



Peace and Good Behaviour Act 1982

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Queensland

Peace and Good Behaviour Act 1982

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Peace and Good Behaviour Act 1982

An Act relating to orders to keep the peace and be of good behaviour; to provide for offences in connection therewith; and for purposes subsidiary thereto

Part 1 Preliminary

1 Short title

This Act may be cited as the *Peace and Good Behaviour Act 1982*.

2 Commencement

This Act shall commence on a day appointed by proclamation.

3 Definitions

The dictionary in schedule 1 defines particular words used in this Act.

4 Objects of Act

- (1) The main object of this Act is to protect the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct.
- (2) Other objects of this Act are to—
 - (a) disrupt and restrict the activities of criminals; and

- (b) deter criminals from establishing, maintaining or expanding a criminal network; and
 - (c) ensure premises in which criminals habitually gather are unable to be used for antisocial, disorderly or criminal conduct; and
 - (d) ensure premises habitually used by criminals, or connected with serious criminal activity, do not become excessively fortified; and
 - (e) prevent intimidation of the public by criminals; and
 - (f) protect the community's enjoyment of safe and secure neighbourhood environments and public spaces.
- (3) The objects are achieved by—
- (a) giving jurisdiction to magistrates to make orders that—
 - (i) require a person to keep the peace and be of good behaviour; or
 - (ii) prevent a person, or group of persons, from doing particular things in relation to a particular area or event, or particular premises; or
 - (iii) prevent disorderly activities from taking place at particular premises; or
 - (iv) require the removal of excessive fortifications from particular premises; and
 - (b) giving power to commissioned officers to make orders, of a duration of no more than 7 days, to prevent a person, or group of persons, from doing particular things in relation to a particular area or event, or particular premises; and
 - (c) giving powers to the police service to ensure the effectiveness of the orders mentioned in paragraphs (a) and (b).
- (4) It is not the Parliament's intention that powers under this Act be exercised in a way that diminishes the freedom of persons in the State to participate in advocacy, protest, dissent or industrial action.

(5) In this section—

criminal means—

- (a) a recognised offender; or
- (b) an associate of a recognised offender; or
- (c) a participant in a criminal organisation; or
- (d) a person subject to a control order.

Part 2 Peace and good behaviour orders

Division 1 Making of orders

5 Complaint in respect of breach of the peace

(1) A person (the *complainant*) may make a complaint to a justice of the peace that a person has threatened—

- (a) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant; or
- (b) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant; or
- (c) to destroy or damage any property of the complainant; or
- (d) to procure any other person to destroy or damage any property of the complainant;

and that the complainant is in fear of the person complained against (the *defendant*).

(2) A person (also the *complainant*) may make a complaint to a justice of the peace that the intentional conduct of a person (also the *defendant*) directed at the complainant has caused

the complainant to fear that the defendant will destroy or damage any property of the complainant.

- (2A) If the matter of a complaint under subsection (1) or (2) is substantiated to the justice's satisfaction, and the justice considers it is reasonable in the circumstances for the complainant to have the fear mentioned in the subsection, the justice may issue—
- (a) a summons directed to the defendant requiring the defendant to appear at a stated time and place before a court; or
 - (b) a warrant to apprehend the defendant and to cause the defendant to be brought before a court;

to answer the complaint and to be further dealt with according to law.

- (3) If the justice before whom the complaint mentioned in subsection (1) or (2) is made considers that the matter would be better resolved by mediation than by proceedings before a court, the justice may, with the complainant's consent, order the complainant to submit the matter to mediation under the *Dispute Resolution Centres Act 1990*.
- (4) In this section—
complaint means a written complaint made on oath.

6 Justice may make inquiries or receive evidence

The justice of the peace, in the consideration of the substantiation of the matter of the complaint to the justice's satisfaction, may make or cause to be made such inquiries and receive such evidence as the justice thinks fit.

7 Magistrates Court may make order

- (1) The court before which the defendant appears in obedience to the summons or is brought pursuant to the warrant, as the case may be, shall hear and determine the matter of the complaint.

- (2) Without limiting any other evidence given by or on behalf of the defendant, the defendant may produce evidence that the complaint is made from malice or for vexation only.
- (3) Upon a consideration of the evidence, the court may—
 - (a) dismiss the complaint; or
 - (b) make an order that the defendant shall keep the peace and be of good behaviour for such time, specified in the order, as the court thinks fit.
- (4) The order made by the court may contain such other stipulations or conditions as the court thinks fit.

8 Where defendant does not appear

- (1) If at the time and place appointed by summons for the hearing of the complaint the defendant does not appear when called and proof is made to the court of due service of the summons in accordance with section 56 of the *Justices Act 1886*, the court may—
 - (a) issue its warrant to apprehend the defendant and to bring the defendant before a court to answer the complaint and to be further dealt with according to law; or
 - (b) proceed in the absence of the defendant to hear and determine the matter of the complaint as fully and effectually to all intents and purposes as if the defendant had personally appeared before the court in obedience to the summons and may make an order referred to in section 7; or
 - (c) for any reason appearing to it to be a sufficient reason, adjourn the hearing to a time and place determined by it before a court.
- (2) Where the court makes an order, a copy thereof shall be served on the defendant in the same manner as a summons may be served under the *Justices Act 1886*.

9 Application of Justices Act

Subject to this Part and subject to any necessary modifications and any modifications prescribed by regulation, the provisions of and proceedings and procedures under the *Justices Act 1886* applicable in the case of the prosecution of an offence in a summary way under that Act are applicable in the case of proceedings by way of complaint in respect of which an order to keep the peace and be of good behaviour may be made pursuant to section 7 as if such complaint were a complaint in respect of such an offence.

10 Application of Bail Act

Where the defendant is apprehended under a warrant issued pursuant to this Act, the provisions of the *Bail Act 1980* are applicable in respect of the defendant as though the defendant is a person apprehended on a charge of an offence.

Division 2 Offences

11 Offence for breach of order

- (1) A person who during the currency of an order made in respect of the person pursuant to section 7 contravenes or fails to comply with that order is for each contravention or failure to comply guilty of an offence against this Act.

Maximum penalty—100 penalty units or imprisonment for 1 year.

- (2) For the purposes of this section, a contravention or failure to comply with an order includes a contravention or failure to comply with any stipulation or condition thereof.

12 Court may make further order

On the conviction of a person for an offence under section 11, the court may, in addition to convicting the offender, make a further order that the offender shall keep the peace and be of

good behaviour for such time, specified in the order, as the court thinks fit and the provisions of law and procedures applicable with respect to an order that may be made under section 7 are applicable with respect to the like order that may be made under this section.

13 Proceedings for offences

Proceedings for an offence against this Part may be instituted in a summary way under the *Justices Act 1886*.

Part 3 Public safety orders

Division 1 Preliminary

14 Definition for part

In this part—

respondent, to an application for a public safety order—

- (a) for division 2—see section 17(1) and (2); or
- (b) for division 3—see section 25(1) and (2).

15 Object of part

The object of this part is to provide for—

- (a) public safety orders, of a duration of no more than 7 days, to be made by a commissioned officer; and
- (b) public safety orders, of a duration of no more than 6 months, to be made by a court.

16 Peaceful Assembly Act 1992 unaffected

This part, or an order under this part, does not affect the *Peaceful Assembly Act 1992*.

Division 2 Making of orders by commissioned officers

17 Commissioned officer may make public safety order

- (1) A commissioned officer may make a public safety order for a person or a group of persons (the *respondent*) if the commissioned officer is satisfied—
 - (a) the presence of the respondent at premises or an event, or within an area, poses a serious risk to public safety or security; and
 - (b) it is more appropriate to make an order under this division than applying to the court for an order of longer duration under division 3; and
 - (c) making the order is appropriate in the circumstances.
- (2) A reference in this division to a respondent, if the respondent is a group of persons, is a reference to the members generally of the group.
- (3) In considering whether or not to make the order, the commissioned officer must have regard to the following—
 - (a) the respondent's criminal history and any previous behaviour of the respondent that posed a serious risk to public safety or security;
 - (b) the number of previous public safety orders made for the respondent;
 - (c) whether the respondent is or has been a participant in a criminal organisation or the subject of a control order;
 - (d) whether the respondent associates, or has associated with—
 - (i) a participant in a criminal organisation; or
 - (ii) a person subject to a control order; or
 - (iii) a recognised offender; or
 - (iv) an associate of a recognised offender;

- (e) if advocacy, protest, dissent or industrial action is the likely reason for the respondent being present at the premises or event or within the area—the public interest in maintaining freedom to participate in those activities;
- (f) whether the degree of risk involved justifies the imposition of the conditions to be stated in the order, having regard, in particular, to any legitimate reason the respondent may have for being present at the premises or event or within the area;
- (g) the extent to which making the order will reduce the risk to public safety or security or effective traffic management;
- (h) the extent to which making the order will assist in achieving the objects of this Act.

