses (4) and (6) are procedural in nature governing the form of, and determination of the application.

Subclause (5) provides the occupier of the place—

- (a) must be given notice of the application unless the police officer reasonably suspects that giving the notice would frustrate or hinder the investigation; and
- (b) if present when the application is made, is entitled to be heard on the determination of an application for a crime scene warrant.

Subclause (7) identifies those matters which must be considered by the person determining the application (upon being satisfied that the place is a crime scene). They are.

- (a) the time for which it is reasonable to maintain a crime scene (not to exceed 7 days);
- (b) the nature and seriousness of the suspected offence;
- (c) the likely extent of interference to be caused to the occupier of the place; and
- (d) any submissions made by the occupier.

Subclause (8) specifies those matters which must be stated in the crime scene warrant.

Subclauses (9) and (10) address the duration of a crime scene warrant. The warrant to establish a crime scene and to exercise the powers in clause 20, will lapse after the expiry of the period specified in the warrant unless an application for an extension of the warrant has been approved by the issuing magistrate or judge. This provision allows police to initially remain on a crime scene for an approved period, which may be up to 7 days, for the purposes of searching for evidence or investigating the offence. If it is necessary to remain on the place after the expiry date of the warrant then a police officer will need to apply for an extension of the warrant from a magistrate or, as the case may be, a judge, before the warrant expires. The warrant may be extended for a further period or periods. Any one extension period may not exceed 7 days.

Example of circumstance in which an extension may be required—

In the case of a serious offence, such as a rape which culminates in the victim's murder, it may take a period longer than 7 days for scientists and technical officers to complete a thorough search or examination of the place. This is especially so should each fibre of a floor carpet need to be located and examined for hair samples, foreign fibres or minute blood or semen stains.

Subclauses (11) and (12) relate to applications for revocation of crime scene warrants. Subclause (11) allows the occupier of the place to apply for an order to revoke the crime scene warrant where:—

- (a) the application for the warrant was made in the absence and without the knowledge of the occupier; or
- (b) the occupier had a genuine reason for not being present at the hearing of the application.

Subclause (12) provides that the judge or magistrate hearing the application for revocation, may either approve or refuse the application.

Subclause (13) provides that the warrant remains in force pending the determination of any application to revoke the warrant, or to review its issue under the *Judicial Review Act 1991*.

Way of establishing a crime scene

Clause 19 permits a police officer to establish a crime scene by any means whatsoever, provided that those means give sufficient notice to the public of the existence of the scene.

Examples of ways of establishing a crime scene—

1. A police officer may stand at a door to stop people entering a building.
2. Barricades or tapes indicating the place is a crime scene may be placed around the place.
3. A written notice stating the place is a crime scene and unauthorised entry is prohibited may be displayed.

Powers at crime scene

Clause 20 identifies the powers a police officer may exercise at a crime scene for the purpose of gathering evidence. A police officer may—

- (a) enter the crime scene;
- (b) direct a person to leave the crime scene or direct a person to remove a vehicle from the crime scene;
- (c) remove from the crime scene a person who fails to comply with a direction to leave the crime scene and remove from the crime scene a vehicle a person fails to remove from the crime scene;
- (d) direct a person not to enter a crime scene;
- (e) prevent a person entering a crime scene;
- (f) prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it, and for that purpose detain and search the person;

- (g) perform any necessary investigation including the inspection of the crime scene and anything in it to obtain evidence of an offence;
- (h) take electricity for use at the crime scene;
- (i) direct the occupier of the place, or a person concerned in the management or control of the place, to maintain a continuous supply of electricity at that place;
- (j) photograph the crime scene and anything in it;
- (k) seize and retain all or part of a thing that may provide evidence of an offence;
- (l) dig up anything at the crime scene—subject to subclause (3);
- (m) remove wall or ceiling linings or floors of a building or panels of a vehicle; and

Example of the need for the type of power—

In the case of the backpacker murders in the Balangelo State Forest, it was necessary for police to remove a wall in the suspect's house in order to search for property to link the suspect to the murders. Property was found as a result of the search.

- (n) remove or cause to be removed an obstruction from a crime scene.

Example—

A police officer may have a tow truck tow the vehicle from across a gateway.

Subclause (2) provides that if it is necessary to enter another place to access the crime scene, then police may enter that place.

Subclause (3) restricts a police officer doing anything in the crime scene that may cause structural damage unless authorised by a Supreme Court judge.

Example of the need for the type of power—

In a recent multiple murder case in England, police were required to conduct an excavation under the house of the suspect in order to search for

and recover bodies or the victims. As a result of the excavation, structural damage was caused to the house.

Subclause (4) allows police to use the assistance of an authorised person for the purposes of exercising the functions under clause 20(1)(g), (h) (j) (k), (l), (m) or (n).

Examples of authorised persons—

1. A forensic scientist who may inspect the scene and gather evidence.
2. A locksmith where it is necessary to open a locked room or receptacle.
3. A structural engineer where excavation of the structure is necessary.

Copy of crime scene warrant or approval to be given to occupier

Clause 21 requires that a copy of a crime scene warrant issued by a magistrate or a Supreme Court judge must be given to the occupier of the premises to which the crime scene relates. The copy is to include a statement of the rights and obligations of the occupier. The clause requires that should the occupier not be present, a copy of the warrant be left in a conspicuous place at the scene.

Exercise of crime scene powers in public place

Clause 22 provides that it is lawful for a police officer to exercise crime scene powers under subclause (1) in a public place without the need to obtain a warrant

Subclause (2) prohibits the doing of anything in the public place which may cause structural damage unless a warrant has been obtained from a Supreme Court judge.

Example—

On receiving information that a murdered body is buried in a National Park, police can exercise any or all of the crime scene powers provided by

the Act. However, if the body is buried in a position against a National Park and Wildlife Service cabin and it is likely that structural damage will be caused to the cabin during the excavation of the area, police will seek the approval of a Supreme Court judge to commencing digging in that particular area.

Subclause (3) allows an authorised person to assist a police officer.

Power to require name and address

Clause 23(1) identifies the circumstances where a police officer may require a person to state their correct name and address. Those circumstances are where a police officer—

- (a) finds a person committing an offence; or
- (b) reasonably suspects a person has committed an offence; or
- (c) reasonably suspects that a person may be able to assist in the investigation of an alleged indictable offence, because the person was near the place where the alleged offence happened before, when or soon after the offence happened; or
- (d) is attempting to execute a warrant or serving a summons or other court document (e.g. notice to appear).

Subclause (2) provides a police officer with the power to require a person to state their correct name and address.

Subclause (3) allows a police officer to require the person to provide evidence of the correctness of any stated name or address. This power may only be exercised where the police officer reasonably suspects that the person may be in a position to verify their name and address. Evidence of correctness may be a driver's licence, or the person may be able establish their correct identity by making a telephone call to another person.

Examples of reasonable suspicion that person may be able to produce evidence of correctness—

1. It is reasonable to expect that a person can produce evidence of correctness if the person is carrying a wallet.
2. It is reasonable to expect that a person can produce evidence of correctness if the person is driving a vehicle.
3. It is reasonable to expect that a person can produce evidence of correctness if the person can does not have identification on them

but can call on another person to verify the name and address supplied.

Examples where a person may not be expected to be able to produce evidence of correctness—

1. It is not reasonable to expect that a person can produce evidence of correctness if the person is alone on a beach and has only swimming attire.
2. It is not reasonable to expect that a person can produce evidence of correctness if the person is jogging while dressed in jogging attire.

Subclause (4) provides that a police officer who requires a person to state their correct name and address or to produce correctness of their name and address must at the time of making the requirement, warn the person that it is an offence not to comply with the requirement.

Subclause (5) creates an offence for a person to fail, without reasonable excuse, to provide their correct name or address, or evidence of their correct name or address.

Subclause(6) provides that an offence referred to in subclause (5) is not committed by the person where it is later established the person did not commit the offence referred to in subclause (1), was not a potential witness to an indictable offence, or was not a person mentioned in a court related document.

PART 3—ROADBLOCKS AND TRAFFIC RELATED POWERS

Roadblocks

Clause 24(1) authorises the establishment of a roadblock if a police officer reasonably suspects that the roadblock may be effective to apprehend or locate a person in a vehicle who—

- (a) has committed a 7 year imprisonment offence; or

Example—

A person who has committed an armed robbery and is driving from the scene.

- (b) may be depriving another of their liberty; or

Example—

A person who has kidnapped another and is moving the person from one place to another.

- (c) is being deprived of their liberty; or

Example—

This paragraph allows for the search for a person who may be held in the boot of a moving vehicle.

- (d) has escaped from lawful custody; or

Example—

A person who has escaped from a police officer following arrest, from a watchhouse, from a prison, from a prison officer, or from a child detention centre or employee of that centre.

- (e) may be endangering the life or safety of someone else.

Example—

A person who is driving a vehicle dangerously on a road, for example at 160kph through a town. The person needs to be stopped by police prior to his or her actions resulting in the death of someone.

Subclause (2) allows the police officer to stop, detain and search any vehicle at a roadblock for a reasonable time to find out if the person is in the vehicle.

Example—

It may be necessary to have the driver of a vehicle open the boot of his or her vehicle to search for a person who has been kidnapped.

Subclause (3) specifies matters which the police officer must consider in determining if a roadblock would be effective. These are—

- (a) when and where the relevant circumstance happened; or

Example—

Where there has been prison outbreak it would be reasonable to suspect

that a roadblock would be effective if established shortly after the outbreak and in the vicinity of the prison, but not if established 24 hours later in the absence of any additional information.

- (b) information the police officer has concerning where the offender, person deprived of liberty or to escape may be travelling in a vehicle.

Example—

Where there has been prison outbreak it would be reasonable to suspect that a roadblock would be effective if established 48hrs after the outbreak if a person resembling an escapee is recently seen in the area of the proposed roadblock.

Powers relating to roads and traffic

Clause 25(1) provides a police officer with the power to give a direction, signal or order to a driver or pedestrian if necessary to safely and effectively control traffic movement on a road.

Examples—

1. A police officer may direct traffic at a busy intersection where traffic lights are faulty.
2. A police officer may direct traffic around the scene of a vehicle accident.

Subclause (2) provides police with power to give a direction, signal or order to the driver or passenger of a train in an emergency.

Example—

Where a fatal accident has occurred on a railway crossing, a police officer can direct the driver of a train to stop the train or divert onto another track (obviously with the consent of the railway controller) until such time as the investigation at the scene is complete.

Subclause (3) provides that if an emergency exists or if it is necessary to temporarily prohibit, divert or direct traffic a police officer may take any measures or give an appropriate direction, signal or order to drivers or pedestrians.

Examples—

1. It is necessary to close a road to keep people away from the scene of a siege where firearms are being discharged and a member of the public may be hurt.
2. Traffic may be detoured around a road where a serious or fatal road accident has occurred and requires that treatment be provided to injured persons, wreckage be cleared or evidence be gathered.

PART 4—SEARCHING PEOPLE AND VEHICLES WITHOUT A WARRANT

Searching persons without warrant

Clause 26(1) and (2) allows a police officer, in specified circumstances, and without a warrant, to stop, detain and search a person and anything in the person's possession and seize and retain evidence. The specified circumstances exist where the officer reasonably suspects that the person—

- (a) unlawfully possesses a thing that may be a weapon;
- (b) unlawfully possesses a thing that may be a dangerous drug;
- (c) unlawfully possesses a thing that may be stolen, unlawfully obtained, or tainted property;
- (d) has a thing that may have been used, is being used, is intended to be used, or is primarily designed for use as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;

Examples—

1. The person has possession of a scanner which if pointed at the door of a car and activated will decipher and replicate the electronic code which automatically unlocks the door of a car.
2. The person has possession of a coat hanger which has been bent to a shape to allow it to be used to unlock the door of a car and the person has it for the purpose of using it to break into a car and steal it.
3. The person has possession of a picklock with the intent of

breaking into a house to commit an offence.

4. The person has possession of a pipe for smoking cannabis sativa.
- (f) has evidence of the commission of a 7 year imprisonment offence which the officer reasonably suspects may be concealed upon the person or destroyed; or

Example—

A person has possession of jewellery which has recently been stolen from a house and which he or she may conceal in order to avoid prosecution.

- (g) has something which he or she intends to use to cause harm to himself, herself or to someone else.

Examples—

1. A person may have possession of a knife with which the person intends to commit suicide.
2. A person may have possession of a knife with which the person intends to use to harm another.

Subclause (3) allows the police officer to seize any thing discovered that may provide evidence of the commission of an offence.

