

Queensland

Police Powers and Responsibilities Act 2000

Current as at [Not applicable]

Indicative reprint note
This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

Some enacted but uncommenced amendments included in the *Police Service Administration and Other Legislation Amendment Act 2022* No. 9 have also been incorporated in this indicative reprint.

Amendments to this Act are also included in the Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022, the Public Sector Bill 2022, the Child Protection (Offender Reporting and Offender Prohibition Order) and Other Legislation Amendment Bill 2022, the Police Service Administration and Other Legislation Amendment Bill (No. 2) 2022 and the Police Powers and Responsibilities (Jack's Law) Amendment Bill 2022. These proposed amendments are not included in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Police Powers and Responsibilities and Other Legislation Amendment Bill 2022—30 November 2022.

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Police Powers and Responsibilities Act 2000

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Police Powers and Responsibilities Act 2000

An Act about the powers and responsibilities of police officers, and for other purposes

Chapter 1 Preliminary

Part 1 General

1 Short title

This Act may be cited as the *Police Powers and Responsibilities Act 2000*.

Editor's note—

Uncommenced amendments to the following provisions have been included in this indicative reprint—

- replacement of chapter 19 part 1 and schedule 6 definitions *belongings*, *noxious or offensive substance*, *proscribed thing* and *state building*
- amendment of sections 609A, 612, 615, 622, 633, 636, 678, 679, 686, 688, 691, 792, 804, 809 and schedule 6 definitions *enforcement act* and *identifying particulars offence*
- insertion of new sections 615A and 633A, chapter 21 part 3 division 4AA, chapter 23 part 1 division 1 heading, chapter 23 part 1 division 2, section 792A, chapter 24 part 23 and schedule 6 definitions *non-commercial authority of the State*, *offensive weapon or instrument*, *protective services officer* and *security*
- omission of schedule 6 definition *offensive weapon*

See 2022 Act No. 9 pt 2 div 1.

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2 Commencement

(1) This Act, other than sections 379, 373, 374, 375, 376 and 377 and schedules 2 and 3, commences on a day to be fixed by proclamation or 1 July 2000, whichever happens first.

(2) Sections 373, 374, 375, 376 and 377 and schedule 2 commence on the date of assent.

(3) Section 379 and schedule 3 commence on a day to be fixed by proclamation.

3 Dictionary

The dictionary in schedule 6 defines words used in this Act.

4 Notes in text

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

5 Purposes of Act

The purposes of this Act are as follows—

(a) to consolidate and rationalise the powers and responsibilities police officers have for investigating offences and enforcing the law;

(b) to provide powers necessary for effective modern policing and law enforcement;

(c) to provide consistency in the nature and extent of the powers and responsibilities of police officers;

(d) to standardise the way the powers and responsibilities of police officers are to be exercised;

(e) to ensure fairness to, and protect the rights of, persons against whom police officers exercise powers under this Act;

(f) to enable the public to better understand the nature and extent of the powers and responsibilities of police officers;

(g) to provide for the forced muster of stray stock.

6 Act binds all persons

(1) This Act binds all persons, including the State, and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.

(2) Nothing in this Act makes the State, the Commonwealth or another State liable to be prosecuted for an offence.

7 Compliance with Act by police officers

(1) It is Parliament's intention that police officers should comply with this Act in exercising powers and performing responsibilities under it.

(2) For ensuring compliance with Parliament's intention, a police officer who contravenes this Act may be dealt with as provided by law.

Examples—

1 A minor contravention, for example, forgetting to make an entry in a register, may amount to a ground for disciplinary action, other than misconduct, under the *Police Service Administration Act 1990* for which a police officer may be dealt with under that Act, including by correction by way of counselling.

2 A contravention, for example, a police officer maliciously strip-searching a suspect in a public place, may amount to misconduct under the *Police Service Administration Act 1990*.

3 A contravention, for example, a police officer improperly disclosing to a criminal information obtained through the use of a listening device, may amount to corrupt conduct under the *Crime and Corruption Act 2001*.

4 A contravention, for example, a police officer deliberately holding a person in custody for questioning several hours after the end of a detention period with no intention of applying under this Act for an extension of the detention period, may amount to an offence of deprivation of liberty under the Criminal Code, section 355.

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8 Act does not affect certain principles

(1) This Act does not prevent a police officer from speaking to anyone or doing anything a police officer may lawfully do apart from this Act when performing the police officer's duties, whether or not in relation to an offence, without exercising a power under this Act or using any form of compulsion.

(2) Also, it is not the purpose of this Act to affect the principle that everyone in the community has a social responsibility to help police officers prevent crime and discover offenders.

Part 2 Effect of Act on other laws

9 Act does not affect constable's common law powers etc.

Unless this Act otherwise provides, this Act does not affect—

(a) the powers, obligations and liabilities a constable has at common law; or

(b) the powers a police officer may lawfully exercise as an individual, including for example, powers for protecting property.

10 Act does not affect court's common law discretion to exclude evidence or stay criminal proceedings

This Act does not affect the common law under which a court in a criminal proceeding may exclude evidence in the exercise of its discretion or stay the proceeding in the interests of justice.

11 Inconsistency

(1) The object of this section is to allow police officers to rely generally on this Act, as opposed to a multiplicity of Acts, for their powers and responsibilities.

(2) This section applies to a provision of another Act that confers a power or imposes a responsibility on a police officer.

(3) To the extent of any inconsistency, this Act prevails over the provision, whether enacted before or after this Act, unless the provision makes express provision to the contrary.

(4) This section applies subject to section 12.

12 Relationship to other Acts

(1) This Act does not affect the powers or responsibilities a police officer has under an Act included in schedule 1.

Example—

A police officer who has entered a place under section 609 may, under the *Public Health Act 2005*, section 157B, take a person to a treatment or care place within the meaning of chapter 4A of that Act.

(2) However, subsection (1) does not prevent a police officer from exercising a power or performing a responsibility under this Act for giving effect to an Act included in schedule 1.

Example—

It may be necessary for a police officer to use reasonable force under this Act to enter a place to detain a person without warrant under a provision of another Act because that Act does not include a provision allowing the police officer to use reasonable force to enter the place.

(3) Also, it is lawful for a police officer to exercise a power in accordance with this Act for giving effect to an Act included in schedule 1 even though the other Act specifies the way the power may or must be exercised.

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Part 3 Appointment as, and helping, public officials

Division 1 Provisions about appointments

13 Appointment of police officers as public officials for other Acts

(1) This section applies if—

(a) an Act (***authorising law***) authorises someone (***appointer***) to appoint public officials for giving effect to the authorising law; and

(b) a police officer may be appointed as a public official under the authorising law.

(2) Despite the authorising law, the appointer may appoint a police officer as a public official for the authorising law only with the commissioner's written approval to the proposed appointment.

(3) The commissioner may approve the proposed appointment only if the commissioner is satisfied the police officer proposed to be appointed—

(a) has the necessary experience or expertise to be a public official for the authorising law; or

(b) has satisfactorily completed a course of training approved by the commissioner.

(4) A police officer may exercise powers as a public official under an authorising law only if and to the extent the commissioner approves the police officer's appointment under this section.

(5) If, under the authorising law, the commissioner is the appointer for police officers, this section does not prevent the commissioner from appointing a police officer as a public official under the authorising law.

14 Declaration of police officers as public officials

(1) This section applies if, under an express provision of an Act (***authorising law***), a police officer is a public official.

(2) Despite the authorising law, the police officer may exercise the powers of the public official only to the extent that the commissioner first approves the exercise of the powers.

(3) The commissioner may approve the exercise of the powers only if the commissioner is satisfied the police officer—

(a) has the necessary experience or expertise to be a public official for the authorising law; or

(b) has satisfactorily completed a course of training approved by the commissioner.

Example for subsection (3)—

The commissioner may decide to approve the exercise of powers of a public official under the *Biosecurity Act 2014* or the *Brands Act 1915* only by police officers who are members of the unit of the police service known as the stock investigation squad.

15 Authorising provisions of other Acts apply subject to ss 13–14

A provision of another Act that expressly or impliedly authorises the appointment of a police officer as a public official or authorises a police officer to perform the functions of a public official applies subject to sections 13 and 14.

Division 2 Helping public officials

16 Helping public officials exercise powers under other Acts

(1) This section applies if an Act (***authorising law***) authorises a public official to perform functions in relation to a person or thing.

(2) However, this section only applies to a police officer who is not a public official for the authorising law.

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(3) If a public official asks, a police officer may help the public official perform the public official's functions under the authorising law.

(4) Before the police officer helps the public official, the public official must explain to the police officer the powers the public official has under the authorising law.