18 Conditions

- (1) In making a public safety order for a respondent, the commissioned officer may impose a condition that prohibits the respondent from doing or attempting to do any of the following while the order is in force—
 - (a) entering or remaining at stated premises;
 - (b) attending or remaining at a stated event;
 - (c) entering or remaining in a stated area;
 - (d) doing a stated thing in a stated area.
- (2) A public safety order does not stop the respondent from entering the respondent's principal place of residence.

19 Particular orders must be authorised by court

- (1) Despite any other provision of this division, a commissioned officer must not do any of the following unless authorised by a court under this section—

- (a) make a public safety order for the same respondent in relation to the same stated premises, stated event or stated area more than 3 times in a period of 6 months;
 - (b) make a public safety order for a respondent that takes effect immediately after the end of a previous public safety order for the respondent;
 - (c) make a public safety order for a respondent of a duration of no more than 72 hours if a public safety order under this division has been made for the respondent within the immediately preceding 7 days.
- (2) A commissioned officer may apply to a court for an order (an **authorisation order**) authorising the officer to make a public safety order of a type mentioned in subsection (1).
- (3) An authorisation order may be made by the court on an application made without notice to any person.
- (4) The grounds of an application for an authorisation order must be verified by affidavit.
- (5) An application to the court for an authorisation order may be made and dealt with by a magistrate by telephone as follows—
- (a) the commissioned officer must inform the magistrate—
 - (i) of the officer's name and rank; and
 - (ii) that the officer is a commissioned officer;
 - (b) the magistrate must be satisfied the case is of sufficient urgency to justify dealing with the application without requiring the personal attendance of the commissioned officer, by the oral questioning of the commissioned officer and any other available witnesses by telephone;
 - (c) if the magistrate is not satisfied it is appropriate to deal with the application without requiring the personal attendance of the commissioned officer—the magistrate may adjourn the hearing of the application to a time and place fixed by the magistrate;

- (d) if the magistrate is satisfied it is appropriate to deal with the application without requiring the personal attendance of the commissioned officer—the officer must inform the magistrate of the grounds on which the officer proposes to make the public safety order and the conditions the officer proposes to include in the order;
 - (e) if the magistrate is satisfied it is appropriate for the commissioned officer to make the public safety order, the magistrate—
 - (i) must inform the officer of the facts that justify, in the magistrate’s opinion, the making of the public safety order; and
 - (ii) must not proceed to make the authorisation order unless the officer undertakes to make an affidavit verifying those facts;
 - (f) if the commissioned officer gives an undertaking mentioned in paragraph (e), the magistrate may make the authorisation order, noting on the order the facts that justify, in the magistrate’s opinion, the making of the public safety order;
 - (g) the commissioned officer must, as soon as practicable after the making of the public safety order, give the magistrate an affidavit verifying the facts mentioned in paragraph (e).
- (6) For subsection (5)(a), the magistrate, on receiving the information mentioned in that paragraph, may assume, without further inquiry, that the commissioned officer is authorised to make an application under this section.

20 Content of order

A public safety order made under this division must—

- (a) be in the approved form; and
- (b) state each of the following—

- (i) the premises, event or area to which the order applies;
- (ii) the person, or group of persons, to which the order applies;
- (iii) each condition imposed under section 18;
- (iv) if the order applies to stated premises or a stated area—the period, of not more than 7 days, for which the order remains in force;
- (v) if the order applies to a stated event—
 - (A) the location of the event for the purposes of the order; and
 - (B) if the event is held over consecutive days—when the event starts and ends for the purposes of the order, provided the total duration of the event is no more than 7 days; and
 - (C) if the event is held over non-consecutive days—when the event starts and ends for the purposes of the order for each day of the event, provided the order is for no more than 7 days of the event;
- (vi) that a contravention of the order may constitute an offence that carries a maximum penalty of 300 penalty units or 3 years imprisonment;
- (vii) that a failure to comply with a direction given by a police officer under section 31 may constitute an offence that carries a maximum penalty of 40 penalty units;
- (viii) that the respondent may appeal to a Magistrates Court against the order if the order is of a duration of more than 72 hours;
- (ix) that a notice of appeal must be filed within 7 days after the order takes effect.

21 Service of order

- (1) If a public safety order is made by a commissioned officer, the commissioned officer must ensure a copy of the order is served by personal service on each person to whom the order relates.
- (2) If the commissioned officer reasonably suspects a person to whom the order applies is a person under 18 years or has impaired intellectual functioning, the commissioned officer must, if practicable, ensure the order is also served by personal service on a parent or guardian of the person.
- (3) A public safety order is not binding on a person to whom the order relates unless the order is served under this section.
- (4) If a public safety order is served on a person under this section, the order is binding on the person whether or not any other person to whom the order relates has been served.
- (5) Failure to comply with subsection (2) does not prevent an order from becoming binding when the order is served on a person.
- (6) In this section—
parent see the *Youth Justice Act 1992*, schedule 4.

22 Urgent orders

- (1) This section applies if a commissioned officer is satisfied a public safety order made under this division should become binding on a person as a matter of urgency.
- (2) Despite section 21, a police officer may—
 - (a) communicate the contents of the order verbally to any person to whom the order relates; and
 - (b) advise the person to whom the contents of the order are communicated under paragraph (a)—
 - (i) of a place at which the person may obtain a written copy of the order on the next business day; and

- (ii) that the order will be published on the QPS website on the next business day.
- (3) If practicable, a communication under subsection (2) must be electronically recorded.
- (4) The order is binding on a person immediately after a police officer has communicated the information mentioned in subsection (2) to the person.
- (5) The police officer must ensure a written copy of the order is—
 - (a) available for collection by a person to whom the contents of the order are communicated under subsection (2)(a), at the place mentioned in subsection (2)(b), during ordinary business hours, on the next business day; and
 - (b) published on the QPS website on the next business day.
- (6) In this section—

electronically recorded means audio recorded or video recorded.

next business day means the next business day after the day on which the officer communicates the information mentioned in subsection (2) to the person.

23 Duration

- (1) A public safety order made by a commissioned officer takes effect—
 - (a) for an urgent order—under section 22(4);
 - (b) otherwise—when a police officer serves the order, under section 21, on the person to whom the order relates.
- (2) The public safety order remains in force until the earlier of the following—
 - (a) the day the order is revoked;

Note—

See the *Acts Interpretation Act 1954*, section 24AA for the power of the commissioned officer to revoke the order.

- (b) if the order applies to a stated event and the event is cancelled—the day the event is cancelled;
- (c) otherwise—the day stated in the order.

24 Records to be kept

- (1) The commissioner must record in writing particulars of each public safety order made by a commissioned officer, including, for example, the following—
 - (a) when and where the order was made;
 - (b) the reasons the order was made;
 - (c) the details of the respondent;
 - (d) the conditions of the order;
 - (e) the duration of the order;
 - (f) the name of the commissioned officer;
 - (g) whether the order was appealed against;
 - (h) if paragraph (g) applies—the outcome of the appeal.
- (2) The record must be made as soon as practicable after the public safety order is made.
- (3) The commissioner must keep in the records of the police service each record the commissioner has kept under this section.
- (4) The commissioner must ensure the public interest monitor has access to each record the commissioner has kept under this section for the purpose of performing the monitor's functions under the *Police Powers and Responsibilities Act 2000*, chapter 21, part 5.
- (5) In this section—

public interest monitor means the public interest monitor appointed under the *Police Powers and Responsibilities Act 2000*, section 740.

Division 3 Making of orders by court

25 Senior police officer may apply for public safety order

- (1) A senior police officer may apply to a court for, or for the extension of, a public safety order under this division for a person or a group of persons (the *respondent*).
- (2) A reference in this division to a respondent, if the respondent is a group of persons, is a reference to the members generally of the group.
- (3) The application must state the following—
 - (a) details sufficient to identify the respondent;
 - (b) the grounds on which the order, or extension, is sought, being grounds mentioned in section 27 to the extent they are relevant to the application;
 - (c) the information supporting the grounds;
 - (d) details of any previous application for a public safety order for the respondent and the outcome of the application;
 - (e) that the respondent may file a response to the application under section 26.
- (4) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (5) The application, with any accompanying affidavit, must—
 - (a) be filed; and
 - (b) on filing, state as the return date a day within 35 days after the filing; and
 - (c) after being filed, be served by a police officer on the respondent—
 - (i) by personal service within 7 business days after the filing; or

- (ii) if personal service is not practicable or the respondent is a group of persons, by public notice within 10 days after the filing.
- (6) An application for an extension of a public safety order may only be made within 2 months before the order ends.