Searching vehicles without warrant

Clauses 27(1) and (2) allow a police officer, in specified circumstances, and without a warrant, to stop, detain the vehicle and its occupants and search a vehicle and anything in it. The specified circumstances exist where the officer reasonably suspects that the vehicle may have in it something that may be—

- (a) a weapon or drug that a person may be in unlawful possession of;
- (b) stolen, unlawfully obtained, or tainted property;
- (c) something that may have been used, is being used, is intended to be used, or is primarily designed for use as an implement of housebreaking, unlawfully using or stealing a vehicle, or the administration of a dangerous drug;
- (d) evidence of the commission of a 7 year imprisonment offence which the officer reasonably suspects may be concealed upon the

person or destroyed; or

- (e) something which the occupier of the vehicle intends to use to cause harm to himself or herself or to someone else.

Examples—

See examples in clause 26.

Subclause (3) allows a police officer to stop, detain and search a vehicle if the police officer reasonably suspects the vehicle is being unlawfully used.

Example—

A police officer can stop, detain and search a vehicle if it has been stolen by a group of youths and is being taken for a ‘joyride’.

Subclause (4) allows a police officer to detain the vehicle and anyone in it and search the vehicle or anything in it, if the driver or a passenger of the vehicle has been arrested in connection with an offence involving something mentioned in this part.

Example—

A police officer can search a vehicle after arresting the driver or a passenger of the vehicle for an offence of possession of an unlawful dangerous drug or an armed robbery.

Subclause (5) authorises the removal of the vehicle to another place where it is necessary to enable a proper search to be conducted.

Examples—

1. Where information is received that unlawful dangerous drugs are in a hidden compartment of the vehicle.
2. Where the driver of a vehicle has been arrested for possession of unlawful dangerous drugs, police may remove it to another place having necessary equipment to properly search the vehicle.

Subclause (6) allows the police officer to seize any thing discovered that may provide evidence of the commission of an offence.

Subclause (7) provides that the power to search a vehicle includes the power to enter the vehicle, stay on and re-enter it as often as necessary to remove anything seized.

PART 5—SEARCHING PEOPLE, PLACES AND

VEHICLES WITH A WARRANT

Search warrant

Clause 28 allows a police officer to make application to a justice for a search warrant to enter and search a place for evidence other than evidence relating to a forfeiture, proceeding.

Subclause (2) requires however, if the object of the warrant is to search for something that may be used as evidence in forfeiture proceedings of other property, the application is to be made to a magistrate.

Example—

A search of financial records that may tend to show where money obtained through the sale of unlawful dangerous drugs has been invested. The money is liable to forfeiture.

Subclause (3) requires that if it is intended to do anything that may cause structural damage to a building, the application must be made to a Supreme Court judge.

Example—

On receiving information that drugs are buried in the back yard of a house, police can exercise any or all of the search warrant powers provided by the Act. However, if the drugs are buried in such a position against a garage that it is likely that structural damage will be caused to the garage during the excavation of the area, police will need to seek a warrant from a Supreme Court judge prior to commencing digging in that particular area.

Subclause (4) provides the form and information required in an application for a warrant.

Subclause (5) allows the issuer to require further information from the applicant police officer.

Subclause (6) provides that a warrant may only be issued if the issuer is satisfied on reasonable grounds that the evidence is in a place at the time the application for the warrant is made or is likely to be brought into the place within the next 72 hours.

Subclause (7) stipulates that certain things must be specified within the warrant. These are the:—

- (a) power to enter and exercise any of the powers under clause 29. However, unless the issuing authority deems it necessary the warrant need not specifically list each power under clause 29 by name. It will be sufficient to simply state that any or all of the powers under clause 29 may be exercised;
- (b) offence for which the warrant was issued or the Act under which the forfeiture proceedings may be started;

Example—

Where it is alleged in the information that the occupier of a house is suspected of having committed numerous offences of burglary, the warrant may simply state that it is issued in relation to offences of burglary. Each separate offence need not be mentioned.

- (c) evidence that is sought and that may be seized under the warrant;

Example—

Where it is alleged in the information that the occupier of a house is suspected of having committed numerous offences of burglary, the warrant may simply state that evidence related to offences of burglary may be sought and seized. Each separate offence need not be mentioned.

- (d) hours of entry if the warrant is to be executed at night (The *Criminal Code* defines night time to be between 9pm and 6am);
- (e) date when the warrant ends.

Subclause (8) provides power to search anyone or anything on board or about to go on board an aircraft, boat, bus or train if the offence involves the safety of the aircraft, boat, bus or train. This subclause is designed to enhance the protection of the large number of people who can travel on one of the things mentioned.

Subclause (9) provides the magistrate with power to issue a warrant directing a person in possession of documents relevant to an offence being investigated by police to surrender those documents to a police officer. Subclause 10 requires that the warrant must also state that a failure to comply, without reasonable excuse, with the direction may be dealt with as contempt of a magistrates order under section 205 of the Criminal Code.

Subclause (11) provides that a police officer may, where a justice (other than a judge or magistrate etc.) has refused to issue a warrant, make a

further application for the issue of the warrant to a magistrate. Subclause (12) provides the magistrate is to be advised of the previous decision of the justice.

Subclause (13) provides definitions of “transport vehicle” and “place”.

A search warrant is not required for a public place.

Powers for search warrants

Clause 29 specifies the powers available to a police officer when executing a search warrant. They are the power to—

- (a) enter the place and remain for a time reasonably necessary to exercise any of the powers in this clause;

Example—

A police officer who locates stolen property identified in the warrant would be able to remain on the place for that period of time reasonably necessary to remove the property or to photograph where it was located.

- (b) access the place the subject of the search by passing through, along, over or under private property;
- (c) search the place for anything sought under the warrant;
- (d) open any locked thing in the place;

Example—

If it is possible to conceal the subject of the search in a drawer then a police officer may open any locked drawer to search for the thing.

- (e) detain any person found on the place for the time reasonably necessary to determine if that person has anything specified in the warrant;
- (f) detain a suspect for the offence who is found on the place, for the duration of the search;
- (g) dig up land—subject to the approval requirements in clause 28(3);

Examples—

1. Police may need to dig up a yard in order to take possession of

cannabis sativa plants.

2. Police may need to dig up a yard in order to undercover a large container in which cannabis sativa plants are being cultivated.
 - (h) search, if authorised in the warrant, any person found upon the place, for anything sought in the warrant which may be concealed on that person. A justice or magistrate must authorise the searching of persons at the place mentioned in the warrant before police can exercise this particular power;
 - (i) seize and retain anything which is reasonably suspected to be evidence of the commission of an offence relating to the warrant, and which is found in the course of the search of the place or any person on the place;
 - (j) muster, hold and inspect any animal where it is reasonably suspected that it may provide evidence of the commission of an offence relating to the warrant;
 - (k) photograph anything where it is reasonably suspected that it may provide evidence of the commission of the offence relating to the warrant;
 - (l) to remove wall or ceiling linings or floors of a building or to remove the panels of a vehicle; and
 - (m) if authorised under the warrant—power to take a vehicle to, and search for a thing that may be concealed in a vehicle, a place for appropriate facilities for conducting the search.

Copy of warrant to be given to occupier

Clause 30 requires a police officer executing a search warrant to provide a copy of that warrant and a statement the persons rights and obligations under the warrant, to the occupier of the place. If the occupier is not present at the time of the execution of the warrant, the copy of the warrant is to be left in a conspicuous place.

Search to prevent loss of evidence

Clause 31 relates to searches, without warrant, of places or people in those places where immediate entry and search is necessary to prevent the destruction or concealment of evidence of the commission of an offence specified in subclause (9) of this clause. Subclause (9) refers to—

- (a) indictable offences, offences involving gaming or betting, and offences against—
 - (i) *Animals Protection Act 1925*;
 - (ii) *Crimes (Confiscation) Act 1989*;
 - (iii) *Nature Conservation Act 1992*; and
 - (iv) *Weapons Act 1990*.

Subclause (2) allows a police officer to exercise any powers which may be conferred under a search warrant. The power does not extend to digging up land where the digging may cause structural damage to a building.

Subclause (3) and (4) provides that following the exercise of the powers, the officer must apply, as soon as reasonably practicable, to a magistrate for an order approving the search. Before approving the search the magistrate must be satisfied—

- (a) that in the circumstances before the search the officer had a reasonable suspicion there was in the place evidence of a relevant offence; and
- (b) that in the circumstances before the search there was a reasonable likelihood of the evidence being concealed or destroyed; or
- (c) having regard to the nature of the evidence found, that it is in the public interest to make the order.

Example—

If a search was made as a result of a rape investigation and the magistrate is not satisfied that the police officer had a reasonable suspicion prior to entering the place or that the evidence might be destroyed, the magistrate may still make the order on the basis that it is in the public interest that a person responsible for an offence as serious as rape should face trial for the offence. Obviously, any evidence retained by virtue of the order may be excluded at the trial by the judge.

Subclause (5) provides that if the magistrate refuses to approve the search, the magistrate may still order the retention of the thing or may order its disposal, return or destruction.

Subclause (6) provides that a police officer may, within 28 days of the magistrate's order for disposal, return or destruction of the thing, appeal to the Supreme Court against the order. A Supreme Court judge is

empowered by common law to allow the admission of evidence unlawfully obtained, on the basis of public interest. Therefore, it stands to reason that the final decision to admit or exclude evidence should be left to the Supreme Court.

Subclause (7) allows retention of the thing by the police officer until the appeal is decided.

Subclause (8) provides the Supreme Court may order the retention, disposal, return or destruction of the thing seized.

Notice to produce documents

Clause 32 allows a police officer to make application to a magistrate for the issue of a notice to produce documents. This notice applies only to financial institutions, which the officer reasonably suspects holds documents that may be evidence of the commission of an offence by someone other than the financial institution.

Subclauses (2), (3) and (4) are machinery clauses.

Subclause (5) provides that a magistrate may only issue a notice if satisfied there are reasonable grounds for suspecting—

- (a) the documents the financial institution holds may be evidence of the commission of an offence; and
- (b) the institution is not a party to the offence.

Subclause (6) provides that the magistrate may set a time within which the documents are to be delivered and nominate the place at which they are to be delivered.

Subclause (7) provides that the notice must be personally served on the financial institution as soon as reasonably practicable after its issue.

Procedural requirements—notice to produce

Clause 33 requires the financial institution to comply with the served notice.

Subclause (2) provides that the institution does not commit a breach of fiduciary duty or does not become liable for other civil action by compliance with the notice.

Subclauses (3) and (4) allow a financial institution to claim privilege on the contents of documents handed over on the basis that the produced documents contain privileged communications between the financial institution and someone else. Should privilege be claimed a police officer is not to read the documents until the issue of privilege is finalised and an order to access the documents is issued. The police officer may retain the documents during this process.

Subclause (5) permits a magistrate or a justice authorised by the magistrate, to make an order with respect to the access to, or the retention, copying or return of the documents.

Subclauses (6) and (7) are machinery clauses to facilitate the operation of the clause.

Subclause (8) provides that a failure on the part of a financial institution to comply with this clause is not an offence under section 205 of the Criminal Code or section 120 of this Bill.

Example—

The financial institution is not in contempt of a magistrate for failing to produce the documents as required.

PART 6—POWER TO SEIZE EVIDENCE

Power to seize evidence

Clause 34(1) and (2) allows a police officer who has lawfully entered a place or is at a public place to seize anything found by chance or in plain view on the place which the officer reasonably suspects is evidence of the commission of an offence. Further, if the thing found by chance or is in plain view is not an object of a search authorised by a warrant, it may still be seized.

Subclause (3) allows a police officer to photograph anything seized and the place where it was located.

Subclause (4) provides that to allow for the removal of the property the officer may remain and re-enter the place for such time as is reasonably necessary.

Examples of lawful entry—

1. In the case of a dwelling, where the occupier consents to entry into the dwelling for the purpose of making an enquiry or serving a summons.
2. Where a police officer has entered a place for the purpose of making an enquiry into an offence, but the occupier has refused entry into the dwelling, and the officer is leaving the place.
3. Where a police officer is searching a place by virtue of a search warrant and discovers, by chance, evidence of the commission of any other offence.
4. Where a police officer has executed a search warrant and is leaving the place.
5. Where a police officer has entered a place without warrant to prevent injury or an offence involving damage.
6. Where a police officer has entered a place for the purpose of making an arrest.