(5) If the public official is not present or will not be present when the help is to be given, the police officer may give the help only if the police officer is satisfied giving the help in the public official's absence is reasonably necessary in the particular circumstances.

(6) The police officer has, while helping a public official, the same powers and protection under the authorising law as the public official has.

(7) Subsection (6) is in addition to, and does not limit, the powers and protection a police officer has under this or any other Act.

17 Steps police officer may take for failure to give name and address etc. to public official

(1) This section applies if a police officer reasonably suspects a person required by a public official under another Act to state the person's name and address or date of birth has failed to comply with the requirement.

(2) The police officer may ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, ask for details or further details of the excuse.

(3) If the person does not answer the question or gives an excuse that the police officer reasonably suspects is not a reasonable excuse, the police officer may, under chapter 2, part 4, require the person to state the following—

(a) the person's name and address;

(b) the person's date of birth.

Note—

See section 791 (Offence to contravene direction or requirement of police officer).

(4) This section does not apply if the public official is a police officer.

18 Steps police officer may take for obstruction of public official

(1) This section applies if a public official claims to have been obstructed by a person in the exercise of the public official's powers and a police officer reasonably suspects the obstruction has happened.

(2) The police officer may ask the person whether the person has a reasonable excuse for the conduct and, if the person gives an excuse, ask for details or further details of the excuse.

(3) If the person does not answer the question or gives an excuse the police officer reasonably suspects is not a reasonable excuse, the police officer may require the person to stop, or not repeat, the conduct.

(4) This section does not apply if the public official is a police officer.

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Chapter 2 General enforcement powers

Part 1 Entry, inquiries and inspection

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

(1) The purpose of this section is to ensure a police officer performing a function of the police service may enter and stay on a place in circumstances that may otherwise be trespass.

(2) However, this section does not authorise entry to a private place if a provision of this Act or another Act provides for entry in the particular circumstances only under a search warrant or other stated authority.

Note—

See, for example, the *Prostitution Act 1999*, section 59.

(3) A police officer may enter a place and stay for a reasonable time on the place to inquire into or investigate a matter.

Examples for subsection (3)—

1 The entry may be to a public area of a place such as a hotel or a nightclub for finding out if an offence is being or has been committed on the place.

2 The entry may be for finding out if a person reasonably suspected of being involved in the commission of an offence is at a place.

3 The entry may be for finding out if a missing person is in the place.

(4) Also, a police officer may enter and stay for a reasonable time on a place to serve a document.

(5) However, if the place contains a dwelling, the only part of the place a police officer may enter without the consent of the occupier is the part of the place that is not a dwelling.

(6) Also, the police officer may only use minimal force to enter the place.

Example for subsection (6)—

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

20 What is a reasonable time to stay on a place

(1) What is a reasonable time to stay on a place a police officer enters to investigate a matter, make an inquiry or serve a document must be decided according to the particular circumstances.

(2) If the entry is for investigating a matter or making an inquiry, a reasonable time for a police officer to stay on a place is the time reasonably necessary for the police officer to do the following for deciding whether any other action is necessary to fulfil a function of the police service—

(a) ask questions of anyone present at the place;

(b) make any reasonable investigation or observation.

Note—

For the functions of the police service, see the *Police Service Administration Act 1990*, section 2.3 (Functions of service).

(3) If the entry is for serving a document, a reasonable time for a police officer to stay on a place is the time reasonably necessary for the police officer to ask questions for serving the document and to serve the document according to law.

21 General power to enter to arrest or detain someone or enforce warrant

(1) A police officer may enter a place and stay for a reasonable time on the place—

(a) to arrest a person without warrant; or

(b) to arrest a person named in a warrant; or

(c) to detain a person named in a forensic procedure order or a registered corresponding forensic procedure order; or

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Not authorised—indicative only

(d) to detain a person who may be detained under an order made under section 471, 484, 485, 488 or 514; or

(e) to detain a person under another Act.

Note—

See section 635 (Use of force likely to cause damage to enter places) for relevant safeguards.

(2) If the place contains a dwelling, a police officer may enter the dwelling without the consent of the occupier to arrest or detain a person only if the police officer reasonably suspects the person to be arrested or detained is at the dwelling.

(3) If the place is a vehicle, a police officer may stop and detain the vehicle and enter it to arrest or detain the person.

(4) A police officer who enters a place under this section may search the place for the person.

(5) In this section—

arrest, a person named in a warrant, includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

21A Power to enter for Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

(1) A police officer may, at any time, enter premises where a reportable offender generally resides to verify the offender's personal details reported by the offender under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

(2) In this section—

generally reside, for a reportable offender, see the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, schedule 5.

personal details, of a reportable offender, see the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, schedule 5.

premises, for a reportable offender, does not include a part of the premises used exclusively by a person other than the offender.

21B Power to inspect digital devices for the Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

(1) A police officer may inspect a digital device in the possession of a reportable offender if—

(a) in the last 3 months, the reportable offender has been—

(i) released from government detention; or

(ii) sentenced to a supervision order; or

(b) the reportable offender has been convicted of a prescribed internet offence; or

(c) a magistrate makes a device inspection order for the reportable offender.

(2) However, a police officer may not carry out an inspection under subsection (1)(b) if at least 4 inspections have been carried out by a police officer under this section in relation to the reportable offender within the previous 12 months.

(3) If an inspection of a digital device in the possession of a reportable offender may not be carried out under subsection (1)(a) or (b), a police officer may apply to a magistrate for a device inspection order for the reportable offender.

(4) The magistrate may make the device inspection order if satisfied there is an elevated risk that the reportable offender will engage in conduct that may constitute a reportable offence against, or in relation to, a child or children.

(5) For subsection (2), each occasion on which a police officer inspects 1 or more digital devices counts as 1 inspection.

(6) In this section—

device inspection order, for a reportable offender, means an order authorising a police officer, on a stated day or on 1 day

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Not authorised—indicative only

during a stated period, to inspect any digital devices in the possession of the reportable offender.

inspect, a digital device, includes inspect the digital device using software.

government detention see the Offender Reporting Act, schedule 5.

Offender Reporting Act means the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

prescribed internet offence means—

(a) an offence against any of the following provisions of the Criminal Code—

- section 218A
- section 228DA
- section 228DB; or

(b) an offence against any of the following provisions of the Criminal Code (Cwlth)—

- section 474.19
- section 474.20
- section 474.22
- section 474.23
- section 474.23A
- section 474.25A
- section 474.25C
- section 474.26
- section 474.27
- section 474.27AA
- section 474.27A; or

(c) an offence under a law of a foreign jurisdiction that, if it had been committed in Queensland, would have

constituted an offence of a kind mentioned in paragraph (a) or (b).

prescribed offence see the Offender Reporting Act, schedule 5.

reportable offence see the Offender Reporting Act, schedule 5.

reportable offender see the Offender Reporting Act, schedule 5.

supervision order see the Offender Reporting Act, schedule 5.

22 Power to enter etc. for relevant laws

(1) For ensuring compliance with a relevant law, a police officer may do any of the following—

(a) at any reasonable time, enter and stay on a place used for a purpose under a licence under the relevant law;

(b) inspect, photograph or copy a prescribed item there or at a place with appropriate facilities for photographing or copying the item;

(c) seize a thing to which the relevant law applies, if the thing is evidence of the commission of an offence against the relevant law or another Act;

(d) require a licence holder or someone else apparently in possession of prescribed items to produce stated prescribed items for inspection;

(e) inspect security measures a person must maintain under the relevant law;

(f) require a licence holder or person apparently in possession or in charge of the place to give to the police officer reasonable help to do something mentioned in paragraph (b) or (e).

(2) A police officer may enter a part of a place not used for the purpose for which entry is made, but only to get to the place used for the purpose.

Not authorised—indicative only

Not authorised—indicative only

(3) If a police officer takes a prescribed item to a place with facilities for photographing or copying the item, the police officer must—

(a) give the person from whom it is taken a receipt for the item as if it had been seized under this Act; and

(b) return the item to the place from which it was taken—

(i) as soon as practicable, but no later than the end of the next day the place is open for business; or

(ii) if a later time is agreed in writing between the police officer and the person from whom it was taken, no later than the later time.

(4) Each of the following persons is taken for this section to be a licence holder under a relevant law—

(a) a person who is required under the *Drugs Misuse Act 1986*, section 43D to keep a register;

(b) a person who is required under the Road Use Management Act, section 133 to record information;

(c) a person who is required under the *Medicines and Poisons Act 2019* to make a record in relation to a sale by retail of a substance that is a prescribed item.