26 Response by respondent

- (1) The respondent may file a response to the application.
- (2) The response must state—
 - (a) the facts relied on by the respondent in response to the application; and
 - (b) the nature of the response in relation to each order sought by the senior police officer.
- (3) The respondent must file the response, and serve it on the senior police officer, at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

27 Court may make public safety order

- (1) The court may make, or extend, a public safety order for the respondent if the court is satisfied—
 - (a) the presence of the respondent at premises or an event, or within an area, poses a serious risk to public safety or security; and
 - (b) making or extending the order is appropriate in the circumstances.
- (2) In considering whether or not to make or extend the order, the court must have regard to the following—
 - (a) the respondent's criminal history and any previous behaviour of the respondent that posed a serious risk to public safety or security;

- (b) whether the respondent is or has been a participant in a criminal organisation or the subject of a control order;
 - (c) whether the respondent associates, or has associated with—
 - (i) a participant in a criminal organisation; or
 - (ii) a person who is the subject of a control order; or
 - (iii) a recognised offender; or
 - (iv) an associate of a recognised offender;
 - (d) if advocacy, protest, dissent or industrial action is the likely reason for the respondent being present at the premises or event or within the area—the public interest in maintaining freedom to participate in those activities;
 - (e) whether the degree of risk involved justifies the imposition of the conditions to be stated in the order, having regard, in particular, to any legitimate reason the respondent may have for being present at the premises or event or within the area;
 - (f) the extent to which making or extending the order will reduce the risk to public safety or security or effective traffic management;
 - (g) the extent to which making or extending the order will assist in achieving the objects of this Act.
- (3) The court may also consider anything else the court considers relevant.
- (4) In deciding whether a respondent satisfies a matter under subsection (1) or (2) in the case of a respondent that is a group of persons, the court must consider the extent to which members of the group, as opposed to every member of the group, satisfy the matter.
- (5) The public safety order may be made or extended whether or not the respondent is present or makes submissions.

Note for subsection (5)—

See section 25(5)(c) for service requirements for an application to make or extend a public safety order.

28 Conditions

- (1) In making or extending a public safety order for a respondent, the court may impose the conditions on the respondent that the court considers necessary having regard to the grounds for making or extending the order.
- (2) Without limiting subsection (1), a condition may prohibit the respondent from doing or attempting to do any of the following while the order is in force—
 - (a) entering or remaining at stated premises;
 - (b) attending or remaining at a stated event;
 - (c) entering or remaining in a stated area;
 - (d) doing a stated thing in a stated area.
- (3) Also, it is a condition of the order that the respondent must comply with every reasonable direction given by a police officer for the purpose of the order.
- (4) Without limiting subsection (3), the condition under the subsection must be stated in the order.
- (5) The court may impose a condition on the order about the use by a police officer of a power under section 31.
- (6) A public safety order does not stop the respondent from entering the respondent's principal place of residence.

29 Duration

- (1) A public safety order made by a court takes effect—
 - (a) when the order is made, if the respondent or a legal or other representative of the respondent is present at the hearing of the application; or
 - (b) if paragraph (a) does not apply—when a police officer serves the order on the respondent.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable or the respondent is a group of persons, by public notice.

- (3) The order served on the respondent must state that—
 - (a) the respondent may appeal to the District Court against the order; and
 - (b) the notice of appeal must be filed within 28 days after—
 - (i) the day on which the order was made; or
 - (ii) for an order made in the absence of the respondent or a legal or other representative of the respondent—the day on which the order was served on the respondent.
- (4) A public safety order remains in force until the earlier of the following—
 - (a) the day the order is revoked;
 - (b) the day stated in the order, which must not be more than 6 months after the order is made.
- (5) However, if the public safety order is extended by the court, the order remains in force until the earlier of the following—
 - (a) the day the order is revoked;
 - (b) the day stated in the order for extension, which must not be more than 6 months after the day the order would have otherwise ended.

30 Revocation or variation

- (1) A court, at any time on application by a senior police officer, may make an order to vary or revoke a public safety order made by the court under this division.
- (2) An application must state—
 - (a) the grounds on which the variation or revocation is sought; and
 - (b) the information supporting the grounds on which the variation or revocation is sought.

- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) A police officer must serve a copy of the application, with any accompanying affidavit, on the respondent.
- (5) A police officer must serve a copy of the order for the variation or revocation on the respondent as soon as practicable after the order is made.
- (6) Service of the application or order must be by personal service or, if personal service is not practicable or the respondent is a group of persons, by public notice.

Division 4 Police powers for enforcing public safety orders

Note—

See also the following provisions of the *Police Powers and Responsibilities Act 2000* relating to police powers—

- section 19 (General power to enter to make inquiries, investigations or serve documents)
- section 41(o)(i) (Prescribed circumstances for requiring name and address)
- section 60(3)(j)(i) (Stopping vehicles for prescribed purposes)

31 Prevention of contravention of public safety order

- (1) This section applies if a police officer reasonably suspects an offence against section 32 has been committed, is being committed, or is about to be committed in relation to a public safety order.
- (2) The police officer may exercise 1 or more of the following powers—
 - (a) stop a person or group of persons for whom the order has been made from entering a public safety place;

- (b) stop, detain and search a vehicle approaching, in or leaving a public safety place—
 - (i) to search for a person for whom the order has been made; or
 - (ii) to serve a copy of the order on a person for whom the order has been made;
 - (c) remove a person or group of persons for whom the order has been made from a public safety place;
 - (d) take any other steps the police officer reasonably considers necessary.
- (3) However, before exercising a power under subsection (2), a police officer must, if it is practicable to do so, first give the person against whom the power is to be exercised a direction—
- (a) for subsection (2)(a)—not to enter the public safety place; or
 - (b) for subsection (2)(c)—to leave the public safety place; or
 - (c) for subsection (2)(d)—to take the step the police officer reasonably considers necessary.
- (4) A police officer may give any direction that is reasonably necessary to exercise a power under subsection (2) or (3).
- (5) A direction given under this section is taken to be a direction given under the *Police Powers and Responsibilities Act 2000*.

Note—

Failure to comply with a direction given under this section is an offence against the *Police Powers and Responsibilities Act 2000*, section 791.

- (6) A person does not commit an offence against the *Police Powers and Responsibilities Act 2000*, section 791 if—
- (a) the person was directed to do something under this section; and

-
- (b) the court is not satisfied that the police officer, at the time of giving the direction, had the suspicion mentioned in subsection (1).
- (7) In this section—
- public safety place* means—
- (a) premises or an area to which a public safety order applies; or
 - (b) a place where an event is taking place to which a public safety order applies.

Division 5 Offence

32 Contravention of public safety order

- (1) A person who, without reasonable excuse, knowingly contravenes a public safety order made for the person, or a group of persons of which the person is a member, commits a misdemeanour.

Maximum penalty—300 penalty units or 3 years imprisonment.

- (2) A person knowingly contravenes a public safety order if the person does an act or makes an omission the person knows, or ought reasonably to know, is a contravention of the public safety order.

Part 4 Restricted premises orders

Division 1 Preliminary

33 Definitions for part

In this part—

criminal activity means conduct that involves the commission of an offence.

disorderly activity, at premises, means—

- (a) drunkenness, disorderly or indecent conduct, or entertainment of a demoralising character, at the premises; or
- (b) criminal activity at the premises that is likely to pose a risk to the safety of a member of the public; or
- (c) the unlawful supply of liquor or drugs from the premises; or
- (d) the unlawful possession at, or supply from, the premises of firearms or explosives; or
- (e) the presence of any of the following at the premises—
 - (i) recognised offenders;
 - (ii) associates of recognised offenders;
 - (iii) persons subject to a control order; or
- (f) the participation of any of the following in the control or management of the premises—
 - (i) recognised offenders;
 - (ii) associates of recognised offenders;
 - (iii) persons subject to a control order; or
- (g) the existence of fortification of the premises that is excessive for lawful use of that type of premises.

prescribed place means a place prescribed by regulation under section 41.

prohibited item means—

- (a) liquor; or
- (b) drugs; or
- (c) a firearm; or
- (d) an explosive; or

- (e) any drinking glass, vessel or container that is used or is capable of being used for or in connection with the storage, supply or consumption of liquor or drugs; or
- (f) any thing that is used or is capable of being used inside premises to contribute to or enhance the ambience of the premises in support of the sale or consumption of liquor or drugs, or entertainment of a demoralising character, at the premises; or

Examples of things used in support of the sale or consumption of liquor or drugs—

- a bar fitout
- a music, entertainment, gaming or lighting system
- a pool or billiard table or darts board
- a dance floor or stage

Examples of things used in support of entertainment of a demoralising character—

- a stripper's pole

- (g) fortification of premises that is excessive for lawful use of that type of premises.

respondent—

- (a) to an application for a restricted premises order—see section 35(1); or
- (b) to an application for an extension order—see section 44(1).

restricted premises means—

- (a) premises for which a restricted premises order is in force; or
- (b) a prescribed place taken to be restricted premises under division 3.

Division 2 Making of orders

34 Senior police officer may apply for restricted premises order

- (1) A senior police officer may apply to a court for a restricted premises order for stated premises, other than licensed premises.
- (2) The application must state the following—
 - (a) details sufficient to identify the premises;
 - (b) details sufficient to identify the owner and occupier of the premises;
 - (c) the grounds on which the order is sought, being grounds mentioned in section 36 to the extent they are relevant to the application;
 - (d) the information supporting the grounds;
 - (e) details of any previous application for a restricted premises order in relation to—
 - (i) the premises mentioned in paragraph (a); or
 - (ii) an owner or occupier mentioned in paragraph (b);
 - (f) that an owner or occupier of the premises may file a response to the application under section 35.
- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) The application, with any accompanying affidavit, must—
 - (a) be filed; and
 - (b) on filing, state as the return date a day within 35 days after the filing; and
 - (c) after being filed, be served by a police officer on the respondent—
 - (i) by personal service within 7 business days after the filing; or

- (ii) if personal service is not practicable or the respondent is a group of persons, by public notice within 10 days after the filing.