PART 7—POWERS RELATING TO ARREST

Division 1—Arrest generally

Arrest without warrant

Clause 35 allows a police officer to arrest a person for an offence, where the arrest is necessary for 1 or more of the following reasons—

- (a) to prevent the continuation or repetition of an offence, or to

prevent the person from committing another offence;

Examples—

1. In the case of an assault—where the person continues to behave violently or threatens to assault another person or the same person again.
 2. To prevent the continuation of an offence of disorderly behaviour in a public place after the police have left.
- (b) to make enquiries to establish the identity of the person, where the identity of the person is uncertain or unknown;

Examples—

1. In the case where a person refuses to provide his or her name and address.
 2. In the case where a person has supplied a name and address but did not supply evidence of correctness of the name and address although the person could reasonably be expected to be able to supply the evidence.
- (c) where a person fails to comply with a requirement to present themselves for the purpose of being fingerprinted and photographed;
- (d) to ensure the person's appearance before a court;

Examples—

1. Where the person has a history of failing to appear before a court.
 2. Where the person has indicated their intention of not appearing before the court with respect to this offence.
- (e) to obtain or preserve evidence relating to the offence;

Examples—

1. Where the person's fingerprints are necessary to prove possession of an unlicensed concealable firearm in the case of an offence under the *Weapons Act 1990*.
2. Where a person needs to be medically examined in terms of this Bill in order to obtain evidence.

3. Where a person is released immediately and is likely to go home to dispose of evidence prior to police being able to arrange a search of the premises in order to obtain that evidence.
 - (f) to prevent the harassment of or interference with potential witnesses;
 - (g) to prevent the fabrication of evidence;

Example—

Where the person is likely to approach a friend who may have been a witness to the offence and ask that person to alter his or her version of the incident to suit the case of the arrested person. At this stage police would not have obtained a statement from the witness.

- (h) to preserve the safety or welfare of any person including the arrestee;

Examples—

1. Where the person is very intoxicated and is walking out in front of traffic.
2. Where the person has committed an offence, such as sexually abusing a child or murdering a child, and the person is in danger of being physically attacked by members of the community.
- (i) to prevent the person from fleeing from the officer or the location of the offence;

Examples—

1. In the case where a police officer reasonably suspects a person has committed house breaking offence because of fingerprint evidence—where the person flees from the officer upon the officer's approach to the person.
2. In the case of a bank robbery—where the suspected offender is intercepted fleeing from the bank.
- (j) where the person commits the offence of obstruction or assault of a police officer;
- (k) because of the nature or seriousness of the offence.

Examples—

1. Where the person is alleged to have used or threatened to use a

firearm, offensive weapon or explosive substance in the course of committing the offence.

2. An offence of such a serious nature that the public would expect the person to be held in custody until such time as the person appears before a court. For example, these offences might be murder, robbery, rape, drug trafficking, or multiple burglary offences.

Subclause (2) allows a police officer to arrest a person for an indictable offence for the purpose of questioning the person about, or investigating the offence.

Examples—

1. Where a person is suspected of having committed an offence of arson—to arrest the person and question the person for the offence. Where practicable the person will be taken without undue delay to a police station having recording facilities for the purposes of electronically recording the interview.
2. Where the person is reasonably suspected of having committed offences of burglary—to arrest the person and have the person identify the addresses where the offences were committed by driving him or her to those addresses. The person usually gives directions in these instances.
3. Where the person is reasonably suspected of having committed a rape—to conduct a medical examination to gather evidence of the offence.
4. Where found committing the offence of dangerous driving a motor vehicle that is stolen—the person may be arrested for the purpose of questioning the person about the dangerous driving offence or the unlawful use of a motor vehicle offence.

Subclause (3) provides that clause 35(1) does not apply to juveniles. In the case of juveniles, a police officer is to use the arrest provisions of the *Juvenile Justice Act*, or where appropriate, clause 35(2) of this Bill.

Arrest with warrant

Clause 36 confirms the authority of a police officer to arrest a person named in a warrant, issued under another Act.

Subclause (2) defines the term “arrest” for the purposes of the clause.

Examples of warrant issued under other Acts—

1. A warrant issued by the Supreme Court for a witness who has failed to appear before a Commission of Inquiry.
2. A warrant of commitment issued under the *Justices Act 1886*, for the arrest of a person who has failed to pay a fine.
3. A warrant of the first instance issued under the *Justices Act 1886* for an offence.

Power of arrest for offences committed outside the State

Clause 37 is designed to assist in the extradition of an offender from Queensland who has committed an offence in another State. It is limited to indictable offences or offences punishable by at least 2 years imprisonment in that other State.

Subclause (2) provides a police officer with a general power of arrest for these offences. The officer is not limited by the restrictions imposed by other arrest provisions of this Bill.

Subclause (3) allows the post-arrest questioning of the person under the provisions of this Bill by a Queensland police officer or an interstate police officer from where the offence was committed.

Subclauses (4) to (6) are machinery clauses dealing with the person’s court appearance, the person being remanded in custody or granted bail. Under these provisions a person cannot be remanded in custody for a period exceeding 7 days unless extradition proceedings are commenced. Also, the person is relieved of any bail conditions if proceedings for extradition are not commenced within 7 days.

Examples—

1. A person can be dealt with under this clause where Queensland police become aware of the fact that the person has committed an offence interstate yet the interstate police are at that time unaware

of the offence.

2. A person commits a break and enter offence in Tweed Heads and crosses the border into Queensland before New South Wales police have time to take action under the *Service and Execution of Process Act 1992*, Queensland police can arrest the person under this clause.

Arrest may be discontinued

Clause 38(1) imposes a duty on a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer a suspect.

Subclause (2) imposes a duty on a police officer to release from arrest, an adult—

- (a) where the holding of the person in custody is no longer necessary; and
- (b) if it is more appropriate to proceed by way of notice to appear, or summons and a notice or summons has been served on the person.

Example—

1. A police officer may have arrested a person only for the purpose of questioning. At the conclusion of questioning the person should be released unless the provisions of clause 35 still apply.
2. A police officer may have arrested a person for both purposes mentioned in clause 35(2). The police officer is required to release the person when both purposes have been fulfilled unless the provisions of clause 35(1) still apply.

Subclause (3) imposes a duty on a police officer to release from arrest, where the arrest is made under clause 35(2), a child—

- (a) where the holding of the child in custody is no longer necessary; and
- (b) it is more appropriate to—
 - (i) take no action;
 - (ii) administer a caution;

- (iii) refer the offence to community conference; or
- (iv) proceed by way of summons or attendance notice.

Subclause (4) provides that the duties under subclause (2) do not apply where the reason for the original arrest was:

- (a) to prevent the person from fleeing from the officer or the location of the offence; or
- (b) because of the nature or seriousness of the offence or offences.

Examples for paragraph (b)—

1. Where the person is alleged to have used or threatened to use a firearm, offensive weapon or explosive substance in the course of committing the offence.
2. An offence of such a serious nature that the public would expect the person to be held in custody until such time as the person appears before a court, for example, murder, robbery, rape or drug trafficking.
3. Multiple burglary offences.

Although the duty to release a person imposed by subclause (2) is relieved by this subclause, there is no obligation to hold the person in custody should the police officer consider that it is appropriate to release the person on bail or notice to appear.

Subclause (5) provides that the duties under subclause (3) do not apply where it is inappropriate, in the case of a child, to discontinue the arrest because of the nature or seriousness of the offence or offences.

Subclause (6) allows the re-arrest of a person released under subclauses (1), (2) or (3) for the same indictable offence only where:—

- (a) the person is harassing or interfering with a potential witness; or

Example—

1. The person continually makes unwelcome telephone calls to the witness.
2. Without reasonable excuse, the person or an associate of the person sits in a parked vehicle outside the witness's house.

3. The person sends an associate to the witness's home in an attempt to have the witness alter his or her evidence.
- (b) new evidence causes the police officer to have a reasonable suspicion the person is responsible for the offence; or

Example—

1. A new witness comes forward and provides new evidence implicating the person in the offence.
2. The results of DNA tests become available and implicate the person in the offence.
- (c) the person is likely to fail to appear before a court to answer the charge.

Person arrested to be taken before a justice

Clause 39 imposes a duty on a police officer to take an arrested person before a justice as soon as is reasonably practicable, unless the person—

- (a) has been released under clause 38; or
- (b) has been granted bail; or
- (c) is being detained for the purpose of post-arrest questioning or investigations.

*Division 2—Alternative to arrest***Notice to appear may be issued for offence**

Clause 40 provides for an alternative means to bring a person before a court for an offence. The clause requires personal service by the issuing officer. This clause does not apply to juveniles. Juveniles are to be dealt with by an attendance notice under the *Juvenile Justice Act*.

Notice to appear form

Clause 41 is a machinery clause which requires the following information be placed on the notice—

- (a) the substance of the offence alleged to have been committed;
- (b) the name of the person alleged to have committed the offence;
- (c) a requirement for the person to appear before a magistrates court at a specified time and place; and
- (d) the signature of the issuing officer.

Subclause (2) requires that the court be sitting at the specified time and place.

Subclause (3) requires that at least 7 days lapse from the service of the notice to the date of the court appearance.

Notice to appear must be filed in court without cost to person

Clause 42 is a machinery clause requiring the lodgement of the notice to appear, prior to the court date, with the clerk of the court at the place where the person is to appear. There are no costs associated with the lodgement of the notice.

General particulars only are required on a notice to appear

Clause 43 provides that the statement of the offence on the notice to appear need only provide general particulars, which will include—

- (a) the type of the offence; and

Example—

In the case of stealing—stole a pair of shoes belonging to Coles Myer.

- (b) the time and place it is alleged to have been committed.

Example—

In the case of obscene language in a public place—10-15pm in Mary Street, Coorparoo, Brisbane.

Subclause (2) allows for more than one offence to be included on a notice to appear without the need for the rules laid down in joinder of offences to be complied with.

Particulars of notice to appear offence must be given in the proceeding

Clause 44 provides that where a person appears before a court in answer to a notice to appear, the person is to be promptly provided with proper particulars of the offence. Proper particulars involve more detailed information than that appearing on the notice to appear. A magistrate may adjourn the proceedings until the person has had an opportunity to consider the particulars provided.

Notice to appear equivalent to a complaint and summons

Clause 45 is a machinery clause which equates a notice to appear with a complaint and summons for the purposes of the *Justices Act* or another Act. Therefore, an option exists for a court to deal with the matter *ex parte*, i.e. in the absence of the person or to place a person on an undertaking to appear under the provisions of the *Bail Act* when they first appear before the court.

Court may order immediate arrest of person who fails to appear

Clause 46 allows a court to issue a warrant for the arrest of a person who fails to appear on a notice to appear, unless the person was given insufficient notice.

Court must strike out notice to appear if service insufficient

Clause 47 requires a court to strike out a notice to appear if the court is not satisfied that the person was served with a notice to appear as required by this Bill.

Subclause (2) provides that a further proceeding may be instituted for the same offence as the original notice to appear which was struck out.

Examples—

1. A further notice to appear;
2. A complaint and summons; or
3. A warrant in the first instance for the arrest of the person.

PART 8—INVESTIGATIONS AND QUESTIONING

Application of part

Clause 48 provides that part 8 of the Bill applies only in relation to a person questioned, or detained for the investigation, of an indictable offence. A further restriction to the application of this part, is that the person must be—

- (a) lawfully arrested for an indictable offence; or
- (b) in custody because bail has been refused (for any offence); or
- (c) in custody because bail has been revoked (for any offence); or
- (d) in custody under a sentence of imprisonment, or in the case of a juvenile, a detention order (for any offence).

Examples—

1. Part 8 applies where a person has been arrested for a indecent assault offence and is then questioned by a police officer in relation to that offence.
2. Part 8 applies to a person who has been refused bail by a watchhouse keeper or a magistrate on one charge of burglary and police want to question the person on another 49 charges of burglary committed at about the same time as the one for which the person has been charged.
3. Part 8 applies to a person who has been refused bail for an offence of disqualified driving of a motor vehicle and police want to question the person about unlawfully using the vehicle and dangerous driving of that vehicle.
4. Part 8 applies to a person who is serving a sentence of imprisonment for rape and a police officer wants to question the person about unrelated stealing charges.
5. Part 8 applies to a person who is arrested for an interstate offence and is questioned for that offence or other indictable offences.
6. Part 8 applies to a person who is arrested in Sydney for an indictable offence committed in Brisbane and questioned by Queensland police in Sydney.

7. Part 8 does not apply to a person who has gone to a police station of his or her own accord and admitted to an indictable offence unless the person is arrested for an indictable offence or arrested for any offence and refused bail.
8. Part 8 does not apply to a person who anticipates that police will want to question him or her about an indictable offence and goes to a police station of his or her own accord in company of a solicitor in order to be questioned or provide his or her version of the incident unless the person is arrested for an indictable offence or arrested for any offence and refused bail.

Removal of persons from lawful custody

Clause 49 provides for the removal of persons who are in custody because bail has been revoked or been refused, or they are subject to a sentence of imprisonment or a detention order.

Subclause (2) enables a police officer to make an application to a magistrate for an order for the removal of the person from the place of custody into police custody to allow for the investigation of the offence.