(5) Also, each of the following places is taken for this section to be a place used under a licence under a relevant law—

(a) a place used by a person to carry out activities for which entries must be made in a register as mentioned in subsection (4)(a);

(aa) a place used by a person to carry out activities for which information must be recorded as mentioned in subsection (4)(b);

(b) a place used by a person to carry out activities for which records must be made as mentioned in subsection (4)(c).

(6) In this section—

inspect includes examine and test.

prescribed item means—

(a) a document or thing that is required or permitted to be kept under a relevant law; or

(b) a thing declared under a regulation to be a prescribed item for this section.

23 What is a reasonable time for entry etc. for a relevant law

(1) A reasonable time for a police officer to enter a place for exercising a power in relation to a relevant law includes—

(a) when the place is open to or used by the public; and

(b) when the police officer may reasonably expect that someone will be present at the place; and

(c) when someone is present at the place.

(2) However, if no-one is at a building on a place a police officer enters under subsection (1)(b), the time stops being a reasonable time for the entry.

24 Requirement by a police officer for a relevant law

(1) This section applies if a police officer requires a licence holder or person apparently in possession or in charge of a place used for a purpose under a licence under a relevant law to give the police officer reasonable help.

(2) What is reasonable help must be decided according to the particular circumstances.

Examples for subsection (2)—

1 It may be reasonable for a person who can operate a computer to help a police officer to gain access to a document on the computer so it can be inspected.

2 It may be reasonable for a person to open a safe or strong room where prescribed items are kept.

25 Power to demand production of licence etc. for weapons

(1) This section applies if a person is required under the *Weapons Act 1990*—

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Not authorised—indicative only

(a) to be the holder of a licence or permit to acquire under that Act; or

(b) to have the approval of any person; or

(c) to keep a register or record.

(2) A police officer may require the person to produce to a police officer for inspection at a stated reasonable place and time, within 48 hours, any of the following documents—

(a) the photo licence or permit to acquire;

(b) a certificate or other evidence of approval;

(c) the register or record.

(3) A police officer may also require the individual to produce for inspection at a stated reasonable place and time, within 48 hours, any weapon still in the individual's possession and mentioned in any of the documents.

(4) However, if an individual has physical possession of a weapon, a police officer may require the individual to produce immediately to the police officer for inspection the weapon and the photo licence authorising possession of the weapon.

(5) This section is in addition to, and does not limit, section 22.

Part 2 Searching persons, vehicles and places without warrant

Division 1 Roadblocks

26 Roadblocks

(1) A police officer may establish a roadblock if the police officer reasonably suspects a roadblock may be effective to apprehend or locate a person in a vehicle who—

(a) has committed a seven year imprisonment offence; or

(b) may be unlawfully depriving someone else of liberty; or

Note—

For what is unlawful deprivation of liberty, see the Criminal Code, section 355.

(c) is being unlawfully deprived of liberty; or

(d) has escaped from lawful custody; or

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

(2) In deciding whether to establish a roadblock, the police officer must have regard to the following—

(a) when and where the relevant circumstances happened;

(b) information the police officer has about where the person sought may be travelling in a vehicle.

(3) A police officer may stop all vehicles or any vehicle at the roadblock and detain each vehicle stopped for the time reasonably necessary to search it to find out if a person mentioned in subsection (1) is in it.

27 Procedure for establishing roadblocks

Before a police officer decides where to establish a roadblock, the senior police officer present must consider—

(a) the effect the roadblock may have on road safety and public safety; and

(b) the likelihood of a dangerous situation happening if a person sought is located at the roadblock; and

(c) any other relevant safety considerations.

Example—

If the person sought is believed to be armed and dangerous, the police officer establishing the roadblock may decide not to establish it in a populated location.

28 Record of roadblock to be made

The senior police officer present at a roadblock must ensure—

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(a) a record is made of relevant details of the roadblock including, for example, the reasons for establishing it, when and where it was established, for how long, and whether the roadblock led to a person sought being located or arrested; and

(b) a copy of the record is given to a person nominated by the commissioner for the purpose.

Division 2 Searching persons without warrant

29 Searching persons without warrant

(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a person without a warrant exist may, without a warrant, do any of the following—

(a) stop and detain a person;

(b) search the person and anything in the person's possession for anything relevant to the circumstances for which the person is detained.

(2) The police officer may seize all or part of a thing—

(a) that may provide evidence of the commission of an offence; or

(b) that the person intends to use to cause harm to himself, herself or someone else; or

(c) if section 30(b) applies, that is an antique firearm.

30 Prescribed circumstances for searching persons without warrant

(1) The prescribed circumstances for searching a person without a warrant are as follows—

(a) the person has something that may be—

(i) a weapon, knife or explosive the person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

(ii) an unlawful dangerous drug; or

(iii) stolen property; or

(iv) unlawfully obtained property; or

(v) tainted property; or

(vi) evidence of the commission of a seven year imprisonment offence that may be concealed on the person or destroyed; or

(vii) evidence of the commission of an offence against the Criminal Code, section 469 that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or

(viii) evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17, 23B or 23C; or

(ix) evidence of the commission of an offence against the *Liquor Act 1992*, section 168B or 168C;

(b) the person possesses an antique firearm and is not a fit and proper person to be in possession of the firearm—

(i) because of the person's mental and physical fitness; or

(ii) because a domestic violence order has been made against the person; or

(iii) because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon;

(c) the person has something that may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for

Not authorised—indicative only

Not authorised—indicative only

unlawfully using or stealing a vehicle, or for the administration of a dangerous drug;

(d) the person has something the person intends to use to cause harm to himself, herself or someone else;

(e) the person is at a casino and may have contravened, or attempted to contravene, the *Casino Control Act 1982*, section 103 or 104;

(f) the person has committed, is committing, or is about to commit—

(i) an offence against the *Racing Act 2002* or *Racing Integrity Act 2016*; or

(ii) an offence against the *Corrective Services Act 2006*, section 128, 129 or 132, or the repealed *Corrective Services Act 2000*, section 96, 97 or 100; or

(iii) an offence that may threaten the security or management of a prison or the security of a prisoner;

(g) the person has committed, is committing, or is about to commit an offence against the *Penalties and Sentences Act 1992*, section 161ZI;

(h) the person has committed, or is committing, an offence against the *Summary Offences Act 2005*, section 10C;

(i) the person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders;

(j) the person has committed, is committing, or is about to commit, an offence against the *Termination of Pregnancy Act 2018*, section 15 or 16;

(k) the person has something that may be a dangerous attachment device that has been used, or is to be used, to disrupt a relevant lawful activity;

(l) the person has failed to comply with a requirement under section 39C or 39D(2) of a police officer.

(2) For subsection (1)(k), a relevant lawful activity is disrupted by using a dangerous attachment device if the use—

(a) unreasonably interferes with the ordinary operation of transport infrastructure within the meaning of the *Transport Infrastructure Act 1994*, schedule 6; or

Example—

placing an obstacle, on a railway, that stops the passage of rolling stock

(b) stops a person from entering or leaving a place of business; or

(c) causes a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

Division 3 Searching vehicles without warrant

31 Searching vehicles without warrant

(1) A police officer who reasonably suspects any of the prescribed circumstances for searching a vehicle without a warrant exist may, without warrant, do any of the following—

(a) stop a vehicle;

(b) detain a vehicle and the occupants of the vehicle;

(c) search a vehicle and anything in it for anything relevant to the circumstances for which the vehicle and its occupants are detained.

(2) Also, a police officer may stop, detain and search a vehicle and anything in it if the police officer reasonably suspects—

(a) the vehicle is being used unlawfully; or

(b) a person in the vehicle may be arrested without warrant under section 365 or under a warrant under the *Corrective Services Act 2006*.

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Not authorised—indicative only

(3) If the driver or a passenger in the vehicle is arrested for an offence involving something the police officer may search for under this part without a warrant, a police officer may also detain the vehicle and anyone in it and search the vehicle and anything in it.

(4) If it is impracticable to search for a thing that may be concealed in a vehicle at the place where the vehicle is stopped, the police officer may take the vehicle to a place with appropriate facilities for searching the vehicle and search the vehicle at that place.

(5) The police officer may seize all or part of a thing—

(a) that may provide evidence of the commission of an offence; or

(b) that the person intends to use to cause harm to himself, herself or someone else; or

(c) if section 32(1)(b) applies, that is an antique firearm.

(6) Power under this section to search a vehicle includes power to enter the vehicle, stay in it and re-enter it as often as necessary to remove from it a thing seized under subsection (5).