- (5) In this section—

licensed premises see the *Liquor Act 1992*, section 4.

35 Response by owner or occupier

- (1) An owner or occupier of premises for which a restricted premises order is sought (the *respondent*) may file a response to the application.
- (2) The response must state—
 - (a) the facts relied on by the respondent in response to the application; and
 - (b) the nature of the response in relation to each order sought by the senior police officer.
- (3) The respondent must file the response, and serve it on the senior police officer, at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

36 Court may make restricted premises order

- (1) The court may make a restricted premises order for stated premises if the court is satisfied—
 - (a) a senior police officer reasonably suspects that 1 or more disorderly activities have taken place at the premises and are likely to take place again at the premises; and
 - (b) making the order is appropriate in the circumstances.
- (2) In considering whether or not to make the order, the court must have regard to the following—

- (a) the extent to which the premises are open to the public, or used by the public, whether on payment or otherwise;
 - (b) the extent to which disorderly activities habitually take place at the premises;
 - (c) the extent to which making the order will reduce the risk to public safety caused by disorderly activities taking place at the premises;
 - (d) the extent to which making the order will assist in achieving the objects of this Act.
- (3) The court may also consider anything else the court considers relevant.
- (4) The restricted premises order may be made whether or not an owner or occupier of the premises is present or makes submissions.

Note for subsection (4)—

See section 34(4)(c) for service requirements for an application to make a restricted premises order.

37 Conditions

- (1) In making a restricted premises order, the court may impose the conditions on the respondent that the court considers necessary having regard to the grounds for making the order.
- (2) Without limiting subsection (1), a condition must prohibit the following—
- (a) disorderly activities taking place at the premises;
 - (b) any of the following being present at the premises—
 - (i) recognised offenders;
 - (ii) associates of recognised offenders;
 - (iii) persons subject to a control order;
 - (c) any of the following taking part in the management or control of the premises—
 - (i) recognised offenders;

- (ii) associates of recognised offenders;
 - (iii) persons subject to a control order;
 - (d) the existence of any fortification of the premises that is excessive for lawful use of that type of premises.
- (3) A restricted premises order does not stop the respondent from entering the respondent's principal place of residence.

38 Duration

- (1) A restricted premises order takes effect—
- (a) when the order is made, if an owner or occupier of the premises, or a legal or other representative of an owner or occupier of the premises is present at the hearing of the application; or
 - (b) if paragraph (a) does not apply—when a police officer serves the order on an owner or occupier of the premises.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable, by public notice.
- (3) The order served on the owner or occupier must state that—
- (a) the owner or occupier may appeal to the District Court against the order; and
 - (b) the notice of appeal must be filed within 28 days after—
 - (i) the day on which the order was made; or
 - (ii) for an order made in the absence of an owner or occupier or a legal or other representative of an owner or occupier—the day on which the order was served on the owner or occupier.
- (4) A restricted premises order remains in force until the earlier of the following—
- (a) the order is revoked;

- (b) the day stated in the order, which must be at least 6 months, and not more than 2 years, after the order is made.

39 Revocation or variation

- (1) A court, at any time on application by a senior police officer, may make an order to vary or revoke a restricted premises order.
- (2) An application must state—
 - (a) the grounds on which the variation or revocation is sought; and
 - (b) the information supporting the grounds on which the variation or revocation is sought.
- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) A police officer must serve a copy of the application, with any accompanying affidavit, on the respondent.
- (5) A police officer must serve a copy of the order for the variation or revocation on an owner or occupier of the premises as soon as practicable after the order is made.
- (6) Service of the application or order must be by personal service or, if personal service is not practicable, by public notice.

Division 3 Prescribed places

40 Definitions for division

In this division—

extended period see section 43(1).

extension order see section 43(1).

initial period see section 42(1).

41 Regulation-making power for prescribed places

- (1) A regulation may prescribe a place as a prescribed place for the purposes of this division.
- (2) A regulation made under subsection (1) after the commencement—
 - (a) may omit a place prescribed by regulation on commencement; and
 - (b) must not prescribe a place that was not prescribed by regulation on commencement.

42 Prescribed place taken to be restricted premises for 2 years

- (1) A prescribed place is taken to be restricted premises for 2 years starting on the commencement (the *initial period*).
- (2) For section 54—
 - (a) the owner or occupier of the prescribed place is taken to have been served with a restricted premises order for the prescribed place, including the condition mentioned in section 37(2), on the commencement; and
 - (b) the restricted premises order mentioned in paragraph (a) is taken to remain in force for the initial period.
- (3) To remove any doubt, if a regulation made under section 41(1) after the commencement omits a place prescribed by regulation on commencement, the place stops being a prescribed place.

43 Extension of initial period

- (1) A senior police officer may apply to a court for an order (an *extension order*) that a prescribed place be taken to be restricted premises for a further stated period of at least 6 months and not more than 2 years (the *extended period*).

- (2) The application must be made at least 1 year after the commencement and at least 2 months before the end of the initial period or the immediately preceding extended period.
- (3) The application must state—
 - (a) the grounds on which the extension order is sought; and
 - (b) the information supporting the grounds on which the extension order is sought.
- (4) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (5) The application, with any accompanying affidavit, must—
 - (a) be filed; and
 - (b) on filing, state as the return date a day within 35 days after the filing; and
 - (c) after being filed, be served by a police officer on the respondent within 10 days after the filing.
- (6) Service under subsection (5)(c) must be by personal service or, if personal service is not practicable, by public notice.
- (7) To remove any doubt, it is declared that a senior police officer may make an application under subsection (1) from time to time as occasion requires.

44 Response by owner or occupier

- (1) An owner or occupier of premises for which an extension order is sought (the *respondent*) may file a response to the application.
- (2) The response must state—
 - (a) the facts relied on by the respondent in response to the application; and
 - (b) the nature of the response in relation to each order sought by the senior police officer.

- (3) The respondent must file the response, and serve it on the senior police officer, at least 5 business days before the return date.
- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

45 Court may make extension order

- (1) The court must make an extension order for a prescribed place if the court is satisfied—
 - (a) 1 or more disorderly activities have taken place at the premises, whether before or after the commencement; and
 - (b) if the court did not grant the order, 1 or more disorderly activities would be likely to take place again at the premises; and
 - (c) making the order is appropriate in the circumstances.
- (2) In considering whether or not to make the extension order, the court must have regard to the following—
 - (a) the extent to which the premises are open to the public, or used by the public, whether on payment or otherwise;
 - (b) the extent to which disorderly activities habitually take place at the premises;
 - (c) the extent to which making the order will reduce the risk to public safety caused by disorderly activities taking place at the premises;
 - (d) the extent to which making the order will assist in achieving the objects of this Act.
- (3) The court may also consider anything else the court considers relevant.
- (4) The extension order may be made whether or not an owner or occupier of the premises is present or makes submissions.

Note—

See section 43(5)(c) for service requirements for an application to make an extension order.

46 Effect of extension order

- (1) If a court makes an extension order for a prescribed place, the prescribed place is taken to continue to be restricted premises for the extended period.
- (2) For section 54—
 - (a) the owner or occupier of the prescribed place is taken to have been served with a restricted premises order for the prescribed place, including the condition mentioned in section 37(2), on the day on which the owner or occupier was served with the extension order; and
 - (b) the restricted premises order mentioned in paragraph (a) is taken to remain in force for the extended period.

47 Duration

- (1) An extension order takes effect—
 - (a) when the order is made, if an owner or occupier of the prescribed place, or a legal or other representative of an owner or occupier of the prescribed place is present at the hearing of the application; or
 - (b) if paragraph (a) does not apply—when a police officer serves the extension order on an owner or occupier of the prescribed place.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable, by public notice, within 28 days before the end of the initial period.
- (3) The order served on the owner or occupier must state—
 - (a) that the owner or occupier may appeal to the District Court against the order; and
 - (b) the notice of appeal must be filed within 28 days after—

-
- (i) the day on which the order was made; or
 - (ii) for an order made in the absence of an owner or occupier or a legal or other representative of an owner or occupier—the day on which the order was served on the owner or occupier.
- (4) An extension order for a prescribed place remains in force until the earlier of the following—
- (a) the day the order is revoked;
 - (b) the day stated in the order, which must be at least 6 months, and not more than 2 years after, the end of the initial period for the prescribed premises;
 - (c) the day the place stops being a prescribed place.

48 Revocation or variation

- (1) The court, at any time on application by a senior police officer, may make an order to vary or revoke an extension order for a prescribed place.
- (2) An application must state—
 - (a) the grounds on which the variation or revocation is sought; and
 - (b) the information supporting the grounds on which the variation or revocation is sought.
- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) A police officer must serve a copy of the application, with any accompanying affidavit, on an owner or occupier of the prescribed place.
- (5) A police officer must serve a copy of the order for the variation or revocation on an owner or occupier of the prescribed place as soon as practicable after the order is made.
- (6) Service of the application or order must be by personal service or, if personal service is not practicable, by public notice.