Subclauses (3) and (4) are machinery clauses.

Subclause (5) permits a magistrate to allow the removal of the person into police custody where the magistrate is satisfied that the custody is reasonably necessary to investigate the offence.

Subclause (6) requires the person in charge of the prison or the detention centre to comply with the order.

Subclause (7) requires the return of the person in police custody to the prison or detention centre as soon as practicable after the end of the detention period.

Initial period of detention for investigation and questioning

Clause 50 allows a person described in clause 48(2), to be detained for a reasonable time for the purpose of questioning the person or conducting investigations into an indictable offence.

Example—

1. Where a person is arrested for possession of heroin—the person may be questioned about the offence or another unrelated indictable offence such as stealing.
2. Where the person is arrested for an offence of rape—the person may be detained for the purpose of obtaining an order from a magistrate, and then for the conducting of a medical examination to gather evidence of the offence.

Subclause (2) limits the detention period to not more than 8 hours unless the person is charged with an indictable offence or is lawfully held in custody.

Subclause (3) limits any period of questioning within the initial 8 hour detention period to no more than 4 hours. The detention of a person is only lawful for the purpose of questioning and time out periods (“time out” is defined in the dictionary).

Examples of “time out” periods—

1. The time taken to take an arrested person to the nearest police station where electronic recording facilities are currently available.
2. The time required to allow for a lawyer to speak to the arrested person.
3. The time taken to arrange and conduct a medical examination of an arrested person.
4. The time taken to interview witnesses to the alleged offence for which the person has been arrested.

Subclause (4) provides the detention period starts when the person is—

- (a) in the case of a person who is arrested for an indictable offence—when the person is arrested for the offence;
- (b) taken into police custody from a prison or detention centre;
- (c) taken from a watchhouse; or
- (d) otherwise in the company of a police officer for the purpose of being questioned with respect to their involvement in an indictable offence.

Extension of detention period

Clause 51 allows a police officer to make an application to extend the detention period. The application must be made before the expiration of the current detention period. An application for an extension may also be made after the detention period ends if there is an unforeseen delay mentioned in *Clause 52*.

Examples—

1. Where the questioning period in the initial 8 hours of detention—before the expiration of that 4 hour questioning period.
2. If the questioning period was extended after that initial 4 hour period—before the expiration of the extended period.

Subclause (2) requires the application to be made to a magistrate or a justice of the peace employed in a magistrates court. If these persons are not available, then the application can be made to a justice of the peace who is not a justice of peace (commissioner for declarations).

Subclause (3) requires the police officer to disclose any foreseeable time out periods.

Subclause (4) allows the person or their lawyer to be personally heard on any application, provided that submissions made do not unduly delay the consideration of the application.

Subclause (5) allows the magistrate or justice to extend the detention period for a reasonable period if satisfied:—

- (a) the nature and seriousness of the offence require the extension; and
- (b) continued detention of the person is necessary—
 - (i) to preserve or obtain evidence of that or another indictable offence; or
 - (ii) to complete the investigation into that or another indictable offence; and
 - (iii) to continue questioning the person about that or another indictable offence
- (c) the investigation is being properly conducted and without unreasonable delay; and

- (d) the person or their lawyer has had an opportunity to make submissions about the application.

Subclause (6) provides the magistrate or justice must state in the order—

- (a) the period that may be used for time out;
- (b) the period not exceeding 8 hours that is to be allowed for questioning.

Subclause (7) allows the person to be detained for the total of the periods referred to in subclause (6) (a) and (b).

Subclause (8) provides that where the granting of an application for the extension of the questioning period (comprised of the initial 4 hour period and any current extensions) would result in the questioning period exceeding 12 hours, then that application and any subsequent application must be determined by a magistrate. A magistrate may grant an extension or extensions of the questioning period for a reasonable time of not more than 8 hours on each occasion.

Subclause (9) permits the continued detention of the person pending the determination of an application for an extension.

Effect of unforeseen delays on detention

Clause 52 considers the effect of unforeseen time out periods.

Subclause (1) allows the continued lawful detention of the person, where a reasonable unforeseen time out delays the making of an application to extend the initial period of detention, for a time reasonably necessary to make and decide the application.

Subclause (2) allows the continued lawful detention of the person in an extended detention period where—

- (a) the questioning of the person during the period is suspended or delayed because of a reasonably unforeseen time out; or
- (b) a reasonably unforeseen time out delays the making of an application to extend the extended period of detention.

In these circumstances the time allowed for questioning is not affected.

Effect of another arrest on questioning period

Clause 53 restricts the questioning of a detained person to a total of 4 hours in any 24 hour period, unless an extension to the detention period has been approved.

When does detention period start for offenders arrested outside Queensland

Clause 54 recognises that it is not reasonable to commence the time limit for detention under this part when the person is arrested or appears in a court, in another State for an indictable offence committed in Queensland.

Subclause (2) defines the commencement of the detention period. The detention period commences when the person:—

- (a) if under the law of another State, a Queensland police officer may question the person in that State—when the Queensland police officer starts to question the person about the indictable offence while in that other State;
- (b) arrives in Queensland in the company of a Queensland police officer for the purpose of being questioned about the indictable offence.

All the other provisions of part 8 apply, such as time-out periods.

Persons helping in covert investigations not under arrest

Clause 55 provides that for part 8, a person who has been arrested for an indictable offence and agrees voluntarily to take part in a covert investigation ceases to be under arrest or in custody for the offence. Consequently, the detention period under part 8 ceases to have effect unless subclause (3) is invoked.

Example—

A person who has been arrested for possession of one kilogram of heroin and is being questioned about the offence, if voluntarily agreeable, may be released for the purpose of meeting the person to whom the heroin was to be delivered. This may be necessary if the questioning of the person is likely to take a further 3 hours and a meeting has previously been

arranged with the other person in one hours time. At the meeting the person can be wearing a listening device and record the conversation with the other person including any admissions that person makes.

Subclause (3) allows for the re-arrest of the person for the original offence.

Example—

After the person has completed his or her contact with the other person mentioned in the preceding example, the original offender may be rearrested for the possession of heroin offence and further questioned in relation to that offence.

PART 9—POWERS IN RELATION TO PERSONS IN CUSTODY

Division 1—Search of persons in custody

Search of persons in custody

Clause 56 allows for the search of a person in custody who has been—

- (a) is lawfully arrested under this, or another, Act, refused bail or is in custody because bail has been revoked; or

Examples—

1. In the case of this Act—where the person is fleeing from the police officer.
2. In the case of the *Bail Act*—where a warrant authorising the arrest of the person has been executed.

3. In the case of the *Domestic Violence (Family Protection) Act*—where the person has been arrested for a breach of a domestic violence order.
 - (b) serving a period of imprisonment or detention; or
 - (c) detained under another Act.

Examples—

1. Person detained under the *Domestic Violence (Family Protection) Act* for a period of 4 hours.
2. Person detained under the *Mental Health Act* for the purpose of being taken to a place of safety (hospital).

Subclause (2) allows the officer to search and re-search a person in custody.

Examples—

1. Brief search on arrest for weapons before placing the person in the police vehicle, followed by a more thorough search of the person on arrival at the watchhouse.
2. Where the person in custody has had the opportunity for contact with other persons during a court hearing, the re-search of the person upon returning to the watchhouse.

Subclause (3) allows a police officer to seize and retain anything found in the course of the search which the officer reasonably suspects may afford evidence of the commission of an offence.

Subclause (4) allows a police officer to take and retain for the period of custody, anything found in the course of the search which the officer reasonably suspects—

- (i) may be used to endanger anyone's safety (e.g. tie, belt, razor blade or pocket knife); or
- (ii) may be used for an escape (e.g. a tool); or
- (iii) should be kept in safe custody (e.g. money, valuables and personal effects).

Division 2—Taking identifying particulars

Power to fingerprint, photograph etc.

Clause 57 provides a limited power for a police officer to take the fingerprints and other identifying particulars of a person against whom proceedings for an offence have been commenced, whether by way of arrest, notice to appear, or complaint and summons. The power is only available where the offence is a ‘relevant offence’ namely an offence—

- (a) punishable by at least 1 year’s imprisonment; or
- (b) against—
 - (i) this Bill;
 - (ii) the *Regulatory Offences Act 1985*;
 - (iii) the *Vagrants, Gaming and Other Offences Act 1931*;
 - (iv) the *Weapons Act 1990*.

Subclause (1) where a police officer starts a proceedings—

- (a) if the person is in custody—any police officer may as soon as is reasonably practicable, take the person’s fingerprints and other identifying particulars; or

Example—

Where the person is arrested and is held in custody because of a refusal of bail.

- (b) by way of complaint and summons or notice to appear—
 - (i) at or before the time of serving the summons or notice—detain the person for a time reasonably necessary to take the person’s identifying particulars; or
 - (ii) by written notice require the attendance of the person at a nominated police station within the following 48 hours for the purpose of having his or her identifying particulars taken; or

Example—

Person given a notice to appear for ‘shop lifting’ after being spoken to by a police officer at the shop—a police officer may require the person to go to a police station which is near to the person’s residence for the purpose of taking their identifying particulars.

- (c) if the person is to be released after arrest—a police officer may detain the person for the reasonable time necessary to take the persons fingerprints, photograph etc.

Examples—

1. Where numerous persons are arrested for disorderly conduct during New Years Eve celebrations on the Gold Coast—soon after arrest the arrested person may be photographed with the arresting officer using a instant developing camera to assist in the identification of the person when transported to another holding facility. The person may then be fingerprinted, ‘un-arrested’ and then served with a notice to appear.
2. Person arrested and detained for questioning on a charge of assault—at the conclusion of the questioning the arrest may be discontinued and the person given a notice to appear. The person may then be taken to a watchhouse for the purpose of having his or her fingerprints taken.

Subclause (2) is an evidentiary provision.

Subclause (3) requires a police officer to warn the person it is an offence to contravene a requirement in (1)(b)(ii).

Subclause (4) creates an offence for a person who fails to comply with a requirement under subclause (1)(b)(ii).

Subclause (5) allows a magistrate hearing a ‘relevant offence’ referred to in subclause (1), to order a person be held in custody for 1 hour to enable the persons identifying particulars to be taken. The provision recognises the purposes of taking identifying particulars generally, however, is particularly relevant to fingerprints.

Subclause (6) provides if a person attends a police station under a notice under subclause (1)(b)(ii), any police officer may take the persons identifying particulars.

Subclause (7) authorises a police officer to use reasonable force for the obtaining of identifying particulars except where those particulars are handwriting or voiceprints.

Subclause (8) provides that subclauses (1)(b) and (5) do not apply to a proceedings commenced with respect to a child.

Subclause (9) defines ‘relevant offence’.

Destruction of identifying particulars

Clause 58 prescribes the circumstances when the identifying particulars must be destroyed, such as when a person is found not guilty or is not proceeded against. The clause also prescribes circumstances when the destruction requirement does not apply as follows—

- (a) the person has been proceeded against on a charge of another relevant offence that has not been decided;
- (b) the person has been found guilty of another relevant offence;
- (c) the identifying particulars are required as evidence in relation to another relevant offence alleged to have been committed by the person; or
- (d) the person is not proceeded against because he or she has been found incapable of standing trial because of mental illness.

Identification of suspects

Clause 59 provides for acceptable methods of suspect identification by a witness.

Subclause (2) specifically requires compliance with any procedures relating to the identification of suspects which are contained in the responsibilities code.

Subclauses (3) and (4) confirm that the involvement of a suspect in an identification parade must be voluntary.

Subclause (5) provides that the clause does not limit procedures a police officer may use to gather evidence of the identity of the person.

Division 3—Medical and dental procedures

Consent or approval needed for performing medical or dental procedure

Clause 60 requires a police officer, prior to the performance of a medical

or dental procedure, to inform the suspect that:—

- (a) the medical or dental procedure cannot be done without the written or electronically recorded consent of the suspect, or without a magistrate's approval; and
- (b) irrespective of consent, the suspect has the right to have 2 persons of their choice present during the procedure (independent person); and

Subclause (2) provides if the suspect is a child the consent must be given in the presence of a person nominated in the subclause.

Subclause (3) requires a copy of the order issued by the magistrate to be given to the suspect and the doctor or dentist .

Presence of independent person required

Clause 61 provides that if the suspect wishes an independent person to be present during the procedure, the officer must take reasonable steps to advise that person of the suspects wish.

Subclause (2) requires the suspect to pay any costs associated with the attendance of the independent person.

Subclause (3) prohibits the performance of the procedure unless a reasonable time has been given to the independent person to attend.

Subclause (4) provides that despite the provisions of subclause (3), the procedure may be conducted in the absence of the independent person if—

- (a) the independent person has failed to attend within a reasonable time after indicating their willingness to attend; or
- (b) evidence is likely to be lost or destroyed if the conducting of the procedure is delayed.