32 Prescribed circumstances for searching vehicle without warrant

(1) It is a prescribed circumstance for searching a vehicle without a warrant that there is something in the vehicle that—

(a) may be a weapon, knife or explosive a person may not lawfully possess, or another thing that the person is prohibited from possessing under a domestic violence order or an interstate domestic violence order; or

(b) may be an antique firearm that a person possesses and the person is not a fit and proper person to possess the firearm—

(i) because of the person's mental and physical fitness; or

(ii) because a domestic violence order has been made against the person; or

(iii) because the person has been found guilty of an offence involving the use, carriage, discharge or possession of a weapon; or

(c) may be an unlawful dangerous drug; or

(d) may be stolen property; or

(e) may be unlawfully obtained property; or

(f) may have been used, is being used, is intended to be used, or is primarily designed for use, as an implement of housebreaking, for unlawfully using or stealing a vehicle, or for the administration of a dangerous drug; or

(g) may be evidence of the commission of an offence against any of the following—

- the *Racing Act 2002*
- the *Racing Integrity Act 2016*
- the *Corrective Services Act 2006*, section 128, 129 or 132
- the *Nature Conservation Act 1992*; or

(h) may have been used, is being used, or is intended to be used, to commit an offence that may threaten the security or management of a prison or the security of a prisoner; or

(i) may be tainted property; or

(j) may be evidence of the commission of a seven year imprisonment offence that may be concealed or destroyed; or

(k) may be evidence of the commission of an offence against the Criminal Code, section 469 that may be concealed on the person or destroyed if, in the circumstances of the offence, the offence is not a seven year imprisonment offence; or

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Not authorised—indicative only

(l) may be evidence of the commission of an offence against the *Summary Offences Act 2005*, section 17, 23B or 23C; or

(m) may be something the person intends to use to cause harm to himself, herself or someone else; or

(n) may be evidence of the commission of an offence against the *Penalties and Sentences Act 1992*, section 161ZI; or

(o) may be evidence of the commission of an offence against the *Termination of Pregnancy Act 2018*, section 15 or 16; or

(p) may be a dangerous attachment device that has been used, or is to be used, to disrupt a relevant lawful activity.

(2) Also, the following are prescribed circumstances for searching a vehicle without a warrant—

(a) the driver or a passenger in the vehicle has committed, or is committing, an offence against the *Summary Offences Act 2005*, section 10C;

(b) the vehicle is being used by, or is in the possession of, a person who has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

(3) For subsection (1)(p), a relevant lawful activity is disrupted by using a dangerous attachment device if the use—

(a) unreasonably interferes with the ordinary operation of transport infrastructure within the meaning of the *Transport Infrastructure Act 1994*, schedule 6; or

Example—

placing an obstacle, on a railway, that stops the passage of rolling stock

(b) stops a person from entering or leaving a place of business; or

(c) causes a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

Division 4 Searching public places without warrant

33 Searching public places without warrant

(1) It is lawful for a police officer to exercise the following powers in a public place without a search warrant—

(a) power to enter the public place and to stay on it for the time reasonably necessary to exercise powers mentioned in paragraphs (b) to (f);

(b) power to search the public place for anything that may be evidence of the commission of an offence;

(c) power to seize a thing found at the public place, or on a person found at the public place, that a police officer reasonably suspects may be evidence of the commission of an offence;

(d) power to photograph anything the police officer reasonably suspects may provide evidence of the commission of an offence;

(e) power to dig up land;

(f) power to open anything that is locked.

(2) However, if this section applies to a place because it is a public place while it is ordinarily open to the public, the police officer may search the place only—

(a) with the consent of the occupier of the place; or

(b) under a search warrant; or

(c) under chapter 7, part 2.

(3) If the occupier consents, the police officer may exercise search warrant powers at the place.

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Not authorised—indicative only

Part 3 Use of detection dogs without warrant

34 Definitions for pt 3

In this part—

body art tattooing business see the *Tattoo Industry Act 2013*, schedule 1.

detection dog means—

(a) a drug detection dog; or

(b) a firearms and explosives detection dog.

drug detection includes—

(a) walking or placing a drug detection dog in the vicinity of a person to ascertain whether the drug detection dog can detect the scent of an unlawful dangerous drug on the person; and

(b) walking or placing a drug detection dog in, on, or in the vicinity of, a vehicle or a thing to ascertain whether the drug detection dog can detect the scent of an unlawful dangerous drug in or on the vehicle or thing.

drug detection dog means a dog trained to detect unlawful dangerous drugs.

event means—

(a) a major event; or

(b) a sports, recreational or entertainment event held at a major sports facility under the *Major Sports Facilities Act 2001*; or

(c) a sports, recreational or entertainment event, not mentioned in paragraph (b), that is open to the public, whether on payment of a fee or not.

Example of an entertainment event for paragraph (c)—

a musical concert held at the Mt Gravatt showgrounds

explosives detection includes—

(a) walking or placing a firearms and explosives detection dog in the vicinity of a person to ascertain whether the firearms and explosives detection dog can detect the scent of explosives or firearms on the person; and

(b) walking or placing a firearms and explosives detection dog in, on, or in the vicinity of, a vehicle or a thing to ascertain whether the firearms and explosives detection dog can detect the scent of explosives or firearms in or on the vehicle or thing.

handler, of a detection dog, means a handler within the meaning of the *Police Service Administration Act 1990*.

tattoo parlour means a place at which a body art tattooing business is being conducted.

unlawful dangerous drug—

(a) means a dangerous drug mentioned in the *Drugs Misuse Regulation 1987*, schedule 1; and

(b) includes—

(i) Gamma hydroxybutyric acid, commonly known as GBH; and

(ii) 3,4-Methylenedioxymethamphetamine (MDMA), commonly known as Ecstasy.

35 Use of detection dogs in particular places

(1) A handler may, without warrant, use a drug detection dog to carry out drug detection in relation to a relevant person or thing.

(2) A handler may, without warrant, use a firearms and explosives detection dog to carry out explosives detection in relation to a relevant person or thing.

(3) This section applies despite any other law.

(4) In this section—

relevant person or thing means—

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Not authorised—indicative only

(a) a person who is in a public place; or

(b) a person who is in the immediate vicinity of, is about to enter, is in, or is leaving, a place at which an event is being held; or

(c) a person who is about to enter, is in, or is leaving, licensed premises; or

(d) a person who is about to enter, is in, or is leaving, a tattoo parlour; or

(e) a thing in a place mentioned in paragraph (a), (b), (c) or (d), or on land associated with the place, whether or not the thing is in the physical possession of a person.

36 Police officers and detection dogs may enter and remain on particular places

(1) For carrying out drug detection under section 35(1), a drug detection dog, the drug detection dog's handler and any other police officer may enter and remain on a relevant place.

(2) For carrying out explosives detection under section 35(2), a firearms and explosives detection dog, the firearms and explosives detection dog's handler and any other police officer may enter and remain on a relevant place.

(3) For subsections (1) and (2), the power to enter and remain on a relevant place includes power to enter and remain on land associated with the relevant place.

Example of land associated with a relevant place—

land on which car parking is provided for patrons of the relevant place

(4) This section applies despite any other law.

(5) In this section—

relevant place means—

(a) a public place; or

(b) a place at which an event is being held; or

(c) licensed premises; or

(d) a tattoo parlour.

37 Reasonable suspicion may be based on indication of detection dog

(1) This section applies if a provision of this Act requires a police officer to form a reasonable suspicion that a person has something, or there is something in a vehicle, that may be an unlawful dangerous drug or explosives or firearms, before the police officer may exercise a power in relation to the person or vehicle.

(2) It is sufficient for the police officer to form a reasonable suspicion that the person has something, or there is something in the vehicle, that may be an unlawful dangerous drug or explosives or firearms, if a detection dog indicates it has detected an unlawful dangerous drug or explosives or firearms—

(a) on the person or on, or in, a thing in the person's physical possession; or

(b) on or in a thing, not in the person's physical possession but which the police officer reasonably suspects is connected with the person, that is at the place the detection dog is carrying out the drug detection or explosives detection; or

(c) in the vehicle.

38 Protection from liability for acts done by detection dogs

(1) This section applies if—

(a) the handler of a detection dog is using the detection dog to carry out detection; and

(b) the detection dog—

(i) physically intrudes onto a person or the clothing of a person, or otherwise comes into contact with a person, while the detection dog is carrying out the detection; or

Not authorised—indicative only

Not authorised—indicative only

(ii) causes damage to a thing that has in or on it an unlawful dangerous drug or explosives or firearms.

(2) The handler does not incur civil liability for an act done, or omission made, honestly and without negligence, in the circumstances to which this section applies.

(3) The State does not incur civil liability in the circumstances to which this section applies—

(a) for an act done by the detection dog; or

(b) for an act or omission of the handler.