Division 4 Police powers for enforcing restricted premises orders

Note—

See also the following provisions of the *Police Powers and Responsibilities Act 2000* relating to police powers—

- section 19 (General power to enter to make inquiries, investigations or serve documents)
- section 41(o)(ii) (Prescribed circumstances for requiring name and address)
- section 60(3)(j)(ii) (Stopping vehicles for prescribed purposes)
- section 150(1)(e) (Search warrant application)

49 Searching restricted premises without warrant

- (1) It is lawful for a police officer to exercise the following powers in relation to restricted premises without a search warrant—
 - (a) power to enter the restricted premises and to stay on the restricted premises for the time reasonably necessary to exercise the powers mentioned in paragraphs (b) to (f);
 - (b) power to search the restricted premises for—
 - (i) a prohibited item; or
 - (ii) anything that may be evidence of the commission of an offence;
 - (c) power to seize from the restricted premises—
 - (i) a prohibited item; or
 - (ii) anything that may be evidence of the commission of an offence;
 - (d) power to open anything that is locked;
 - (e) power to search any person found at the premises for anything mentioned in paragraph (c) that can be concealed on the person;

-
- (f) power to photograph any thing that may be evidence of disorderly activities taking place at the restricted premises.
 - (2) To remove any doubt, it is declared that a power mentioned in subsection (1) may be exercised from time to time as occasion requires.

Division 5 Applications for return of prohibited items

50 Application to court by owner for return of prohibited item

- (1) This section applies if a police officer seizes a prohibited item from—
 - (a) restricted premises in the exercise of powers under section 49; or
 - (b) premises the subject of a search warrant applied for under the *Police Powers and Responsibilities Act 2000*, section 150(1)(e) in exercise of powers under section 157(1)(h) of that Act.
- (2) A person who claims to have a legal or equitable interest in the prohibited item may, within 21 days after its seizure, apply to a court for an order that the item be returned to—
 - (a) the person (the *applicant*); or
 - (b) someone else named in the application as the person to whom the item may be delivered (the *nominee*).
- (3) The applicant must give each of the following a copy of the application and notice of the day, time and place fixed for hearing the application—
 - (a) the commissioner;
 - (b) anyone else the person reasonably believes has a legal or equitable interest in the item.
- (4) In this section—

prohibited item does not include an item that is—

- (a) evidence of the commission of an offence; or
- (b) forfeited to the State under an Act.

51 Court may order return of prohibited item

- (1) The court may order that the prohibited item be returned to the applicant or the nominee on the conditions, if any, the court considers appropriate if satisfied—
 - (a) the applicant may lawfully possess the item; and
 - (b) for a prohibited item seized from restricted premises—the seizure was not lawful under section 49; and
 - (c) for a prohibited item seized from premises the subject of a search warrant applied for under the *Police Powers and Responsibilities Act 2000*, section 150(1)(e)—the disorderly activities forming the grounds on which the warrant was sought were not taking place at the premises; and
 - (d) it is appropriate that the item be returned to the applicant or nominee.
- (2) If the court proposes to order that the prohibited item be returned to the nominee, the court must also be satisfied that the nominee may lawfully possess the item.
- (3) The court must not order the return of a prohibited item to the applicant or the nominee if the court is satisfied the item—
 - (a) may be evidence in a proceeding relating to the item; or
 - (b) is a thing used in or for manufacturing a dangerous drug; or
 - (c) may be subject to a confiscation proceeding.
- (4) In this section—

applicant see section 50(2)(a).

confiscation proceeding means a proceeding for an order under the *Criminal Proceeds Confiscation Act 2002*.

nominee see section 50(2)(b).

Division 6 Forfeiture of prohibited items

52 Application of division

This division applies if—

- (a) a police officer seizes a prohibited item from—
 - (i) restricted premises in the exercise of powers under section 49; or
 - (ii) premises the subject of a search warrant applied for under the *Police Powers and Responsibilities Act 2000*, section 150(1)(e) in exercise of powers under section 157(1)(h) of that Act; and
- (b) either—
 - (i) an application under division 5 for the return of the prohibited item has not been made within 21 days after the item was seized; or
 - (ii) a magistrate has refused to return the prohibited item under section 51.

53 Forfeiture of prohibited item

- (1) The commissioner may forfeit the prohibited item to the State.
- (2) On the forfeiture, the prohibited item—
 - (a) becomes the property of the State; and
 - (b) may, subject to any direction given under the *Police Service Administration Act 1990*, section 4.6, be dealt with by the commissioner as the commissioner considers appropriate.

[s 54]

- (3) Without limiting subsection (2), the commissioner may destroy or dispose of the prohibited item.
- (4) Subsections (5) and (6) apply if the commissioner proposes to sell the prohibited item.
- (5) The sale must be by auction.
- (6) The proceeds of the sale must be applied in the following order—
 - (a) first, in meeting the expenses of the sale;
 - (b) second, in meeting any reasonable costs incurred in—
 - (i) seizing the prohibited item; and
 - (ii) storing the prohibited item; and
 - (iii) doing anything necessary to prepare the prohibited item for sale;
 - (c) third, to the consolidated fund.

Division 7 Offence

54 Offence by owner or occupier of restricted premises

- (1) An owner or occupier of restricted premises commits a misdemeanour if—
 - (a) an owner or occupier has been served with a restricted premises order for the restricted premises; and
 - (b) a disorderly activity takes place at the restricted premises after the order has been served and while the order remains in force; and
 - (c) the owner or occupier knows, or ought reasonably to know, that the disorderly activity has taken place.

Maximum penalty—

- (a) for the first offence—150 penalty units or imprisonment for 18 months; or

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- (b) for each later offence—300 penalty units or 3 years imprisonment.
 - (2) An owner or occupier of premises is not guilty of an offence against subsection (1) if the owner or occupier proves the owner or occupier has taken all reasonable steps to prevent the contravention.
 - (3) An owner of premises is not guilty of an offence against subsection (1) if the owner proves the owner has taken all reasonable steps to evict the occupier from the premises.

Division 8 Evidentiary matters

55 Disorderly activity taken to have happened if obstruction or fortification

- (1) This section applies if—
 - (a) a police officer exercises, or attempts to exercise—
 - (i) a function under section 49 in relation to restricted premises; or
 - (ii) a function under the *Police Powers and Responsibilities Act 2000*, section 157 in relation to premises; and
 - (b) any of the following applies—
 - (i) the police officer is assaulted or obstructed in the performance of the officer's function;
 - (ii) the performance of the police officer's function is hindered by excessive fortification of the premises.
- (2) This section also applies if a police officer has given a stop and desist notice to an owner or occupier of premises within 14 days before applying for a restricted premises order for the premises and the notice has not been complied with before the day of the hearing of the application.
- (3) In a relevant proceeding, evidence of any of the matters mentioned in subsection (1)(b) or (2) is evidence that a

disorderly activity has taken place at the premises unless proven otherwise.

(4) In this section—

assault has the meaning given by the Criminal Code, section 245.

function includes power.

obstruct includes hinder, resist and attempt to obstruct.

relevant proceeding means—

- (a) a proceeding against a person for a charge of having committed an offence against section 54; or
- (b) an application under this part to a court; or
- (c) an appeal relating to a proceeding mentioned in paragraph (a) or an application mentioned in paragraph (b).

Part 5 Fortification removal orders

Division 1 Preliminary

56 Definitions for part

In this part—

fortification, of premises, means any structure or device that, alone or as a system or part of a system, is designed to stop or hinder, or to provide any other form of step against, uninvited entry to the premises.

Example of a device that may be part of a system—

a video surveillance system, also called security camera surveillance

respondent, to an application for a fortification removal order, see section 59(1).

57 Relationship with Sustainable Planning Act 2009 and development approvals

- (1) This section applies for the carrying out of development as defined under the *Sustainable Planning Act 2009*—
 - (a) authorised under a fortification removal order; or
 - (b) that is enforcement action.
- (2) If, other than for this subsection, the development would be any of the following under the *Sustainable Planning Act 2009* it is taken to be exempt development under that Act—
 - (a) assessable development;
 - (b) development requiring compliance assessment;
 - (c) prohibited development.
- (3) The development may be carried out despite any development approval under the *Sustainable Planning Act 2009*.

Division 2 Making of orders

58 Senior police officer may apply for fortification removal order

- (1) A senior police officer may apply to a court for a fortification removal order for stated premises.
- (2) The application must state the following—
 - (a) details sufficient to identify the premises and the fortification;
 - (b) details sufficient to identify the owner and occupier of the premises;
 - (c) the grounds on which the order is sought, being grounds mentioned in section 60 to the extent they are relevant to the application;
 - (d) the information supporting the grounds;

- (e) details of any previous application for a fortification removal order in relation to—
 - (i) the premises mentioned in paragraph (a); or
 - (ii) an owner or occupier mentioned in paragraph (b);
 - (f) that an owner or occupier of the premises may file a response to the application under section 59.
- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) The application, with any accompanying affidavit, must—
- (a) be filed; and
 - (b) on filing, state as the return date a day within 35 days after the filing; and
 - (c) after being filed, be served by a police officer on the respondent—
 - (i) by personal service within 7 business days after the filing; or
 - (ii) if personal service is not practicable or the respondent is a group of persons, by public notice within 10 days after the filing.