Performing medical and dental procedures—with consent

Clause 62 defines the application of the section and permits a person to consent to the procedures.

Subclause (2) requires the consent to a procedure under this clause to be written or electronically recorded.

Subclause (3) prescribes the powers of a doctor to gather evidence during a consent procedure.

Subclause (4) prescribes the powers of a dentist to gather evidence during a consent procedure.

Subclause (5) allows a doctor or dentist to photograph anything relevant to the procedure.

Example—

1. In the case of an examination by a doctor—a photograph of scratch marks to the suspects face or injuries to the suspects knuckles.
2. In the case of an examination by a dentist—a photograph of a bite mark on the suspects hand.

Subject to subclause (8), subclause (6) allows another person under the direction of a doctor or dentist to give reasonably necessary help.

Example—

1. In the case of an examination by a doctor—the doctor may direct a police photographer to photograph scratch marks to the suspects face or injuries to the suspects knuckles.

Subclause (7) provides that a person may not provide help under subclause (2) unless they are a person mentioned in subclause (8)

Subclause (8) lists the persons who may help as—

- (a) a person as the same sex as the suspect;
- (b) a doctor; or
- (c) if a person mentioned in (a) or (b) is not available—anyone else who is asked to help and acts at the doctor's direction.

Subclause (9) allows a person assisting to use reasonably necessary force for the purpose.

Example—

A doctor may ask an assistant to help the suspect remain still for a particular examination.

Subclause (10) requires the doctor or dentist to immediately discontinue the procedure if the suspect indicates they no longer consent to the procedure.

Subclause (11) confirms that a withdrawal of consent by the suspect does not itself affect the admissibility of any evidence resulting from any procedure conducted, before the consent was withdrawn.

Magistrate may approve performance of medical or dental procedure

Clause 63 provides the power to a magistrate to issue an order for a medical or dental procedure of a suspect in custody on the application of a police officer, irrespective of whether the person has given consent to the procedure or not. This clause replicates the substance of section 259 of the *Criminal Code*. However, the clause also allows a magistrate to order that the person be taken from a place of custody to another place for the purpose of the clause.

Example—

A police officer who considers that a suspect may withdraw consent during a procedure may, irrespective of the consent, still apply to a magistrate for an approval.

A person may be taken from a watchhouse to a hospital or doctor's surgery which has a sterile environment for the purposes of the examination.

Performing medical and dental procedures without consent

Clause 64 allows for the conduct of medical and dental procedures without the consent of a suspect provided an approval has been given by a magistrate.

Subclause (2) prescribes the powers of a doctor to gather evidence during a procedure approved by a magistrate.

Subclause (3) prescribes the powers of a dentist to gather evidence during an procedure approved by a magistrate.

Subclause (4) allows a doctor or dentist to photograph anything relevant

to the procedure.

Subclause (5) allows another person under the direction of a doctor or dentist to provide reasonably necessary help.

Subclause (6) provides that a person may not provide help under subclause (2) unless they are a person mentioned in subclause (7).

Subclause (7) lists the persons who may help as—

- (a) a person as the same sex as the suspect;
- (b) a doctor; or
- (c) if a person mentioned in (a) or (b) is not available—anyone else who is asked to help and acts at the doctor’s direction.

Subclause (8) allows a doctor or a dentist or a person assisting to use reasonable force for the purpose of the procedure.

Power to analyse samples

Clause 65 provides a machinery clause to allow necessary persons to make an analysis of the samples, substance, thing, impression or photograph taken under this Bill and for a police officer to retain the results of the analysis for use in a court proceeding for any offence, present or future.

Samples and test results to be given to person

Clause 66 requires that in—

- (a) subclause (1)—the person, if practicable, be given a similar sample for the purpose of their own independent analysis; and
- (b) subclause (2)—the person be provided with a copy of the results of any analysis.

PART 10—SURVEILLANCE POWERS

Part 10 provides for the issue of surveillance device warrants under strict

conditions.

Certain Acts do not apply to this part

Clause 67 provides that the provisions of the *Libraries and Archives Act 1988* and the *Freedom of Information Act 1988* do not apply to this part.

Surveillance warrants

Clause 68 provides that only a police officer of or above the rank of inspector may apply for a surveillance device warrant.

[A class A device means a surveillance device installed—

- (a) in a private place, or on a suspect's clothing, without the suspect's consent; or*
- (b) in a public place;*

but does not include a visual surveillance device installed in a public place or with the occupier's consent, a private place]

[A class B device is a tracking device installed in a vehicle or other moveable object without covert entry to a building by the person installing it.]

Example—

A tracking device installed, in a shipping container .

Subclause (3) provides that an application for a Class A device is to be made to a Supreme Court judge. Also, an application for a Class B warrant is to be made to a magistrate. However, if a Class A and a Class B device are to be used in conjunction, the application must be made to a Supreme Court judge.

Example—

Class A and Class B used in conjunction—a tracking device which also has the capacity to record conversations.

Subclause (4) restricts the use of a Class A device to serious indictable offences.

[A serious indictable offence is an indictable offence involving any of the following—

- (a) *serious risk to or actual loss of a person's life;*
- (b) *serious risk of or actual serious injury to a person;*
- (c) *serious damage to property endangering the safety of any person;*
- (d) *serious fraud;*
- (e) *serious loss of revenue to the State;*
- (f) *official corruption;*
- (g) *serious theft;*
- (h) *money laundering;*
- (i) *conduct related to prostitution or SP bookmaking;*
- (j) *child abuse including child pornography; or*
- (k) *a drug offence punishable by at least 20 years imprisonment.]*

Subclause (5) is a machinery clause outlining how the application is to be made.

Subclause (6) requires the applicant to advise the monitor of the application.

Subclause (7) is a machinery clause allowing a judge or magistrate to require additional information from the applicant.

Subclause (8) provides that the issuer must hear the application in the absence of anyone other than—

- (a) the applicant;
- (b) a monitor;
- (c) someone the issuer permits to be present;
- (d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

Subclause (9) provides the application must be heard—

in the absence of the suspect or a suspects associate; and
without the suspect being informed of the application

Subclause (10) specifies particular issues which must be considered in determining an application. These include—

- (a) the nature and seriousness of the suspected offence;

- (b) for a class A device—the likely extent of interference to the privacy of the suspect;
- (c) the extent to which the warrant would help prevent, detect or provide evidence;
- (d) benefits derived from previous surveillance warrants in relation to the suspect;
- (e) the extent to which investigating police have used or can use conventional methods of investigation
- (f) the potential effectiveness of conventional methods of investigation; and
- (g) the degree of prejudice to the investigation which may be caused by the use of conventional methods of investigation.

Subclause (11) allows the issuer to issue a warrant if satisfied there are reasonable grounds for believing that any person—

- (a) at a place specified in the warrant; or
- (b) likely to be at a class of place specified in the warrant;
has been, is involved, or is likely to be involved—
- (c) in the case of a class A device—a serious indictable offence; and
- (d) in the case of a class B device—any indictable offence.

Subclause (12) allows the issuer to specify in what parts of a dwelling the applicant may install a visual surveillance device.

Example—

A judge may authorise the use of the device in all rooms except the master bedroom, toilet or bathroom. However, where it is necessary the judge may allow the device to be used in all rooms.

Subclause (13) prevents the issue of a class A device in the office of a practising lawyer unless the warrant relates to the lawyer's involvement in a serious indictable offence.

Subclause (14) provides that the warrant must state the powers under clause 70 which may be exercised by police.

Subclause (15) allows the issuer to impose any conditions on the warrant considered necessary in the public interest.

Examples—

1. A condition requiring regular reporting to the issuer on activities under the warrant.
2. A requirement for the police officer to hold a reasonable belief that the suspect will be in the public place or class of place prior to the installation or use of a listening device.

Subclause (16) permits the issuer to order the destruction of recordings unless they relate to the offence or an investigation of another indictable offence started because of the information.

Subclause (17) provides that a surveillance warrant remains in force for a period no longer than 30 days unless an extension is granted by a judge or in the case of a class B device, a magistrate.

Subclause (18) is a machinery clause allowing for applications for extensions.

Subclause (19) provides that when an investigation ends the warrant ceases to have effect unless evidence is gained of another serious indictable offence or in the case of a tracking device, another indictable offence.

Subclauses (20), (21) and (22) are machinery provisions which—

- (a) prohibit the recording or publication of any application, or order, for a warrant; and
- (b) prohibit access to information used to obtain a warrant unless ordered by a Supreme Court judge.

Emergency use of surveillance devices

Clause 69(1), (2) and (3) provides that a police officer of or above the rank of inspector may authorise the use of a surveillance device without having first obtained a warrant where the police officer reasonably believes—

- (a) that there is a risk of serious injury to a person; and
- (b) using a surveillance device may help reduce the risk of injury to the person.

Example—

In the case where an armed person is threatening to kill persons he or she is holding hostage inside a house, police may install a listening device or may install a camera in order to determine the location of the hostages or the psychiatric condition of the armed person.

Subclause (4) and (5) provide that within 7 days of using the device the police officer must apply for approval for his or her actions from a Supreme Court judge. The application for an approval is to be heard in the same manner as an application for a warrant under clause 68(5) to (10) and (20) to (22). The monitor is to be advised of, and may be present for the application.

Subclause (6) the judge may require distribution of recordings made that do not relate to the emergency purpose.

Subclause (7) permits the judge to approve the use of the device.

Subclause (8) provides that if the judge approves of the use of the device any evidence obtained is admissible in any proceedings taken.

Subclause (9) provides that any information obtained from the use of the device may be provided to any person who is involved in reducing the risk of serious injury.

Examples of whom the information may be given to—

1. A member of the police Special Emergency Response Team.
2. A member of the Special Air Services.
3. A doctor or a member of the Queensland Ambulance Service who may need to treat a person for an injury received.
4. A psychiatrist who may assist in negotiating the release of persons.
5. A member of the police or army bomb disposal unit.

Powers under surveillance warrants

Clause 70 specifies the powers which may be authorised under a surveillance warrant. They are—

- (a) (i) for a class A device—power to enter, covertly or through subterfuge a place or class of place to install, maintain, replace or remove a surveillance device;

Example for “class of place”—

The warrant may be issued for any motel in a state area because the police officer may have a reasonable belief that the person may be in a motel but not know in advance which one, but the device may only be activated when the person is known to be present.

- (ii) for a class B device—power to enter a vehicle or another moveable object or open a thing to install, maintain, replace or remove a tracking device. A “class B device” may only be used where the installing of a tracking device does not require the installer to covertly enter a building. The authority to pass through a place to get to the vehicle or other moveable object where the tracking device is to be used is found in paragraph (f) of this clause;

Example of installing a tracking device without covert entry into a building—

1. Installing a tracking device on a vehicle located in public undercover car park where entry is gained by any member of the public by paying a fee, or where a vehicle is on a street.
 2. Installing of a tracking device in a video recorder purported to be stolen, which is then given to a suspected thief to determine where stolen goods are being distributed.
 3. Installing a tracking device on a parcel inside a shipping container located in storage yard, where the parcel is reasonably believed to contain unlawful drugs.
- (b) for a listening device or a visual surveillance device—power to intercept and record visual images even though it may otherwise constitute an offence under the *Invasion of Privacy Act 1971*; and
 - (c) for all devices—
 - (i) power to take electricity to use a device;
 - (ii) use reasonable force to install, maintain, replace or remove a device;
 - (iii) power to use 1 or more surveillance devices whether the same or a different kind in the same place;

Example—

Where a surveillance warrant is issued for a listening device in a house, the judge may approve the installation of more than 1 listening device in that house so that a device may be installed in each room of the house to record conversations throughout the house.

- (iv) power to access the place through any other place.

Disclosure of information obtained using surveillance warrant

Clause 71 restricts the disclosure of information obtained through the use of a listening device or a visual surveillance device for which a warrant has been issued. This is distinct from the provisions of clause 68 (20), (21) and (22).

Unless the information has been disclosed in an open court then the information may only be disclosed to—

- (a) the judge or magistrate who issued the warrant or any judge or magistrate who determines an application for an extension to the warrant or another warrant relating to the same person or a different person.

Example—

Information obtained from the use of a listening device against one person may provide sufficient grounds to apply for a listening device against another person for the same or another offence.

- (b) a court taking evidence about an offence in which the information is evidence;
- (c) the commissioner or a person authorised by the commissioner;
- (d) another police officer involved in—
 - (i) the investigation or an investigation of another indictable offence started because of information obtained under the warrant or linked to the offence under investigation;
 - (ii) a proceeding in which the information is evidence; or
- (e) a declared law enforcement agency;
- (f) a public prosecutor for use as evidence in a proceeding or for an application for a warrant or an extension;

- (g) a lawyer representing a person for a proceeding in which the information is evidence;
- (h) the monitor; or
- (i) a person transcribing or making copies of records.