(4) However, if—

(a) the act of the detection dog; or

(b) the act or omission of the handler;

causes bodily harm to a person and subsection (2) prevents civil liability attaching to the handler, the civil liability attaches instead to the State.

(5) The handler is not criminally responsible for an act done by the detection dog in the circumstances to which this section applies other than for an attack by the detection dog on a person intentionally caused by the handler or for which the handler is criminally responsible under the Criminal Code, section 289.

(6) This section does not prevent the State or the handler from relying on another provision of an Act to limit civil liability or criminal responsibility.

Examples of other Acts that may limit civil liability or criminal responsibility—

- *Civil Liability Act 2003*
- Criminal Code, sections 25, 271, 272 and 273
- *Police Service Administration Act 1990*, section 10.5

(7) In this section—

bodily harm includes physical injury, grievous bodily harm, and death, but does not include mental, psychological or emotional harm.

detection means drug detection under section 35(1) or explosives detection under section 35(2).

handler, of a detection dog, includes a police officer helping the handler of the detection dog.

39 Effect of part on use of detection dogs under search warrants

To remove any doubt, it is declared that this part does not restrict the powers of a police officer to use a drug detection dog to carry out drug detection, or a firearms and explosives detection dog to carry out explosives detection, in conducting a search of a place under a search warrant or without a warrant.

Part 3A Use of hand held scanners without warrant in public places in prescribed areas

39A Definitions for part

In this part—

Broadbeach CBD safe night precinct means the area prescribed under the *Liquor Act 1992*, section 173NC(1) as the Broadbeach CBD safe night precinct.

prescribed area means—

(a) the Broadbeach CBD safe night precinct; or

(b) the Surfers Paradise CBD safe night precinct.

Surfers Paradise CBD safe night precinct means the area prescribed under the *Liquor Act 1992*, section 173NC(1) as the Surfers Paradise CBD safe night precinct.

use, of a hand held scanner, in relation to a person, see section 39B.

Not authorised—indicative only

Not authorised—indicative only

39B Meaning of *use* of hand held scanner

Use, of a hand held scanner, in relation to a person, means—

(a) to pass a hand held scanner in close proximity to the person; or

(b) to pass a hand held scanner in close proximity to the person's belongings.

39C Use of hand held scanner in public place in prescribed area without warrant

If an authorisation is given under section 39E in relation to a prescribed area, a police officer may, without a warrant, in a public place in the prescribed area, require a person to stop and submit to the use of a hand held scanner in relation to the person to ascertain whether the person has a knife.

39D Police requirements if hand held scanner indicates metal

(1) This section applies if a police officer requires a person in a public place in a prescribed area to submit to the use of a hand held scanner in relation to the person and the hand held scanner indicates the presence or likely presence of metal.

(2) The police officer may require the person—

(a) to produce the thing that may be causing the hand held scanner to indicate the presence or likely presence of metal; and

(b) to resubmit to the use of a hand held scanner in relation to the person.

Note—

See also sections 29 and 30(1)(l) for the power to search a person without a warrant.

39E Authorisation by senior police officer

(1) A senior police officer may authorise the use of a hand held scanner in relation to a person, by a police officer, in a public place in a prescribed area.

(2) The authorisation must state—

(a) the day and time the authorisation starts; and

(b) the prescribed area for which the authorisation is given.

(3) The authorisation has effect for 12 hours after the authorisation starts.

(4) In this section—

senior police officer means—

(a) a police officer of at least the rank of inspector; or

(b) a police officer of at least the rank of senior sergeant authorised by the commissioner to give an authorisation under this section.

39F Safeguards for exercise of powers

(1) This section applies if a police officer exercises a power under this part to require a person to stop and submit, or resubmit, to the use of a hand held scanner in relation to the person.

(2) The police officer must exercise the power in the least invasive way that is practicable in the circumstances.

(3) The police officer may detain the person for so long as is reasonably necessary to exercise the power.

(4) The police officer must—

(a) if requested by the person, inform the person of the police officer's name, rank and station; and

(b) if requested by the person, provide the information mentioned in paragraph (a) in writing; and

(c) produce the police officer's identity card for inspection by the person, unless the police officer is in uniform; and

Not authorised—indicative only

Not authorised—indicative only

(d) inform the person that the person is required to submit to the use of a hand held scanner; and

(e) offer to give the person a notice that complies with subsection (5); and

(f) if the person accepts an offer under paragraph (e)—give the person a notice that complies with subsection (5).

(5) A notice under subsection (4)(e) or (f) must be in writing and state—

(a) the person is in a public place in a prescribed area; and

(b) a police officer is empowered to require the person to—

(i) stop and submit, or resubmit, to the use of a hand held scanner in relation to the person; and

(ii) produce a thing that may be causing a hand held scanner to indicate the presence or likely presence of metal; and

(c) it is an offence for the person not to comply with the requirement unless the person has a reasonable excuse.

(6) If reasonably practicable, the police officer must be of the same sex as the person.

(7) Section 637 does not apply if a police officer stops or detains a person under this part.

39G Effect of part on power to search person without a warrant

To remove any doubt, it is declared that this part does not affect the power of a police officer to search a person without a warrant under part 2, division 2.

39H Expiry of particular provisions

The following provisions expire 2 years after the commencement—

(a) section 30(1)(l);

(b) this part;

(c) schedule 6, definitions *Broadbeach CBD safe night precinct*, *enforcement act*, paragraph (a)(iia), *prescribed area*, *search*, paragraph (d), *Surfers Paradise CBD safe night precinct* and *use*, paragraph (aa).

Part 4 Power to require name, address or age

Division 1 Powers relating to name and address

40 Person may be required to state name and address

(1) A police officer may require a person to state the person's correct name and address in prescribed circumstances.

(2) Also, the police officer may require the person to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name or address or to otherwise be able to give the evidence.

(3) A person does not commit an offence against section 791 if the person was required by a police officer to state the person's name and address and the person is not proved—

(a) for section 41(a) or (b)—to have committed the offence; or

(b) for section 41(f)—to be the person named in the warrant, summons, order or court document; or

(c) for section 41(h)—to have been involved or to be about to be involved in domestic violence or associated domestic violence; or

(d) for section 41(i) or (j)—to have been able to help in the investigation.

Not authorised—indicative only

Not authorised—indicative only

(4) Also, a person does not commit an offence against section 791 if—

(a) the person was required by a police officer to state the person's name and address for enforcing the *Tobacco and Other Smoking Products Act 1998* in relation to the supply of a smoking product to a child; and

(b) no-one is proved to have committed an offence against that Act.

(5) In this section—

address means current place of residence.

41 Prescribed circumstances for requiring name and address

The prescribed circumstances for requiring a person to state the person's name and address are as follows—

(a) a police officer finds the person committing an offence;

(b) a police officer reasonably suspects the person has committed an offence, including an extradition offence;

(c) a police officer is about to take—

(i) the person's identifying particulars under an identifying particulars notice or an order of a court made under section 471 or 514; or

(ii) a DNA sample from the person under a DNA sample notice or an order made under section 484, 485, 488 or 514;

(d) an authorised examiner is about to perform a non-medical examination under a non-medical examination notice or under section 514;

(e) a police officer is about to give, is giving, or has given a person a noise abatement direction, an initial nuisance direction or a final nuisance direction;

(f) a police officer is attempting to enforce a warrant, forensic procedure order or registered corresponding forensic procedure order or serve on a person—

(i) a forensic procedure order or registered corresponding forensic procedure order; or

(ii) a summons; or

(iii) another court document;

(g) a police officer reasonably believes obtaining the person's name and address is necessary for the administration or enforcement of an Act prescribed under a regulation for this section;

(h) a police officer reasonably suspects the person has been or is about to be involved in domestic violence or associated domestic violence;

(i) a police officer reasonably suspects the person may be able to help in the investigation of—

(i) domestic violence or associated domestic violence; or

(ii) a relevant vehicle incident;

(j) a police officer reasonably suspects the person may be able to help in the investigation of an alleged indictable offence because the person was near the place where the alleged offence happened before, when, or soon after it happened;

(k) the person is the person in control of a vehicle that is stationary on a road or has been stopped under section 60;

(l) under chapter 17, a qualified person for performing a forensic procedure is about to perform the forensic procedure on the person;

(m) a police officer is about to give, is giving, or has given a person a police banning notice under chapter 19, part 5A;

Not authorised—indicative only

Not authorised—indicative only

(n) a police officer is about to give, is giving, or has given a person any of the following under the *Peace and Good Behaviour Act 1982*—

(i) a public safety order;

(ii) a restricted premises order;

(iii) a fortification removal order;

(o) a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

41A Power to require identifying particulars of person for official warning for consorting

(1) This section applies if—

(a) a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders; and

(b) the police officer has required the person, under section 40(2), to give evidence of the correctness of the person's stated name and address; and

(c) the person can not provide evidence of the correctness of the person's stated name and address when the requirement is made or at another convenient location.