59 Response by owner or occupier

- (1) An owner or occupier of premises for which a fortification removal order is sought (the *respondent*) may file a response to the application.
- (2) The response must state—
- (a) the facts relied on by the respondent in response to the application; and
 - (b) the nature of the response in relation to each order sought by the applicant.
- (3) The respondent must file the response, and serve it on the applicant, at least 5 business days before the return date.

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- (4) The response must be accompanied by any affidavit the respondent intends to rely on at the hearing of the application.

60 Court may make fortification removal order

- (1) The court may make a fortification removal order for stated premises if the court is satisfied—
- (a) the premises have a fortification; and
 - (b) the fortified premises are either—
 - (i) being, have been or are likely to be, used for or in connection with serious criminal activity, or to conceal evidence of, or to keep proceeds of, serious criminal activity; or
 - (ii) owned or habitually occupied or used by a criminal organisation, participants in a criminal organisation, recognised offenders, or associates of recognised offenders; and
 - (c) the extent or nature of the fortification is excessive for lawful use of that type of premises; and
 - (d) making the order is appropriate in the circumstances.
- (2) In considering whether or not to make the order, the court must have regard to the following—
- (a) the extent to which the premises are open to the public, or used by the public, whether on payment or otherwise;
 - (b) the extent to which making the order will reduce the risk to public safety caused by habitual use of the premises by people mentioned in subsection (1)(b);
 - (c) the extent to which making the order will assist in achieving the objects of this Act.
- (3) The court may also consider anything else the court considers relevant.
- (4) The fortification removal order may be made whether or not the respondent is present or makes submissions.

Note—

See section 58(4)(c) for service requirements for an application to make a fortification removal order.

- (5) The fortification removal order must state—
- (a) the premises and the fortification; and
 - (b) the time or the period within which the fortification must be removed or modified; and
 - (c) if the order requires the fortification to be modified—details of the modification.

61 Conditions

- (1) In making a fortification removal order for stated premises, the court may impose the conditions on the respondent that the court considers necessary having regard to the grounds for making the order.
- (2) Without limiting subsection (1), a condition may require the respondent to remove or modify the fortification the subject of the order within a stated period.

62 When order takes effect

- (1) A fortification removal order takes effect—
 - (a) when the order is made, if the respondent or a legal or other representative of the respondent is present at the hearing of the application; or
 - (b) if paragraph (a) does not apply—when a police officer serves the order on the respondent.
- (2) Service under subsection (1)(b) must be by personal service or, if personal service is not practicable or the respondent is a group of persons, by public notice.

63 Revocation or variation

- (1) The court, at any time on application by a senior police officer, may make an order to vary or revoke a fortification removal order.
- (2) An application must state—
 - (a) the grounds on which the variation or revocation is sought; and
 - (b) the information supporting the grounds on which the variation or revocation is sought.
- (3) The application must be accompanied by any affidavit the senior police officer intends to rely on at the hearing of the application.
- (4) A police officer must serve a copy of the application, with any accompanying affidavit, on an owner or occupier of the premises.
- (5) A police officer must serve a copy of the order for the variation or revocation on an owner or occupier of the premises as soon as practicable after the order is made.
- (6) Service of the application or order must be by personal service or, if personal service is not practicable or the owner or occupier is a group of persons, by public notice.

Division 3 Police powers for enforcing fortification removal orders

Note—

See also the following provisions of the *Police Powers and Responsibilities Act 2000* relating to police powers—

- section 19 (General power to enter to make inquiries, investigations or serve documents)
- section 41(o)(iii) (Prescribed circumstances for requiring name and address)
- section 60(3)(j)(iii) (Stopping vehicles for prescribed purposes)

64 Application of division

This division applies if—

- (a) a fortification removal order has taken effect; and
- (b) the period within which to file an appeal about the order has ended and—
 - (i) no appeal about the order has been filed; or
 - (ii) any appeal about the order has been withdrawn or dismissed; and
- (c) the order has not been complied with.

65 Powers for removing and modifying fortifications

- (1) A police officer may cause the fortification the subject of the fortification removal order to be removed or modified to the extent required under the order (*enforcement action*).
- (2) A police officer may, for taking enforcement action, do all or any of the following—
 - (a) enter the fortified premises the subject of the order;
 - (b) remain on the fortified premises for the time necessary to achieve the removal or modification;
 - (c) obtain expert or technical advice;
 - (d) take into or onto the fortified premises any persons, equipment and materials the police officer reasonably requires to take the action;
 - (e) require the occupier of the fortified premises, or a person at the premises, to give the police officer reasonable help to take the action or exercise the powers under paragraphs (a) to (d);
 - (f) remove any person from the fortified premises if it is necessary or desirable to do so to take the action.
- (3) A police officer may use force that is reasonably necessary to remove a person under subsection (2)(f).
- (4) The powers under this section—

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- (a) may, subject to sections 66 and 67 and the terms of the order, be exercised at any time and as often as is required to achieve the removal or modification; and
 - (b) do not limit or otherwise affect any enforcement powers under the fortification removal order.

66 Procedure for entry to fortified premises

- (1) This section applies if—
 - (a) a police officer is intending to enter fortified premises to take enforcement action; and
 - (b) a person who is the respondent or an occupier of the fortified premises is present at the premises.
- (2) Before entering the fortified premises, the police officer must do, or make a reasonable attempt to do, the following—
 - (a) identify himself or herself to the person;
 - (b) tell the person—
 - (i) the purpose of the entry; and
 - (ii) that the police officer is permitted under this Act to enter the fortified premises without the person's consent; and
 - (iii) about any ancillary powers the police officer thinks may need to be exercised to take the enforcement action;
 - (c) give the person an opportunity to allow the police officer to enter the fortified premises immediately without using force.
- (3) However, subsection (2) does not apply if the fortification makes it impracticable to tell the occupier anything.
- (4) In this section—

ancillary powers means—

 - (a) the powers under section 65(2)(c) to (f) as affected by the fortification removal order; and

- (b) any powers under the fortification removal order.

67 Requirements for entry to buildings on fortified premises

- (1) A police officer or a person authorised by a police officer may enter a building on the fortified premises only if the police officer reasonably believes the entry is needed to take the enforcement action.
- (2) Also, a person mentioned in subsection (1) may enter a part of the building where a person resides only if—
 - (a) the police officer reasonably believes the fortification consists of or includes that part; and
 - (b) entry to the part is needed to take the enforcement action.

68 Exemption from compliance with noise standards

- (1) Noise made or caused to be made during the taking of the enforcement action does not constitute an offence against the *Environmental Protection Act 1994*, section 440Q.
- (2) However, subsection (1) does not apply if the enforcement action is taken at a time prohibited under the fortification removal order.

Division 4 Forfeiture of fortifications

69 Application of division

This division applies if a police officer removes fortification from fortified premises in taking enforcement action.

70 Definitions for division

In this division—

net proceed see section 71(7).

responsible person, for a provision about a fortification removal order or the taking of enforcement action, means—

- (a) the respondent to the application for the order; or
- (b) any other person who—
 - (i) was the occupier of the fortified premises when the order was made; and
 - (ii) knew or ought reasonably to have known about the fortification being installed.

71 Forfeiture of removed fortification

- (1) The commissioner may forfeit the removed fortification to the State.
- (2) On the forfeiture, the removed fortification—
 - (a) becomes the property of the State; and
 - (b) may, subject to any direction given under the *Police Service Administration Act 1990*, section 4.6, be dealt with by the commissioner as the commissioner considers appropriate.
- (3) Without limiting subsection (2), the commissioner may destroy or dispose of the removed fortification.
- (4) Subsections (5) and (6) apply if the commissioner proposes to sell the removed fortification.
- (5) The sale must be by auction.
- (6) The proceeds of the sale must be applied in the following order—
 - (a) first, in meeting the expenses of the sale;
 - (b) second, in meeting any reasonable costs incurred in—
 - (i) taking the enforcement action; and
 - (ii) storing the removed fortification; and
 - (iii) doing anything necessary to prepare the fortification for sale;

- (c) third, to the consolidated fund.
- (7) An amount applied under subsection (6)(c) is a *net proceed* from the removed fortification.

72 Recovery of enforcement costs

- (1) The State may recover from a responsible person as a debt any reasonable costs incurred in taking the enforcement action.
- (2) Subsection (3) applies if—
 - (a) the fortification the subject of the enforcement action was removed in taking the action; and
 - (b) the removed fortification has been forfeited to the State under section 71.
- (3) Any net proceed from the fortification must be set off against the amount of the debt.

73 Compensation from State to particular owners

- (1) This section applies if—
 - (a) a fortification has been removed or modified under a fortification removal order or because of the taking of enforcement action; and
 - (b) the owner of the fortified premises is someone other than a responsible person.
- (2) The owner may claim compensation from the State for any reasonable costs incurred for all or any of the following—
 - (a) repairing any damage to the fortified premises because of the removal or modification;
 - (b) restoring the fortified premises to the condition the premises were in before the fortification was made.
- (3) The compensation may be claimed and ordered in a proceeding brought in a court of competent jurisdiction.