Register to be kept

Clause 72 requires that a secure register of information disclosed (unless the information has been used in proceeding as evidence) be kept by the commissioner. The register is only open to inspection by—

- (a) the commissioner
- (b) a police officer or declared law enforcement agency investigating a serious indictable offence to which the information may be relevant;
- (c) the monitor;
- (d) the issuing or extending judge.

This clause does not apply to information that has been used in a proceeding as evidence.

Destruction of records

Clause 73 requires the commissioner to keep all information obtained (including transcripts) in a secure place, and requires that the commissioner destroy any recording, transcript, photograph or copy as soon as practicable if no longer required. However, all information and records may be retained if an appeal against the result of any proceedings is likely.

Example—

A person convicted of murder as a result of evidence obtained through the use of a surveillance device, may wish to lodge an appeal against his or her conviction.

Covert search warrants

Clause 74 provides that only a police officer of or above the rank of inspector may apply to a Supreme Court judge for a covert search warrant,

to enter an search a place for evidence of organised crime.

[Organised crime means an ongoing criminal enterprise to commit serious indictable offences in a systematic way involving a number of people and substantial planning and organisation.

A serious indictable offence is an indictable offence involving any of the following—

- (a) serious risk to or actual loss of a person's life;*
- (b) serious risk of or actual serious injury to a person;*
- (c) serious damage to property endangering the safety of any person;*
- (d) serious fraud;*
- (e) serious loss of revenue to the State;*
- (f) official corruption;*
- (g) serious theft;*
- (h) money laundering;*
- (i) conduct related to prostitution or SP bookmaking;*
- (j) child abuse including child pornography; or*
- (k) a drug offence punishable by at least 20 years imprisonment.]*

Subclause (2), (3) (4) and (5) are machinery clauses outlining how the application is to be made and heard, allows the issuer to require full information and requires the monitor to be informed.

Subclause (6) specifies particular issues which must be considered in determining an application. These include—

- (a) the nature and seriousness of the suspected offence;
- (b) the extent to which the warrant would help prevent, detect or provide evidence of the offence;
- (c) benefits derived from previous covert search warrants, search warrants, or surveillance devices in relation to the suspect or place;
- (d) the extent to which investigating police have used or can use conventional methods of investigation;

- (e) the potential effectiveness of conventional methods of investigation;
- (f) the extent to which the use of conventional methods of investigation would prejudice the investigation of the offence; and
- (g) submissions made by the monitor.

Subclause (7) allows a warrant to be issued only where the judge finds there are grounds to reasonably believe that there is evidence of organised crime on the place.

Subclause (8) specifies those matters which must be stated in the warrant. They are—

- (a) that a stated police officer, or all police officers, may with reasonable help and force, enter the place, covertly or by subterfuge, and exercise the powers in clause 75;
- (b) the organised crime for which the warrant was issued;
- (c) any evidence (in whole or part) that may be seized;
- (d) that the warrant may be executed at any time;
- (e) that the search be videotaped, if it is practicable to do so; and
- (f) the date when the warrant ends.

Subclause (9) is a similar provision to clause 68(9).

Subclause (10) allows the judge to impose any conditions on the warrant considered necessary in the public interest.

Subclause (11) provides that a covert search warrant remains in force for a period no longer than 30 days unless a shorter period is specified in the warrant, or the initial search is complete.

Subclause (12) allows for an extension to be made to the warrant.

Subclause (13) is a machinery clause concerning the manner of an application for an extension;

Subclauses (14), (15) and (16) are machinery provisions which—

- (a) prohibits the recording or publication of any application, or order, for a warrant; and
- (b) prohibits access to information used to obtain a warrant unless

ordered by a Supreme Court judge.

Powers for covert search warrant

Clause 75 provides the following powers—

- (a) to enter, covertly or through subterfuge and remain for the purposes of the warrant;
- (b) to go through another place to get there;
- (c) to search for anything mentioned in the warrant;
- (d) to open anything that is locked;
- (e) to seize and retain evidence;
- (f) to photograph evidence; and
- (g) to inspect or test anything found on the place.

Report on covert search

Clause 76 requires a police officer to report, in accordance with the Responsibilities Code, to the issuing judge within 7 days after execution of the warrant on matters relating to the search. The officer, if practicable, must take any evidence before the judge and the judge may make an order with respect to how the thing is dealt with.

Application of the Invasion of Privacy Act

Clause 77 provides that any restrictions under the *Invasion of Privacy Act* does not apply.

Register of surveillance and covert search warrants and applications

Clause 78 requires the commissioner to keep a register of applications for surveillance and covert search warrants. The register is open only to the commissioner, a police officer making an application under this part or monitor. The intent of the clause is to facilitate the monitor's function.

Public interest monitor

Clause 79 allows the Governor-in-Council to appoint a person to perform the functions of the monitor. The monitor may oversee applications for, and the use of, surveillance warrants and covert search warrants. The clause also allows for deputy monitors to be appointed. The monitor and deputy monitors are exempt from the provisions of the *Public Service Act 1996*. The Governor-in-Council may fix the terms and conditions that apply to the monitor and deputy monitors. However, to ensure independence, a monitor or deputy monitor cannot be a member of, or employed by—

- (a) the Director of Public Prosecutions;
- (b) the office of the Director of Public Prosecutions;
- (c) the Queensland Crime Commission;
- (d) the Criminal Justice Commission; or
- (e) the Queensland Police Service.

Monitor's functions

Clause 80 provides the functions of the monitor to be—

- (a) to monitor compliance by police with this part;
- (b) to oversight an application to a judge and to ask questions of the applicant and make submissions to the judge;
- (c) to gather statistical information; and
- (d) to report non-compliance by police officers with this part to the commissioner.

A deputy monitor has the functions outlined in (a), (b) and (c) above.

Monitor's annual report

Clause 81 requires the monitor to provide the Minister with an annual report for tabling in Parliament.

Secrecy

Clause 82 requires a monitor (past or present) not to record, use or disclose information other than in accordance with this part. For this purpose, the monitor is not a compellable witness in any proceedings.

PART 11—POWER TO GIVE DIRECTIONS IN NOTIFIED AREAS AND OTHER PLACES

Division 1—Directions to move-on

When part applies to behaviour

Clause 83 provides powers to deal with the unacceptable behaviour of a person in or near a prescribed place.

Subclause (1) provides that the part applies if a police officer reasonably suspects that a person's behaviour in or near a prescribed place is or has been—

- (a) causing anxiety to a reasonable person who is, entering, in, or leaving the place; or

Example—

1. A stranger approaching a child and asking the child if he or she wants to be driven home.
 2. Youths gathering around the footpath near the entrance to a railway station tunnel and causing anxiety to any person by abusing any person who wants to use the tunnel to get to a train platform.
- (b) interfering with trade or business in a place by unnecessarily obstructing, hindering or impeding someone entering, in or leaving the place [This paragraph only applies if the occupier makes a complaint]; or

Example—

A group of youths deliberately stepping in front of someone who is attempting to enter or leave a late night store.

- (c) disorderly, indecent, offensive, or threatening to someone who is, entering, in, or leaving the place; or

Examples—

1. Youths fighting in front of a place in such a manner that a reasonable person may feel threatened if they were to enter or leave.
 2. A husband yelling at his estranged spouse who is attempting to leave a school yard after picking up her child.
 3. Youths gathering around the entrance to a railway station and threatening, or by menace demanding something from, a person who wants to catch a train or wants to leave a railway station.
- (d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering in a prescribed place.

Examples—

1. An intoxicated person or a group of intoxicated persons disrupting a school fete.
2. A person or persons interrupting or disrupting entertainment held at a shopping complex.

When part applies to a person's presence

Clause 84 provides powers to deal with the presence of a person where a police officer reasonably suspects that the person's presence in or near a prescribed place is or has been—

- (a) causing anxiety to a reasonable person who is, entering, in, or leaving the place; or

Examples—

1. A person, who has no reasonable excuse for being there, is sitting in a vehicle parked across from a school yard.
2. A person who is known, or reputed, to be selling drugs to school children is standing outside a school yard without reasonable

cause.

- (b) interfering with trade or business in a place by unnecessarily obstructing, hindering or impeding someone entering, in or leaving the place [This paragraph only applies if the occupier makes a complaint]; or

Example—

A group of youths sitting on the steps in front of a store and by their presence are preventing or impeding the entry of a person to that store.

- (c) disrupting the peaceable and orderly conduct of any event, entertainment or gathering in a prescribed place.

Example—

Members of an extremist group standing at the entrance of a shopping centre where a book opposing their views is to be launched by the author.

Division does not apply to authorised public assemblies

Clause 85 provides that this division does not apply to an authorised public assembly under the *Peaceful Assemblies Act 1992*.

Example—

Where a group of people are lawfully demonstrating against an action of someone else, police cannot use the powers provided under this part. Police must instead use the provisions of the *Peaceful Assemblies Act 1992*.

Proposal for notified area

Clause 86 allows a local government or government entity to apply to the Minister for an area to be declared a notified area. Before the Governor in Council declares an area to be a notified area, the Minister must ensure any requirements prescribed under the regulation has been complied with.

Additional explanation—

Where it comes to the attention of a local government that there are constant problems created by drunken or violent persons in an area in which night clubs are concentrated, the local government may apply to the Minister for the Governor in Council to declare a defined area to be a notified area. Therefore, a police officer may move-on a drunken or violent

person to leave the notified area, which will be defined by the street names.

Examples—

1. The Gold City Council may apply to the Minister to have the Cavill Avenue Mall declared a notified area, due to the disorderly conduct of drunken persons leaving night clubs located in that area.
2. The South Bank Corporation, being a State government entity, may apply to the Minister to have South Bank declared as a notified area so that police may exercise the powers under this part within that area.

Declaration of notified areas

Clause 87 provides the notified area may be declared by gazette notice. The gazette notice is subordinate legislation, however, is an exempt instrument under the *Legislative Standards Act 1992*.

Direction may be given to person

Clause 88 allows a police officer to give a person in a prescribed place any direction that is reasonable in the circumstances.

Examples—

1. If a person is sitting in the entrance of a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.
2. If a group of people have been fighting in a night club car park which is in a notified area, a police officer may give the people involved in the fight a direction to leave the notified area in opposite directions to separate the aggressors.
3. If a stranger approaches a child outside a primary school and offers to give the child a ride home, the person may be given a direction to leave the area of the school and not return for a period of 24 hours.

Subclause (2) identifies the nature of directions that may be given, including—

- (a) leave the notified area and not return for a stated reasonable time of not more than 24 hours; or
- (b) move from a particular location for a stated reasonable distance in a stated direction and not return or be within a stated distance from the place for a stated reasonable time or not more than 24 hours.

Subclause (3) requires the police officer giving the direction to tell the person or group of persons the reason for giving the direction.

Subclause (4) requires the police officer to give a person who fails to comply with a direction, to warn the person that to fail to comply with the direction is to commit the offence of obstruction of a police officer, unless the person has a reasonable excuse.

Division 2—Breaches of the peace and riots

Dealing with breach of the peace

Clause 89 limits the application of the section to where a police officer reasonably suspects—

- (a) a breach of the peace is happening or has happened; or
- (b) there is an imminent likelihood of a breach of the peace; or
- (c) there is a threatened breach of the peace.

Subclause (2) allow a police officer in the circumstances mentioned in subclause (1), to take the steps the officer considers reasonably necessary, even though the conduct prevented may be otherwise lawful, to—

- (a) prevent the breach of the peace happening or continuing;
- (b) prevent the conduct constituting the breach of the peace again happening.

Examples—

1. The police officer may detain a person until the need for the

detention no longer exists.

2. A person who pushes in to the front of a queue may be directed to go to the end of the queue.
3. Property that may be used in or for breaching the peace may be seized to prevent the danger.

Prevention of riot

Clause 90 allows a police officer to take any steps the officer reasonably believes are necessary to suppress a riot. The clause also allows a police officer to execute an order of a justice given to suppress a riot.

PART 12—STANDARD SAFEGUARDS

Division 1—Application of part

Part does not apply to covert operations

Clause 91 provides that this part does not apply to covert operations.

Division 2—Right to remain silent not affected

Right to remain silent not affected

Clause 92 preserves the right to silence, unless required to answer questions by or under another Act.

Division 3—Safeguards ensuring rights of and fairness to persons questioned for indictable offences

Application of division

Clause 93 provides that this division relates only to indictable offences.

When is a person “in custody” for this part

Clause 94 provides that a person is in custody for this part if the person is in the company of a police officer for the purpose of being questioned about the person’s involvement as a suspect in an offence.