Example of another convenient location—

the person's vehicle, containing the person's driver's licence, parked nearby

(2) The police officer may require the person to allow the police officer to take or photograph all or any of the person's identifying particulars for the sole purpose of establishing the name, address and date of birth of the person.

(3) The identifying particulars must be destroyed, in the presence of a justice, as soon as practicable after establishing the name, address and date of birth of the person.

(4) A person does not commit an offence against section 791 if—

(a) the person was required to do something under subsection (2); and

(b) the court is not satisfied that the police officer, at the time of making the requirement, had the power under subsection (1) to make the requirement.

Division 2 Powers relating to age

42 Power for age-related offences and for particular motor vehicle related purposes

(1) This section applies if—

(a) a person is at a place and the age of the person is relevant to the person's entitlement to be at the place; or

(b) a person is engaging in an activity and the age of the person is relevant to the person's entitlement to engage in the activity; or

(c) the person's age is relevant to any of the following—

(i) giving a notice in relation to a motor vehicle impounded or immobilised under chapter 4;

(ii) giving a noise abatement direction in relation to excessive noise emitted by a motorbike being driven on a place other than a road;

(iii) the making of an application for an impounding order or a forfeiture order under chapter 4;

(iv) the making of an application under section 589 for a noise abatement order;

(v) deciding whether a person is driving a motor vehicle in contravention of a provision of a regulation made under the Road Use Management Act that restricts the number of passengers below a stated age who may be in a motor vehicle while the person is driving it (a ***regulation restriction***);

Not authorised—indicative only

Not authorised—indicative only

(vi) deciding whether another person is contravening the *Tobacco and Other Smoking Products Act 1998*, section 26VC;

(vii) giving a person a police banning notice under chapter 19, part 5A.

Examples for subsection (1)—

1 The age of a person is relevant to a person's entitlement to be on licensed premises.

2 The age of a person is relevant to a person's entitlement to play a gaming machine at a casino or a club.

(2) A police officer may require a person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.

(3) Also, the police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.

(4) If a police officer asks a person to give evidence of the person's date of birth and is not satisfied the person is old enough to be at the place or to engage in the activity, the police officer may direct the person—

(a) to immediately leave the place, or the part of the place in which the person's age is relevant, and not re-enter it; or

(b) not to engage in the activity.

Example for subsection (4)—

The police officer may not be satisfied the person is old enough to be at a place because of the person's apparent age if—

(a) the person fails to provide evidence of the stated date of birth; or

(b) the police officer reasonably suspects a document purporting to establish the person's identity and stating a date of birth does not belong to the person.

(5) A passenger in a motor vehicle does not commit an offence against section 791 if the passenger was required to state his or her correct date of birth for a reason mentioned in subsection (1)(c)(v) and the driver of the motor vehicle at the

time of the alleged offence is not proved to have contravened a regulation restriction.

(6) A person in a motor vehicle does not commit an offence against section 791 if the person was required to state his or her correct date of birth for deciding whether another person is contravening the *Tobacco and Other Smoking Products Act 1998*, section 26VC, and the other person is not proved to have contravened the section.

43 Unlawful supply of smoking products to minors

(1) This section applies if a police officer—

(a) either—

(i) observes a person being supplied a thing that the police officer reasonably suspects is a smoking product; or

(ii) reasonably suspects a person has just been supplied a smoking product; and

(b) reasonably suspects the person is under 18 years.

(2) A police officer may—

(a) ask the person to show acceptable evidence of age of the person; and

(b) require the person to produce the thing supplied to the person.

(3) The police officer may seize the smoking product if—

(a) the person either—

(i) refuses, or is unable, to comply with the request; or

(ii) shows acceptable evidence of age of the person showing the person is under 18 years; and

(b) the police officer reasonably suspects the smoking product is evidence of an offence against the *Tobacco and Other Smoking Products Act 1998*.

(4) In this section—

Not authorised—indicative only

Not authorised—indicative only

acceptable evidence of age has the meaning given to it by the *Tobacco and Other Smoking Products Act 1998*, section 6.

smoking product has the meaning given to it by the *Tobacco and Other Smoking Products Act 1998*, schedule.

43A Unlawful sale of spray paint to minors

(1) This section applies if a police officer—

(a) either—

(i) observes a person being sold a thing the police officer reasonably suspects is spray paint; or

(ii) reasonably suspects a person has just been sold spray paint; and

(b) reasonably suspects the person is under 18 years.

(2) A police officer may—

(a) ask the person to show acceptable evidence of age of the person; and

(b) require the person to produce the thing sold to the person.

(3) The police officer may seize the spray paint if—

(a) the person either—

(i) refuses, or is unable, to show acceptable evidence of the person's age; or

(ii) shows acceptable evidence of age of the person showing the person is under 18 years; and

(b) the police officer reasonably suspects the spray paint is evidence of an offence against the *Summary Offences Act 2005*, section 23B or 23C.

(4) In this section—

acceptable evidence of age has the meaning given under the *Summary Offences Act 2005*, section 23B.

spray paint has the meaning given under the *Summary Offences Act 2005*, schedule 2.

43B Power to require date of birth of person for official warning for consorting

(1) This section applies if a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

(2) The police officer may require the person to state the person's correct date of birth, whether or not when requiring the person to state the person's correct name and address.

(3) Also, the police officer may require the person to give evidence of the correctness of the stated date of birth if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated date of birth or to otherwise be able to give the evidence.

(4) A person does not commit an offence against section 791 if—

(a) the person was required to do something under subsection (2) or (3); and

(b) the court is not satisfied that the police officer, at the time of making the requirement, had the power under subsection (1) to make the requirement.

Part 5 Directions to move on

44 Application of pt 5

This part applies in relation to the following places (***regulated places***)—

(a) public places, including a public place in a safe night precinct;

(b) prescribed places that are not also public places.

Not authorised—indicative only

Not authorised—indicative only

45 Part does not apply to authorised public assemblies

This part does not apply to an authorised public assembly under the *Peaceful Assembly Act 1992*.

46 When power applies to behaviour

(1) A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person's behaviour is or has been—

(a) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances; or

(b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or

(c) disorderly, indecent, offensive, or threatening to someone entering, at or leaving the place; or

(d) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) If the regulated place is a public place, other than a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the public place only if the person's behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in the part of the public place at or near where the person then is.

(2A) If the regulated place is a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the public place only if the person's behaviour has or had the effect mentioned in subsection (1)(a), (b), (c) or (d) in any public place located in the safe night precinct.

(3) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's behaviour.

(4) However, subsections (1)(b) and (3) do not limit subsection (1)(a), (c) and (d).

(5) This part also applies to a person in a regulated place if a police officer reasonably suspects that, because of the person's behaviour, the person is soliciting for prostitution.

(6) For this part, the person's behaviour is a ***relevant act***.

47 When power applies to a person's presence

(1) A police officer may exercise a power under section 48 in relation to a person at or near a regulated place if a police officer reasonably suspects the person's presence is or has been—

(a) causing anxiety to a person entering, at, or leaving the place, reasonably arising in all the circumstances; or

(b) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place; or

(c) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place.

(2) If the regulated place is a public place, other than a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the public place only if the person's presence has or had the effect mentioned in subsection (1)(a), (b) or (c) in the part of the public place at or near where the person then is.

(2A) If the regulated place is a public place in a safe night precinct, subsection (1) applies in relation to a person at or near the place only if the person's presence has or had the effect mentioned in subsection (1)(a), (b) or (c) in any public place located in the safe night precinct.

(3) Subsection (1)(b) applies to premises used for trade or business only if the occupier of the premises complains about the person's presence.

(4) However, subsections (1)(b) and (3) do not limit subsection (1)(a) and (c).

(5) For this part, the person's presence is a ***relevant act***.

Not authorised—indicative only

Not authorised—indicative only

48 Direction may be given to person

(1) A police officer may give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances.

Examples for subsection (1)—

1 If a person sitting in the entrance to a shop is stopping people entering or leaving the shop when it is open for business and the occupier complains, a police officer may give to the person a direction to move away from the entrance.

2 If a group of people have been fighting in a nightclub car park, a police officer may give the people involved in the fight a direction to leave the premises in opposite directions to separate the aggressors.

3 If a person has approached a primary school child near a school in circumstances that would cause anxiety to a reasonable parent, a police officer may give the person a direction to leave the area near the school.