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- (4) A court may order compensation in a proceeding to be paid only if the court is satisfied it is just to make the order in the circumstances of the particular case.

74 Recovery of paid compensation from responsible person

- (1) This section applies if—
- (a) an owner mentioned in section 73 has made a claim against the State under that section; and
 - (b) the State has paid the owner an amount for the claim.
- (2) The State may recover the amount from any responsible person as a debt.
- (3) However, any net proceed from the relevant fortification that has not already been set off under section 72(3) must be set off against the amount.
- (4) For this section it does not matter—
- (a) whether the amount was paid because of a judgment in a proceeding for the claim or under a compromise of the claim; or
 - (b) that the responsible person was not a party to the proceeding or compromise.

Division 5 Offence

75 Hindering removal or modification of a fortification

- (1) A person who does an act or makes an omission with intent to hinder any of the following commits a misdemeanour—
- (a) the removal or modification of a fortification under a fortification removal order;
 - (b) the taking of enforcement action.
- Maximum penalty—5 years imprisonment.

- (2) In this section—

fortification removal order only includes a fortification removal order if—

- (a) the order has taken effect; and
- (b) the period within which to file an appeal about the order has ended and—
 - (i) no appeal about the order has been filed; or
 - (ii) any appeal about the order has been withdrawn or dismissed.

hinder includes prevent, obstruct, interfere with and delay.

Division 6 Evidentiary matters

76 Power to give stop and desist notice

- (1) A commissioned officer may give a notice (a *stop and desist notice*), in the approved form, to an owner or occupier of premises requiring the owner or occupier to stop and desist from installing stated fortification of the premises.
- (2) A commissioned officer may give a stop and desist notice only if the officer reasonably believes—
 - (a) steps are being taken to install excessive fortification of the premises; and
 - (b) the premises are either—
 - (i) being, have been or are likely to be, used for or in connection with serious criminal activity, or to conceal evidence of, or to keep proceeds of, serious criminal activity; or
 - (ii) owned or habitually occupied or used by a criminal organisation, participants in a criminal organisation, recognised offenders, or associates of recognised offenders.
- (3) The notice takes effect—

- (a) when the notice is given by a police officer to an owner or occupier of the premises by personal service; or
 - (b) if service under paragraph (a) is not practicable—by leaving the notice at the premises in a conspicuous place.
- (4) The notice remains in force until the day that is 14 days after the day on which the notice is given to the owner or occupier under subsection (3).

77 Noncompliance with stop and desist notice taken to be evidence of fortification

- (1) This section applies if—
- (a) a commissioned officer gives a stop and desist notice to an owner or occupier of premises within 14 days before applying for a fortification removal order for the premises; and
 - (b) the notice has not been complied with before the day of the hearing of the application.
- (2) In a proceeding relating to the application for the fortification removal order, evidence that the notice has not been complied with is evidence of the matters mentioned in section 60(1)(a) to (c) unless proven otherwise.

Part 6 Court proceedings

Division 1 Jurisdiction

78 Conferral of jurisdiction

A court has jurisdiction—

- (a) to hear and decide an application made to the court under this Act; and

- (b) to perform any other function or exercise any other power conferred on the court under this Act.

79 Constitution of Magistrates Court

A court exercising jurisdiction under this Act must be constituted by a magistrate.

Division 2 Proceedings for orders

80 General application of rules of court

The *Uniform Civil Procedure Rules 1999* apply in relation to applications made to a court under this Act to the extent the rules are consistent with this Act.

81 Standard of proof

A question of fact in proceedings under this Act, other than proceedings for an offence, is to be decided on the balance of probabilities.

82 Service by public notice

- (1) This section applies if service by a police officer of an application or order by public notice is required or authorised by a provision of this Act.
- (2) For service by public notice to be effective, the police officer must publish a notice—
 - (a) in a newspaper circulating throughout the State; and
 - (b) on the QPS website.
- (3) The notice under subsection (2) need only state the following—
 - (a) the general nature of the application or order;
 - (b) the respondent for the application or order;

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- (c) for an application—how copies of any affidavit or draft order to be used in the application may be obtained or read.

83 Service affidavit that must be filed

- (1) This section applies for a provision of this Act that requires service of an application or order by a police officer by personal service or public notice.
- (2) For personal service, the police officer must file, as soon as practicable, an affidavit of personal service made by the individual who personally served the application or order.
- (3) For service by public notice, the police officer must file, by the end of the next business day after publication, an affidavit stating the following—
 - (a) why the service was by public notice rather than personal service;
 - (b) if the service was by public notice because it was not practicable to personally serve the application or order, the reasons personal service was not practicable;
 - (c) the steps taken to publish the notice.
- (4) The affidavit mentioned in subsection (3) must be accompanied by a copy of the published notice.
- (5) As soon as practicable after the affidavit mentioned in subsection (3) is filed, a sealed copy of the affidavit and notice must be sent by registered post to the respondent to the application or order at the respondent's last known address.
- (6) However, if the respondent is a group of persons and the police officer is not aware of any address of the respondent—
 - (a) subsection (5) applies only if the police officer is aware of the address of an individual who the police officer believes to be an office holder of the group; and
 - (b) if subsection (5) applies under paragraph (a), the subsection applies as if a reference to the respondent were a reference to the office holder.

Division 3 Proceedings for offences

84 Summary proceedings for offences

An offence against this Act not defined as a crime or misdemeanour is a summary offence.

85 Proceedings for indictable offence

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
 - (a) by way of summary proceeding under the *Justices Act 1886*; or
 - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
 - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
 - (b) the magistrate believes the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
 - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and
 - (b) a plea of the person charged at the start of the proceeding must be disregarded; and
 - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
 - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).

86 When summary proceeding may start

A proceeding for a summary offence against this Act must be started within—

- (a) 1 year after the offence is committed; or
- (b) 1 year after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

Division 4 Appeals

87 Definition for division

In this division—

appellate court means—

- (a) for an appeal against a public safety order made by a commissioned officer—a court; or
- (b) otherwise—the District Court.

88 Who may appeal

A person who is aggrieved by any of the following decisions may appeal against the decision—

- (a) a decision to make, or refuse to make, any of the following orders—
 - (i) a public safety order, other than a public safety order of a duration of no more than 72 hours made by a commissioned officer;
 - (ii) a restricted premises order;
 - (iii) a fortification removal order;
- (b) a decision to extend, or refuse to extend, a public safety order under part 3, division 3;
- (c) a decision to vary, or refuse to vary, any of the following orders—

- (i) a public safety order under part 3, division 3;
- (ii) a restricted premises order;
- (iii) a fortification removal order;
- (d) a decision to make, or refuse to make, an extension order under section 45;
- (e) a decision to make, or refuse to make, an order under section 51 for the return of a prohibited item.

89 How to start appeal

- (1) The appeal is started by filing a notice of appeal with the registrar of the appellate court.
- (2) The appellant must—
 - (a) serve a copy of the notice on the respondent to the appeal; and
 - (b) file a copy of the notice in the court that made the decision being appealed.
- (3) The notice of appeal must be filed within 28 days after—
 - (a) the day on which the decision was made; or
 - (b) for a decision made in the absence of an appellant or a legal or other representative of the appellant—the day on which the order the subject of the decision was served on the appellant.
- (4) The appellate court may at any time extend the period for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.
- (6) Despite subsections (1) to (4), if the decision being appealed is a decision of a commissioned officer to make a public safety order—
 - (a) subsection (2)(b) does not apply; and
 - (b) the notice of appeal must be filed within 7 days after the order takes effect; and

- (c) the return date for the hearing of the appeal must be the day after the day the notice of appeal was filed; and
- (d) subsection (4) does not apply.

90 Effect of particular orders not stayed by appeal

- (1) This section applies for the purpose of proceedings for an appeal in relation to an order made under part 3, 4 or 5.
- (2) The appeal does not affect—
 - (a) the operation of the order; or
 - (b) prevent the taking of action to implement the order.
- (3) However, the court may order the suspension of the operation of the order or stay any proceeding under the order if the court is satisfied it would be appropriate to do so, having regard to—
 - (a) the likely impact of the suspension or stay on the protection of the safety, welfare, security, and peace and good order of the community from risks presented by people engaging in antisocial, disorderly or criminal conduct; and
 - (b) any other relevant matter.

91 Hearing procedures

- (1) An appeal must be decided on the evidence and proceedings before the court that made the decision being appealed.
- (2) However, the appellate court may order that the appeal be heard afresh, in whole or part.

92 Powers of appellate court

- (1) In deciding an appeal against a decision, the appellate court may—
 - (a) confirm the decision; or

- (b) vary the decision; or
 - (c) set aside the decision and substitute another decision; or
 - (d) set aside the decision and remit the matter to the court that made the decision.
- (2) The decision of the appellate court upon an appeal is final and conclusive.