Subclause 2 provides that the person is not in custody only because of this clause if the officer is exercising any of the following powers—

- (a) the power to detain and search; or
- (b) the power to require a person to give information or to answer questions.

Right to communicate with friend, relative or lawyer

Clause 95 provides that a police officer must before questioning a person in custody, inform the person of the right to telephone a friend or relative to advise them of their whereabouts and to request their presence during questioning. The officer must also inform the person of the right to telephone or speak to a lawyer of the person’s choice, and of the right to arrange or attempt to arrange for a lawyer to be present during questioning.

Subclauses (2) and (3) require the officer to delay questioning for a reasonable time to allow the person in custody to telephone or speak to a person mentioned above and for that person to arrive.

Subclause (4) requires facilities are to be made available for the person to talk to a friend, relative or lawyer. Communication between the person in custody and the lawyer requested is, where practicable, to be confidential and the lawyer is to be permitted to be present during questioning.

Subclause (5) provides that where the suspect requests another person to be present during questioning the police officer must allow the person to be present and give advice to the person during questioning.

Subclause (6) provides that the person may be excluded from questioning for unreasonable interference with the questioning.

Subclause (7) provides that subclauses (2) to (6) do not apply to a person

mentioned in clauses 96 and 97.

Questioning of Aboriginal people and Torres Strait Islanders

Clause 96 provides for additional safeguards during the questioning of adult Aboriginals and Torres Strait Islanders. They are—

- (a) unless otherwise advised, a police officer must inform the person that a representative of a legal organisation will be notified that the person is in custody for an offence; and
- (b) as soon as reasonably practicable, notify or attempt to notify a representative of a legal organisation.

Subclause (4) provides that these additional safeguards do not apply where the police officer reasonably suspects that the person is not at a disadvantage in comparison with member of the Australian community generally.

Subclause (5) prohibits the commencement of questioning until the police officer has, if practicable, allowed the person to speak to the interview friend, where practicable, in privacy, and also requires that the interview friend is present during questioning.

Subclause (6) removes the operation of subclause (5) where the person has waived his or her right, electronically or in writing, to have an interview friend present.

Subclause (7) provides that the interview friend may be excluded from questioning for unreasonable interference with the questioning.

Questioning of children

Clause 97 provides for additional safeguards during the questioning of children as suspects. They are to prohibit the commencement of questioning until the police officer has, if practicable, allowed the person to speak to the interview friend, where practicable, in privacy, and also requires that the interview friend is present during questioning.

Subclause (4) provides that the interview friend may be excluded from questioning for unreasonable interference with the questioning.

Questioning of person after proceeding started

Clause 98 provides that nothing in this part prevents a person in custody from assisting a police officer by making a statement or answering questions in relation to a matter for which the person is charged after a proceeding has been stated.

Subclause (2) provides that a person may be questioned to clarify any ambiguity in what has been previously said.

Subclause (3) provides that if new evidence becomes available the person may be informed of the evidence and invited to make a statement.

Example

If a person has been charged with the offence of rape, and a scientific comparison such as DNA analysis connects the person with the offence, the police officer may tell the person of the result and invite the person to comment.

Cautioning of persons in custody

Clause 99 requires the police officer to caution a person in custody in terms of his or her right to silence before starting to question the person. Where necessary, the caution must be given in the person's language or in writing if the person is hearing impaired. However, this clause does not apply where the person is required, by virtue of another Act, to answer questions.

Provision of information relating to a person in custody

Clause 100 provides that where a relative, friend or lawyer asks about the whereabouts of a person in police custody, they must be advised—

- (a) unless the person in custody does not agree in writing to the request; or
- (b) the police officer reasonably suspects that the person making the request is not a relative, friend or lawyer of the person in custody.

Right to interpreter

Clause 101 provides that a person who does not understand the English language is entitled to the services of an interpreter. The police officer must arrange for the presence of an interpreter and delay the questioning or investigation until the interpreter arrives.

For the purpose of this section the term “investigation” means—

the process of using investigative methodologies, other than fingerprinting, searching or taking photographs of the person, that involve interaction by a police officer with the person, for example, an examination or the taking of samples from the person.

Right of foreign national to communicate with embassy etc

Clause 102 provides for a person who is not an Australian citizen to contact his or her embassy or consular office prior to the commencement of questioning.

Rights of a person in custody to be electronically recorded

Clause 103 requires that where a police officer is required to give a person in custody information under this part, the giving of that information and any response made is, where practicable, to be electronically recorded.

Example—

A caution relating to the right to remain silent should, where practicable, be electronically recorded.

Recording of confessions and admissions

Clause 104 provides that a confession or admission made by a suspect is inadmissible as evidence against the person unless the provisions of the clause are complied with. The clause requires any questioning of the person with respect to their involvement in the offence and anything said by the person relevant to that questioning is, if practicable, to be electronically recorded. If it is not reasonably practicable to electronically record the interview at the time the clause requires that a written interview to be made and be recorded on an electronic recording device as soon as reasonably

practicable and the suspect be given the opportunity to comment. A copy of the written and electronically recorded interview is to be provided to the person.

In the absence of an electronic recording, when questioning a person a police officer is as soon as reasonably practicable make a written record in the language used by the person. Any written record is to be read to the person in English or in the language used during questioning and the person is to be given a copy of the record.

Example—

A police officer may use the services of an interpreter to perform these requirements.

However, a court may admit evidence obtained in non compliance with this clause if it is in the interests of justice.

List of interview friends and interpreters

Clause 105 requires the commissioner, where practicable, to keep an updated list of interview friends and interpreters for the purposes of this Bill.

When clauses 95-97, 100 and 102 do not apply

Clause 106 provides that clauses 95-97, 100 and 102 do not apply where a police officer reasonably suspects that compliance is likely to result in—

- (a) an accomplice or accessory of the person taking steps to avoid apprehension;
- (b) an accomplice or accessory being present during questioning;
- (c) the concealment, fabrication or destruction of evidence; or
- (d) the intimidation of a witness.

If the requirement relates to the deferral of questioning—the questioning is so urgent, having regard to the safety of other people, that it should not be delayed by compliance with that requirement.

The clause only applies for so long as the police officer has a reasonable suspicion that the conditions above apply.

Examples—

1. A person has set a bomb in a shopping centre and it is likely to explode.
2. The life of a person who has been abducted is in danger.

Division 4—Safeguards for things seized during searches**Receipt for seized property**

Clause 107 requires a receipt for property to be issued and given, as soon as reasonably practicable, to a person from whom property is seized or the occupier of premises from which it is taken.

Subclause (2) requires the receipt to contain a description of the thing seized and other relevant information.

Subclause (3) provides that the receipt must be left in a conspicuous place if the occupier is not present.

Requirement after seizure of property

Clause 108 requires that an application be made within 28 days to a magistrate or specified justice for an order—

- (a) as to retention of the evidence;
- (b) that it be photographed and returned;
- (c) that it be dealt with under section 39 of the Justices Act or be the subject of a forfeiture proceeding;

Example of order—

That a Ford motor vehicle seized as evidence of the commission of an offence be retained until any forfeiture proceeding under the *Drugs Misuse Act 1986* is determined.

- (d) as to its disposal or destruction.

Examples of order for disposal or destruction—

That hydroponics equipment seized as evidence of the commission of an offence, from a site where cannabis sativa plants were growing, be given to

a local school for use in their gardens.

unless—

- (i) a proceeding has been commenced;
- (ii) consent has been given to retain the thing by the owner or person in lawful possession of it before it was seized;
- (iii) the property is to be disposed of because it has no intrinsic value;

Example—

A sample of blood taken for analysis.

- (iv) the property is disposed of because it is perishable;

Example—

Fruit, vegetables or meat that will not keep.

- (v) it is destroyed under section 52 of the *Drugs Misuse Act*; or
- (vi) it has been returned under clause 110 of this Bill.

Subclause (2) provides that an application for an order must also be made within 28 days after either of the following happens—

- (a) where a proceeding has been discontinued without an order being made in relation to the seized thing; or
- (b) consent to retain the thing has been withdrawn.

Any application for an order is to be accompanied by the warrant under which the thing was seized with the record made under clause 118.

Right to inspect seized documents

Clause 109 requires, unless otherwise ordered by a justice, a police officer, at reasonable times and intervals, to allow a person entitled to a seized document to inspect it and if inspected make copies and take extracts.

Return of seized things

Clause 110 requires, unless otherwise ordered by a justice, a police officer to return any seized thing to the owner or person who had lawful possession of the thing if satisfied that it is no longer required as evidence

and it is lawful to return it.

Division 5—Other safeguards

Protecting the dignity of persons during search

Clause 111 provides that a police officer may require a person to be searched under this Act to remove items of clothing. However, unless an immediate search is necessary, the search is to be conducted in a place of privacy by a police officer of the same sex or if there is no appropriate officer available—a person of the same sex as the suspect or by a doctor. If all items of clothing or all items of clothing other than underwear are removed the person should be provided with reasonable privacy. Where necessary, the person must be given reasonably appropriate clothing to replace that removed and seized. Also, a police officer may remove a person from one place to another in order to conduct the search.

Supplying officer's details etc

Clause 112 provides that a police officer must, as soon as reasonably practicable—

- (a) provide his or her name, rank and station; and
- (b) if not in uniform—produce his or her identity card;

to the person subject of the exercise of any of the following powers—

- (i) stopping or detaining a person or vehicle;
- (ii) searching a person;
- (iii) searching a vehicle;
- (iv) searching a private place;
- (v) requiring a person to state name and address;
- (vi) giving a direction at a crime scene or to move-on;
- (vii) arresting a person;
- (viii) seizing any property; or
- (ix) enter to make an inquiry, investigation or serve a document.

Also, if a police officer exercises any of the powers in paragraphs (ii), (iii), or (iv) without a search warrant the police officer must state the purpose for the search and the reason for the seizure of any property.

A police officer is also required to enter particulars of a search, seizure or arrest into a register.

The clause provides that only the senior officer present need comply with the requirement to state name, rank and station or to produce identification unless requested by a person to do so. However, if a person asks another police officer for his or her name, rank and station or identification, the police officer must supply the information.

Information to be given to arrested person

Clause 113 provides that a person who is arrested must be informed, as soon as reasonably practicable, of that fact and of the offence. Also, prior to release from police custody the person must be given written details of the officer's name, rank and station.

Parent and chief executive must be advised of arrest of child

Clause 114 provides that a police officer who arrests a child must promptly advise—

- (a) a parent of the child unless the person cannot be found after reasonable inquiry; and
 - (b) the chief executive officer of the Department of Family, Youth and Community Care or a nominated person,
- of the arrest and whereabouts of the child.

Subclause (2) provides definitions relevant to the clause.

Police officer to consider alternatives to proceeding against a child.

Clause 115 provides that other than where a police officer arrests a child, the officer is to consider before starting proceedings against the child whether it would be more appropriate—

- (a) to take no action;

- (b) administer a caution; or
- (c) refer the offence to community conference.

Subclause (2) provides that in making this determination the officer is to consider—

- (a) the circumstances of the alleged offence; and
- (b) the child's previous history.

Subclause (3) requires that proceedings be delayed to consider the matters in subclause (2).

Subclause (4) provides that this clause does not prevent a police officer starting a proceeding against a child for an offence by way of—

- (a) complaint and summons under the *Justices Act*; or
- (b) attendance notice under the *Juvenile Justice Act*.

Limitation on period of detention for search

Clause 116 requires that a police officer must not detain a person for the purpose of search any longer than is reasonably necessary.

Persons to be given copy of information in register

Clause 117 provides that, as soon as reasonably practicable, a copy of any information recorded in a register required to be kept by the commissioner under this Bill is, if requested, to be given to the person subject of the entry.

This clause does not apply to information the commissioner may not disclose under this Bill or another Act.

Record of execution of warrant or order

Clause 118 is a machinery clause that requires a warrant or order to be endorsed by a police officer who executed it.

Alternative accommodation to be provided in some cases

Clause 119 applies if because of a direction given at a crime scene of a dwelling cannot continue to live there for the duration of the crime scene or because of damage caused to the place in the exercise of crime scene powers.

Subclause (2) provides that the commissioner must on request arrange alternative accommodation for the person for the time they cannot live in the dwelling.

Subclause (3) provides that the clause does not apply to a person who is detained in lawful custody.

Example—

A person arrested for an offence which results in a crime scene being established at his or her home and who is in custody is not entitled to make a request under this clause. However, other occupants of the dwelling are entitled to make the request, e.g. his or her spouse, children or lodgers.

PART 13—ASSAULT OR OBSTRUCTION OF POLICE OFFICERS**Assault etc of police officer**

Clause 120 creates an offence to assault or obstruct a police officer in the performance of that officer's duties.