(2) However, a police officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless it is reasonably necessary in the interests of—

(a) public safety; or

(b) public order; or

(c) the protection of the rights and freedoms of other persons.

Examples of rights and freedoms for subsection (2)(c)—

1 the rights and freedoms of the public to enjoy the place

2 the rights of persons to carry on lawful business in or in association with the place

(3) Without limiting subsection (1), a direction may require a person to do 1 of the following—

(a) leave the regulated place and not return or be within the regulated place within a stated reasonable time of not more than 24 hours;

(b) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time of not more than 24 hours;

(c) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the place within a stated reasonable time of not more than 24 hours.

(4) The police officer must tell the person or group of persons the reasons for giving the direction.

49 Review

(1) The CCC must review the use by police officers of powers under this part and prepare a report on the review.

(2) The review must be started as soon as practicable after 31 December 2007.

(3) The conduct of the review and the preparation of the report is a function of the CCC for the *Crime and Corruption Act 2001*.

(4) In the course of preparing the report, the CCC must consult with the Minister.

(5) The CCC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

Part 6 Breaches of the peace, riots and prevention of offences

50 Dealing with breach of the peace

(1) This section applies if a police officer reasonably suspects—

(a) a breach of the peace is happening or has happened; or

(b) there is an imminent likelihood of a breach of the peace; or

(c) there is a threatened breach of the peace.

Not authorised—indicative only

Not authorised—indicative only

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Examples for subsection (2)—

1 The police officer may detain a person until the need for the detention no longer exists.

2 A person who pushes in to the front of a queue may be directed to go to the end of the queue.

3 Property that may be used in or for breaching the peace may be seized to prevent the breach.

(3) It is lawful for a police officer—

(a) to receive into custody from a person the police officer reasonably believes has witnessed a breach of the peace, a person who has been lawfully detained under the Criminal Code, section 260; and

(b) to detain the person in custody for a reasonable time.

51 Prevention of riot

(1) It is lawful for a police officer to take the steps the police officer reasonably believes are necessary to suppress a riot.

(2) It is lawful for a police officer, acting under reasonable orders given by a justice for suppressing a riot, to suppress a riot.

52 Prevention of offences—general

(1) This section applies if a police officer reasonably suspects an offence has been committed, is being committed, or is about to be committed.

(2) It is lawful for a police officer to take the steps the police officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence.

Example of preventing the commission of an offence—

A police officer who reasonably suspects the way a person in the vicinity of a prisoner is acting threatens or is likely to threaten the security of the prisoner or the security or good order of the place where the prisoner is detained may require the person to leave the vicinity of the prisoner or the place of detention.

Examples of continuation of an offence—

1 A police officer may direct a person who is obstructing an ambulance officer acting under the authority of the *Ambulance Service Act 1991* to leave the place where the person is and, if the person fails to leave, may use reasonably necessary force to remove the person.

2 A police officer may remove or deface an obscene or indecent placard, picture, writing or advertisement attached to a place or thing if it contravenes an Act because it is visible to members of the public.

53 Prevention of particular offences relating to liquor

(1) Subsection (2) applies if—

(a) a police officer reasonably suspects a person has committed, is committing or is about to commit an offence against any of the following at a place—

(i) *Liquor Act 1992*, section 157(2), 164, 168B, 168C or 173B;

(ii) *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 34 or 38(2)(e) or (3)(e) or (f); and

(b) the police officer reasonably suspects an opened container of liquor at the place in the person's possession or under the person's control relates to, or is contributing to, or is likely to contribute to, the commission of the offence by the person.

(2) The police officer may seize—

(a) the opened container and its contents; and

(b) any unopened container of liquor at the place, and its contents, the police officer reasonably suspects relates

Not authorised—indicative only

Not authorised—indicative only

to, or is contributing to, or is likely to contribute to, the commission of an offence against a provision mentioned in subsection (1) at the place by the person or another person.

(2A) Also, if—

(a) a police officer reasonably suspects a person has committed, is committing or is about to commit an offence against the *Liquor Act 1992*, section 156(2) at a place; and

(b) the police officer reasonably suspects that liquor, whether in opened or unopened containers, in the person's possession or under the person's control relates to, or is contributing to, or is likely to contribute to, the commission of an offence at any place by the person or another person;

the police officer may seize the liquor, including any container of the liquor.

(3) A police officer may dispose of anything seized under subsection (2) or subsection (2A) in the way the police officer considers reasonably necessary to prevent the commission, continuation or repetition of the offence.

Example for subsection (3)—

The police officer may empty an opened can of beer found by the police officer being consumed by a person in contravention of a provision mentioned in subsection (1) or an unopened can of beer likely to be consumed in contravention of a provision mentioned in subsection (1).

(4) If the police officer exercises the power under subsection (2) or subsection (2A)—

(a) the thing is taken to have been forfeited to the State immediately after the officer seized it; and

(b) chapter 21, part 2, division 3 and chapter 21, part 3 do not apply to the thing.

(5) For this section, a reference in a provision of an Act mentioned in subsection (1) or subsection (2A) to alcohol or liquor is taken to include a reference to methylated spirits.

(6) In this section—

liquor means—

(a) liquor, as defined in the *Liquor Act 1992*, section 4B; or

(b) methylated spirits.

opened container includes a container that has been opened, even if it is closed at the material time and regardless of whether or not some of its contents have been removed.

53A Seizure of liquor from a minor in particular circumstances

(1) This section applies if a police officer—

(a) is lawfully at a place other than a place to which a licence or permit under the *Liquor Act 1992* relates; and

(b) finds a minor at the place has possession or control of liquor, whether in opened or unopened containers; and

(c) reasonably suspects that the minor is not being responsibly supervised by a responsible adult for the minor.

(2) The police may seize the liquor, including any container of the liquor, (the ***seized thing***) and dispose of it in the way the police officer considers reasonably necessary.

(3) For subsection (2), the police officer may continue to stay at the place and re-enter the place for the time reasonably necessary to remove the seized thing, even though to continue to stay or to re-enter, apart from this section, would be trespass.

(4) For subsection (1) the following matters are to be decided on the same basis as the matters are decided under the *Liquor Act 1992*, section 156A—

(a) whether or not a person is a minor;

(b) whether or not a minor is being responsibly supervised;

(c) whether or not an adult is a responsible adult for a minor.

Not authorised—indicative only

Not authorised—indicative only

(5) If the police officer exercises the power under subsection (2) to seize a thing—

(a) the seized thing is taken to have been forfeited to the State immediately after the police officer seizes it; and

(b) chapter 21, part 2, division 3 and chapter 21, part 3 do not apply to the seized thing.

(6) In this section—

liquor has the same meaning as it has in section 53.

53AA Seizure and disposal of dangerous attachment devices

(1) This section applies if a police officer—

(a) finds a dangerous attachment device; and

(b) reasonably suspects the dangerous attachment device has been used, or is to be used, to disrupt a relevant lawful activity.

(2) For subsection (1)(b), a relevant lawful activity is disrupted by using a dangerous attachment device if the use—

(a) unreasonably interferes with the ordinary operation of transport infrastructure; or

Example—

placing an obstacle, on a railway, that stops the passage of rolling stock

(b) stops a person from entering or leaving a place of business; or

(c) causes a halt to the ordinary operation of plant or equipment because of concerns about the safety of any person.

(3) The police officer may do 1 or both of the following—

(a) deactivate or disassemble the dangerous attachment device to the extent the police officer considers reasonably necessary;

(b) seize all or parts of the dangerous attachment device.

(4) If the police officer exercises the power under subsection (3) to seize a dangerous attachment device or parts of a device, the device or part is taken to have been forfeited to the State immediately after the police officer seizes it.

(5) To remove any doubt, it is declared that a police officer may disassemble a dangerous attachment device and choose to seize only some of the disassembled parts.

(6) In this section—

deactivate, a dangerous attachment device, includes to make the device safe or unusable.

transport infrastructure see the *Transport Infrastructure Act 1994*, schedule 6.

53B Entry powers for vehicles referred to in ss 53 and 53A

If a place where a police officer is exercising a power under section 53 or section 53A is outside a vehicle that is not being used as a dwelling, the police officer's powers for the section include the power to enter the vehicle to exercise a power under the section within the vehicle.