Part 7 General

Division 1 General safeguards for things in possession of police service

93 Application of division

This division applies to—

- (a) a prohibited item seized by a police officer from restricted premises under section 49(1)(c)(i) (a *thing*); or
- (b) fortification removed by a police officer from fortified premises under section 65 (also a *thing*).

94 Receipt for seized or removed thing

- (1) The police officer must, as soon as practicable after seizing the thing—
 - (a) if the person from whom the thing is seized is present—give to the person a receipt for the thing; or
 - (b) if the occupier of the premises is not present—leave a receipt for the thing in a conspicuous place.
- (2) The receipt may be for a single thing or for all things seized from the person or the premises.
- (3) Also, the receipt must describe the thing seized and include any other information required under the responsibilities code.

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- (4) This section does not apply if the police officer reasonably believes—
- (a) there is no-one apparently in possession of the thing; or
 - (b) the thing has been abandoned; or
 - (c) the thing has no value other than as evidence of the commission of an offence.
- (5) In this section—
- responsibilities code* see the *Police Powers and Responsibilities Act 2000*, schedule 6.
- seize* includes remove.

95 Responsibilities of police officer taking possession of thing

- (1) The police officer must ensure the thing is given to an appropriate property officer or delivered to a property point that is appropriate in the circumstances, as soon as practicable, unless—
- (a) the thing is earlier returned, destroyed or disposed of under this Act; or
 - (b) it is necessary to keep the thing for use during questioning or for an investigative procedure involving the thing.
- (2) If the police officer keeps a thing under subsection (1)(b), the police officer must deliver the thing to an appropriate property officer or property point as soon as practicable after the reason for keeping the thing ends.
- (3) Until the thing is delivered to the property officer or property point, the police officer is responsible for the safe keeping of the thing.
- (4) In this section—
- property officer* see the *Police Powers and Responsibilities Act 2000*, schedule 6.

property point see the *Police Powers and Responsibilities Act 2000*, schedule 6.

Division 2 Miscellaneous

96 Delegation by commissioner

- (1) The commissioner may delegate a function of the commissioner under this Act to a police officer.
- (2) A delegation of a power of the commissioner under subsection (1) may permit the subdelegation of the power to a police officer.
- (3) In this section—
function includes power.

97 Protection from liability

- (1) A member of the police service does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to a member of the police service, the liability attaches instead to the State.
- (3) In this section—
member of the police service means a member of the police service under the *Police Service Administration Act 1990*.

98 Review of Act

- (1) This section applies if the Minister appoints, under the Criminal Code, section 736, a retired judge (the *reviewer*) to review the operation of the consorting provisions.
- (2) The Minister must also appoint the reviewer to—
 - (a) review the operation of this Act, other than part 2; and

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- (b) prepare, and give the Minister, a written report on the outcome of the review.
- (3) The terms of reference are to be decided by the Minister.
- (4) Without limiting subsection (3), the terms of reference for the review must state the following matters—
- (a) the object of the review is for the reviewer to decide whether this Act, other than part 2, is meeting the objects of this Act;
 - (b) if the reviewer decides this Act, other than part 2, is not meeting the objects of this Act, the reviewer must recommend the amendments to the provisions the reviewer considers necessary to improve the effectiveness of the provisions in meeting the objects;
 - (c) in conducting the review, the reviewer must consider the information contained in the register of enforcement acts about the exercise of powers under this Act;
 - (d) in conducting the review, the reviewer must consider whether any demographic has been disproportionately or adversely affected by this Act, other than part 2.

Examples of a demographic—

Aboriginal people, Torres Strait Islanders, homeless people, drug dependent people

- (5) The reviewer has access to, and the commissioner may disclose to the reviewer, the information mentioned in subsection (4)(c) despite any other law.
- (6) The Minister must, within 14 sitting days after receiving the reviewer's report for the review, table a copy of the report in the Legislative Assembly.
- (7) In this section—

consorting provisions, see the Criminal Code, section 736(5).

register of enforcement acts see the *Police Powers and Responsibilities Act 2000*, schedule 6.

99 Approved forms

- (1) A form may be approved for use under this Act.
- (2) The form may be approved by any of the following—
 - (a) the chief executive (magistrates court);
 - (b) the commissioner;
 - (c) the chief executive.
- (3) In this section—

chief executive (magistrates court) means the chief executive of the department in which the *Magistrates Courts Act 1921* is administered.

100 Regulation-making power

The Governor in Council may make regulations under this Act.

Part 8 Transitional provisions for Justice and Other Legislation Amendment Act 2020

101 Existing applications for restricted premises orders

- (1) This section applies if, before the commencement—
 - (a) an application was made under section 34 to a court for a restricted premises order; and
 - (b) the court had not decided the application.
- (2) Section 33, definition *disorderly activity*, paragraph (b) does not apply in relation to—
 - (a) the making of the restricted premises order under section 36; or
 - (b) the imposition of conditions on the order under section 37.

102 Application of s 54 in relation to particular disorderly activities

- (1) This section applies in relation to the owner or occupier of premises if—
 - (a) immediately before the commencement, a restricted premises order was in effect for the premises; or
 - (b) on or after the commencement, a restricted premises order is made for the premises for an application in relation to which section 101 applies.
- (2) The owner or occupier does not commit a misdemeanour under section 54 in relation to a disorderly activity, mentioned in section 33, definition *disorderly activity*, paragraph (b), taking place at the premises while the restricted premises order is in effect.

103 Appeals may not be made against particular decisions made before commencement

Section 88(e) does not apply in relation to a decision, made before the commencement, to make an order under section 51 for the return of a prohibited item.

Schedule 1 Dictionary

section 3

appellate court, for part 6, division 4, see section 87.

associate, of a recognised offender, means a person to whom an official warning about the recognised offender has been given under the *Police Powers and Responsibilities Act 2000*, section 53BAC.

at premises or a place, includes in or on the premises or place.

commissioned officer means any police officer of or above the rank of inspector.

commissioner means the commissioner of the police service.

control order—

- (a) means a control order under the *Penalties and Sentences Act 1992*, part 9D, division 3, subdivision 1; and
- (b) includes a registered corresponding control order under the *Penalties and Sentences Act 1992*.

court means a Magistrates Court.

criminal activity, for part 4, see section 33.

criminal history, of a person, means—

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act, including a conviction—
 - (i) for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* had expired under that Act; and
 - (ii) that is not revived as prescribed by section 11 of that Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

criminal organisation see the *Penalties and Sentences Act 1992*, section 161O.

disorderly activity see section 33.

drugs means a controlled substance or a dangerous drug under the *Drugs Misuse Act 1986*.

enforcement action see section 65(1).

enter premises or a place, includes re-enter the premises or place.

evidence of the commission of an offence see the *Police Powers and Responsibilities Act 2000*, schedule 6.

explosive see the *Explosives Act 1999*, schedule 2.

extended period, for part 4, division 3, see section 43(1).

extension order, for part 4, division 3, see section 43(1).

firearm see the *Weapons Act 1990*, schedule 2.

fortification, of premises, see section 56.

fortification removal order means a fortification removal order made for premises under section 60.

fortified premises means premises for which a fortification removal order is in force.

initial period, for part 4, division 3, see section 42(1).

liquor see the *Liquor Act 1992*, section 4B.

net proceed, for part 5, division 4, see section 71(7).

occupier, of premises, includes a lessee or sublessee of the premises.

owner, of premises, includes a person who—

- (a) holds any legal or equitable estate or interest in the premises; or
- (b) is entitled to receive, or if the premises were leased, would be entitled to receive, the rents and profits of an interest in the premises.

participant, in a criminal organisation, see the *Penalties and Sentences Act 1992*, section 161P.

personal service means service under the *Uniform Civil Procedure Rules 1999*, rule 106.

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

police service means the Queensland Police Service.

possession includes custody and control.

premises includes—

- (a) a building or structure, or part of a building or structure, of any type; and
- (b) a group of buildings or structures, or part of a group of buildings or structures, of any type; and
- (c) the land or water where a building or structure, or a group of buildings or structures, is situated; and
- (d) a vehicle and a caravan; and
- (e) a tent or cave; and
- (f) premises held under 2 or more titles or owners.

prescribed place see section 33.

prohibited item see section 33.

public notice, in relation to an application or an order under this Act, means public notice under section 82.

public safety order means a public safety order under section 17 or 27.

QPS website means the website used by the commissioner to provide public access to information about matters relating to this Act.

recognised offender see the Criminal Code, section 77.

respondent—

- (a) for part 3, division 2—see section 17(1) and (2); or
- (b) for part 3, division 3—see section 25(1) and (2); or

- (c) for part 4, division 2—see section 35(1); or
- (d) for part 4, division 3—see section 44(1); or
- (e) for part 5—see section 59(1).

responsible person, for part 5, division 4, see section 70.

restricted premises, for part 4, see section 33.

restricted premises order means a restricted premises order under section 36.

search warrant see the *Police Powers and Responsibilities Act 2000*, section 150(1).

senior police officer means a police officer of or above the rank of sergeant.

serious criminal activity see the *Penalties and Sentences Act 1992*, section 161N.

stop and desist notice see section 76(1).

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