PART 14—MISCELLANEOUS POWERS**Prevention of offences**

Clause 121 allows a police officer to take necessary steps to prevent the commission of an offence.

Entry of place to prevent offence or injury

Clause 122 provides a power for police to enter a place to prevent an offence of damage to property or injury to a person.

Subclause (1) allows a police officer to enter any place where the police officer reasonably suspects that—

- (a) a person on the place is in risk of imminent injury; or

Example—

Police receive a call from a neighbour that a grandson is threatening to assault his grandmother. Police arrive and hear a person yelling inside the house.

- (b) there is an offence (either occurring or has recently occurred) involving damage to another person's property on the place.

Examples—

1. Police receive a call from a neighbour that the sound of smashing furniture is coming from a unit shared by two males.
2. Police receive a call that the occupants of a rented house are breaking the windows of the house.
3. Police receive a call of property damage occurring, however, on arrival the offender has ceased breaking the property but is still on the premises.

Subclause (2) provides that a police officer may, after entering, detain anyone found on the place for the time reasonably necessary to establish whether it is necessary to exercise any of the other powers contained in subclause (3)

Subclause (3) provides that where a police officer reasonably suspects that any of the circumstances mentioned in subclause (1) exist, the officer may—

- (a) detain anyone on the place for the purpose of searching them for anything that may be or has been used to cause injury or damage; and
- (b) search the place and anyone detained or anything that may be or has been used to cause injury or damage and seize and retain the thing; and

- (c) if the offender is not arrested for an offence—detain that person to prevent continued acts of violence for the period of exercising the powers.

Additional information for subclause (3)—

If a police officer ceases to exercise his or her powers under clause 122, the police officer may assist the occupier of the place to remove a person who is not a resident of the place under the provisions of the *Criminal Code*.

Subclause (4) provides that a police officer must return any seized property to the owner within 7 days of the seizure where—

- (a) it is lawful for the person to possess it; and
- (b) it is not required as an exhibit in a proceeding for an offence.

Example—

Where person A has been arrested for threatening B on a place with a machete and B later withdraws the complaint, police must return the machete to A. However, the machete may be retained if there is reason to suspect that it has been used in a previous assault on another person and A has been charged with that assault.

The clause provides that for this clause a place that is a building includes a vehicle in the place.

Police officer may use assistance in exercising certain powers

Clause 123 provides that a police officer who is exercising a power under this Bill or any other Act may take onto a place such assistance reasonably necessary for exercising the power, for example—a person, equipment or material. Where a person is taken onto the place, the person may exercise such police powers as authorised by the police officer except the power to arrest or demand name and address. The police officer is required to inform the person of the person's authority and powers.

Examples—

1. A police officer may arrange for a backhoe to be taken onto a place where it is necessary for a yard to be dug up. In this instance the backhoe operator would not be given any police powers other than to enter, remain on the place and dig up the

yard.

2. A police officer may take a forensic scientist or a doctor onto a place to search for evidence of an offence. In this case the person would be provided with the power to enter and remain on the premises, to search (including breaking open locked receptacles) seize and retain evidence of the offence.
3. A police officer may take an accountant or a computer expert onto a place to examine documents or to locate and unlock computer files relating to an offence. The computer expert may dismantle the computer and remove the hard drive, if a part of the computer is faulty and does not allow it to operate.
4. A police officer may take a person experienced in mustering stock onto a place and the person may go to any part of the property in order to muster the stock.
5. If a police officer is performing duty at a one officer station and he or she needs to arrest a violent offender and cannot expect other police assistance within a reasonable period, the officer may take another person with him or her to a place to assist in the restraint of the offender after the police officer has arrested the offender. The assistant may use reasonable force to restrain the offender while the officer handcuffs the offender and may assist in escorting the offender to a watchhouse.

Protection for assistants from liability

Clause 124 transfers the civil liability from a person to the State where that person is acting honestly and without negligence as an assistant to a police officer performing his or her duty.

Power to use force—exercise of certain powers

Clause 125 allows a police officer and assistant, exercising a power under this Bill or any other Act to use reasonable force to exercise the power with respect to a thing. This clause does not relate to the use of force against persons.

Examples—

1. Forced entry may be necessary to execute a search warrant and seize items.

2. Forced entry may be needed for covert entry to a place to install a surveillance device.
3. Force may be used to stop vehicles.

Power to use force against individuals

Clause 126(1) provides police and anyone helping the police officer with the power to use reasonably necessary force against individuals when exercising a power under this Bill or any other Act.

Examples—

1. A police officer may use minimal force when arresting a person by touching the person on the arm and advising the person that he or she is under arrest.
2. A police officer may need to use force to overcome resistance while the officer is handcuffing a person.
3. A police officer may need to use a baton to break up a violent fight involving several persons.
4. A police officer may need to use force to arrest a person who has assaulted the officer or who is throwing punches at the officer.
5. A police officer may need to use force to detain a person at a house during a search of the house under a search warrant.

Subclause (2) provides that it is lawful for a police officer to use reasonably necessary force to prevent a person from escaping from lawful custody.

Examples—

1. A police officer may need to chase and tackle a person who has escaped from lawful custody.
2. A police officer may need to use handcuffs or other means of restraint to ensure a person in lawful custody does not escape when moving the person from a watchhouse to a court.
3. A police officer may keep a person in handcuffs or other means of restraint during a person's court appearance to ensure that the person does not escape from lawful custody.

Subclause (3) prohibits the use of force against a person where the level of force is likely to cause grievous bodily harm to the person or lead to the

person's death.

Power to use force against individuals in critical situations

Clause 127 governs the use of force a police may use against a person in critical situations.

Subclauses (1) and (2) list the circumstances to which the section applies and provides that if a police officer reasonably suspects a person—

- (a) has committed, is committing or is about to commit a life imprisonment offence;

Example—

Where a person has committed the offence of murder.

- (b) has committed a life imprisonment offence and is attempting to escape or has escaped from arrest or custody;

Examples—

1. Where a person is serving a life sentence for serial rapes and attempts to escape or escapes from prison.
2. Where a person has been arrested for an offence of murder and flees from police.
- (c) is doing, or is about to do, something likely to cause grievous bodily harm to, or the death of, another person and the police officer reasonably suspects he or she cannot prevent the grievous bodily harm or death other than in a way authorised under this clause.

Examples—

1. A person is holding a gun at another person and threatening to kill that other person.
2. A person is swinging an axe at another person.
3. A person is driving a truck at the wall of a building in which other people are in and it is likely that the truck will break through the wall and seriously injure or kill those people.
4. A person fleeing in a vehicle from an armed robbery and who is shooting at the pursuing police.

Subclause (3) outlines the purposes for which reasonably necessary force may be used as being to—

- (a) prevent the continuation or repetition of the life imprisonment offence, or the commission of another life imprisonment offence; or
- (b) apprehend the person; or
- (c) prevent the escape of the person from arrest or custody; or
- (d) prevent the commission of an act mentioned in subclause(2).

Subclause(4) allows a police officer to use force which is likely to cause grievous bodily harm or death in the circumstances outlined in this clause.

However, subclause (5) requires that if a police officer reasonably believes it is reasonably necessary to use force likely to cause grievous harm or death the officer must, if practicable, first call on the person to stop doing the unlawful act.

Examples—

1. Where a police officer reasonably believes it is necessary to use his or her firearm to prevent a person shooting another, the police officer should, if time permits, call on the person to drop the firearm before the officer discharges his or her weapon.
2. Where a person under sentence of life imprisonment is breaking out of a watchhouse, a police officer should call on the person to stop before using the force provided by this clause.
3. Where a person is fleeing from an armed holdup in a vehicle and is shooting at police, there is no necessity to call on the person to stop and surrender as in this case it would be impractical.

PART 15—GENERAL

Performance of duty

Clause 128 provides that where a police officer is performing a function of the police service the officer is performing a duty as a police officer even

if what the officer is doing could be done by another person.

Example—

A police officer who, at the request of the occupier of land, is removing a trespasser is to be taken as acting in his or her capacity as a police officer, irrespective of the fact that the provision allowing for the person's removal may be exercised by a person other than a police officer.

Obtaining warrants, orders and authorities, etc., by telephone or similar facility

Clause 129 is a machinery clause which allows a police officer to obtain a warrant, order, etc., by telephone, radio, facsimile, etc where it is not practicable for the police officer to make application for the document in person.

Protection of methodologies

Clause 130 identifies those matters which a court should take into account in considering public interest immunity and crown privilege.

Subclause(1) provides for a police officer to refuse to disclose information mentioned in subclause (2) in a proceedings for an offence unless the court is satisfied that the disclosure is—

- (a) necessary for the fair trial of the offender; or
- (b) necessary to find out whether the scope of law enforcement investigation has exceeded the limits imposed by law; or
- (c) otherwise necessary in the public interest.

Subclause(2) provides the information for subclause(1) is information that could, if disclosed, reasonably be expected to—

- (a) prejudice an investigation of a contravention or possible contravention of the law; or

Example—

Where the disclosure would alert suspects to an ongoing covert investigation such as drug dealing.

- (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

Examples—

1. Where the name of an informant may be revealed.
 2. Where an informant may be identified because information was revealed to the informant by the offender either alone or in the presence of a very limited number of the offender's associates.
- (c) endanger a person's life or physical safety; or

Examples—

1. Where the information would lead to the identification of an informant and place the informant in physical danger through retribution.
 2. Where the information would disclose the location of a safe house where a witness whose life may be in danger from the offender is kept.
 3. Where the information may lead to an offender or his or her associates learning the true home address of an undercover police officer or his or her family and therefore place that officer or his or her family in danger.
- (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

Examples—

1. Where the frequency at which a listening device broadcasts a conversation is revealed.
 2. Where the information reveals the location on a car of secret vehicle identification numbers placed there by the manufacturer to assist in the identification of stolen cars.
 3. Where the information would reveal the procedures adopting in conducting covert surveillance activities.
- (e) prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or

Examples—

1. Where the information is likely to reveal specific security methods which are used at major events.
 2. Where the information is likely to reveal the methods used to identify or dismantle an explosive device.
- (f) facilitate a person's escape from lawful custody.

Examples—

1. Where the information is likely to reveal the strength of staff at a watchhouse or watchhouse procedures used to prevent escape.
2. Where the information reveals the times and dates that prisoners are to be transferred from one place to another and the methods to be used in the transfer.
3. Where the information reveals special measures which are put in place to protect security in a court during a proceeding.

Compensation

Clause 131 allows a person who is not complicit in an offence to claim compensation arising from damages caused to the person's property due to an action of a police officer exercising a power under this Bill or any other Act. An application for compensation may be made to the Minister and if accepted the applicant can be compensated for loss without the matter needing to go to court.

Compensation is not payable to a person who is found guilty of an indictable offence because of the exercise of the powers, nor is compensation payable for the lawful seizure of a thing under this Bill

Availability of responsibilities code

Clause 132 requires the commissioner to have a copy of the responsibilities code available at every police station and establishment for inspection by anyone who asks for it.

Approved forms

Clause 133 provides that the commissioner may approve forms for use under this Bill.

Example—

The design of a notice to appear.

Review of Act

Clause 134 provides that the Minister must ensure that the operation of the Bill is regularly reviewed. The first review must start no sooner than 6 months after the commencement of the Act and be completed within 3 years.

Regulation making power

Clause 135 provides that the Governor in Council may make regulations not inconsistent with this Bill. A regulation may include the Responsibilities Code. However, an instructional guideline does not form part of a regulation.

Example—

An instructional guideline may suggest ways of defining the perimeter of a crime scene such as placing checkered tape around the scene or parking a vehicle across the entrance to a place.

Transitional provision about exercise of public official's powers

Clause 136 provides that for a transitional period of 1 year (unless decreased or extended by regulation) to allow for the preservation of public officer powers a police officer may exercise. Any extension of the period is limited to 1 year, unless extended by regulation.

Transitional provision about non-compliance with requirements for warrants etc.

Clause 137 alleviates the need for a police officer to provide information relating to the applications for search warrants, etc. on the same person or

place for a 12 month period. This clause is needed as previous sections require information regarding any applications made in the 12 month period prior to a new application. The Police Service at the time of introduction of this Bill does not have the facilities to comply with the requirements referred to, however, this matter will be addressed on Proclamation of the Act.

Transitional provision about change in way powers may be exercised

Clause 138 excuses a police officer from exercising powers that existed prior to the Proclamation of this Bill for a period of 7 days. For example—the clause allows for errors which may be made due to the fact that an officer may have been absent from duty at the time of Proclamation and unaware of the Proclamation.

Acts amended

Clause 139 provides for relevant Acts in Schedule 2 to be amended.