Part 6A Prevention of criminal consorting

Note—

See the following provisions for related police powers—

- section 30(i) (Prescribed circumstances for searching persons without warrant)
- section 32(2)(b) (Prescribed circumstances for searching vehicle without warrant)
- section 41(o) (Prescribed circumstances for requiring name and address)
- section 41A (Power to require identifying particulars of person for official warning for consorting)

Not authorised—indicative only

Not authorised—indicative only

- section 43B (Power to require date of birth of person for official warning for consorting)
- section 60(3)(k) (Stopping vehicles for prescribed purposes)

53BAA Definitions for part

In this part—

consort—

(a) has the meaning given by the Criminal Code, section 77A; and

(b) does not include an act of consorting mentioned in the Criminal Code, section 77C that is reasonable in the circumstances.

offence of habitually consorting means an offence against the Criminal Code, section 77B.

official warning, for consorting, means a warning given in person, whether orally or in writing, that—

(a) a stated person is a recognised offender; and

(b) consorting with the stated person on a further occasion may lead to the commission of the offence of habitually consorting.

recognised offender means a recognised offender who is at least 18 years.

53BAB Part does not apply to child

An official warning may not be given to a child.

53BAC Police powers for giving official warning for consorting

(1) This section applies if a police officer reasonably suspects a person has consorted, is consorting, or is likely to consort with 1 or more recognised offenders.

(2) The police officer may stop the person and require the person to remain at the place where the person is stopped for the time

reasonably necessary for the police officer to do any or all of the following—

(a) confirm or deny the police officer's suspicion, including, for example, by exercising a power under section 40 or 43B;

(b) give the person an official warning for consorting;

(c) if the official warning is given orally—confirm under subsection (5) the official warning.

Note—

Failure to comply with a requirement given under this subsection is an offence against section 791.

(3) However, before giving an official warning under subsection (2)(b), the police officer must consider whether it is appropriate to give the warning having regard to the object of disrupting and preventing criminal activity by deterring recognised offenders from establishing, maintaining or expanding a criminal network.

(4) If an official warning for consorting is given in writing, the warning must be in the approved form.

(5) If an official warning for consorting is given orally, the police officer must, within 72 hours after giving the warning orally, confirm the warning by giving it, in the approved form, to the person in the prescribed way.

(6) Unless the contrary is proved—

(a) an approved form given by post is taken to have been received by the person to whom the form was addressed when the form would have been delivered in the ordinary course of post; and

(b) an approved form given by electronic communication is taken to have been received by the person to whom the form was sent on the day the form was sent to the unique electronic address nominated by the person to a police officer.

(7) If practicable, the giving of an official warning under subsection (2)(b) must be electronically recorded.

Not authorised—indicative only

Not authorised—indicative only

(8) To remove any doubt, it is declared that—

(a) an official warning for consorting may be given to a person in relation to a recognised offender before, during or after the person has consorted with the recognised offender; and

(b) a failure to comply with subsection (3) does not affect the validity of an official warning for consorting.

(9) In this section—

criminal activity means the commission of a relevant offence under the Criminal Code, section 77.

prescribed way, for giving an approved form to a person, means—

(a) delivering the form to the person personally; or

(b) sending the form by electronic communication to the unique electronic address nominated by the person to a police officer; or

(c) sending the form by post or certified mail to the person at the last known or usual place of residence or business of the person or the last known or usual postal address of the person.

recognised offender includes a person who a police officer reasonably suspects is a recognised offender.

Example of when a police officer might reasonably suspect a person is a recognised offender—

A police officer reasonably suspects a person has been convicted of an indictable offence. The police officer is unable to confirm the nature of the indictable offence, or whether the conviction is spent, due to the unavailability of the person's complete criminal history or the application of the *Criminal Law (Rehabilitation of Offenders) Act 1986*. However, the police officer reasonably suspects the person is a recognised offender.

53BAD Effect of official warning for consorting

(1) An official warning for consorting given in relation to a stated person who is a recognised offender has effect until the stated person stops being a recognised offender.

(2) However, if an official warning for consorting is given orally, and the warning is not confirmed under section 53BAC(5), the official warning stops having effect 72 hours after it is given.

(3) Also, if an official warning for consorting is given in relation to a stated person who is not a recognised offender, the official warning stops having effect 24 hours after it is given.

(4) A person does not commit an offence against section 791 if—

(a) the person was required to do something under section 53BAC(2); and

(b) the court is not satisfied the police officer, at the time of making the requirement, had the suspicion mentioned in section 53BAC(1).

53BAE Prevention of consorting with recognised offender

(1) This section applies if—

(a) a police officer has given a person at a place an official warning for consorting; and

(b) the police officer reasonably suspects the person is consorting at the place with the person stated in the official warning.

(2) The police officer may require the person to leave the place and not return or be within the place within a stated reasonable time of not more than 24 hours.

Note—

Failure to comply with a requirement given under this subsection is an offence against section 791.

(3) However, subsection (2) does not apply if requiring the person to leave the place may endanger the safety of the person or someone else.

Not authorised—indicative only

Not authorised—indicative only

Example of requirement to leave place that may endanger safety—

a requirement for a person to leave a vehicle in which recognised offenders are passengers in circumstances in which the person has no access to other transport

(4) A person does not commit an offence against section 791 if—

(a) the person was required to leave a place under subsection (2); and

(b) the court is not satisfied the police officer, at the time of making the requirement, had the power under subsection (1) to make the requirement.

Part 7 Out-of-control events

Division 1 Preliminary

Subdivision 1 Application of pt 7

53BA Additional powers

The powers a police officer has under this part are additional to, and are not limited by, the powers a police officer otherwise has under this Act or another Act.

Subdivision 2 Key definitions

53BB What is an *out-of-control event*

(1) An event becomes an ***out-of-control event*** if—

(a) 12 or more persons are gathered together at a place (an ***event***); and

(b) 3 or more persons associated with the event engage in out-of-control conduct at or near the event; and

(c) the out-of-control conduct would cause a person at or near the event—

(i) to reasonably fear violence to a person or damage to property; or

(ii) to reasonably believe a person would suffer substantial interference with their rights and freedoms or peaceful passage through, or enjoyment of, a public place.

(2) However, each of the following is not an out-of-control event—

(a) a licensed event;

(b) a major event;

(c) an event that is primarily for the purposes of political advocacy, protest or industrial action;

(d) an authorised public assembly under the *Peaceful Assembly Act 1992*, section 7;

(e) any event held at a major sports facility under the *Major Sports Facilities Act 2001*, section 4;

(f) an event prescribed by regulation.

(3) For applying subsection (1), it is immaterial whether there is or is likely to be a person who—

(a) fears the things mentioned in subsection (1)(c)(i); or

(b) suffers in the way mentioned in subsection (1)(c)(ii).

53BC What is *out-of-control conduct*

The following conduct is ***out-of-control conduct***—

(a) unlawfully entering, or remaining in, a place or threatening to enter a place;

(b) behaving in a disorderly, offensive, threatening or violent way;

Not authorised—indicative only

Not authorised—indicative only

Examples for paragraph (b)—

- using offensive, obscene, indecent, abusive or threatening language
- taking part in a fight

(c) unlawfully assaulting, or threatening to assault, a person;

(d) unlawfully destroying or damaging, or threatening to destroy or damage, property;

(e) wilfully exposing a person's genitals or doing an indecent act;

(f) causing or contributing to the emission of excessive noise mentioned in section 576(1);

(g) driving a motor vehicle in a way that causes a burn out within the meaning of section 69;

(h) unlawfully lighting fires or using fireworks;

(i) throwing, releasing or placing a thing in a way that endangers, or is likely to endanger, the life, health or safety of a person;

(j) unreasonably obstructing the path of a vehicle or pedestrian;

(k) littering in a way that causes, or is likely to cause, harm to a person, property or the environment;

(l) being intoxicated in a public place;

(m) conduct that would contravene the *Liquor Act 1992*, part 6;

(n) conduct that would contravene the *Drugs Misuse Act 1986*, part 2.

53BD Other definitions for pt 7

In this part—

associated, with an event, means a person who—

(a) is at the event; or

(b) is near the event and is reasonably suspected by a police officer of either—

(i) intending to go to the event, whether or not the person was invited to attend the event; or

(ii) leaving the event.

commissioner's reasonable costs means the reasonable costs of the commissioner for lawful action taken by the police service under this part, including costs for ending an event or dispersing persons from the event.

event see section 53BB(1)(a).

event authorisation see section 53BE(1).

licensed event means an event held at premises to which any 1 of the following licenses or permits under the *Liquor Act 1992* applies—

(a) a commercial hotel licence;

(b) a commercial special facility licence;

(c) a commercial other licence;

(d) a community club licence;

(e) a commercial public event permit;

(f) an extended hours permit;

(g) an adult entertainment permit.

organise, an event, means being substantially involved in arranging, hosting, managing, advertising or promoting the event.

out-of-control event power means a power, under section 53BG, for a police officer to take action for an event.

parent includes a guardian other than the chief executive (child safety).

senior police officer means a police officer of at least the rank of sergeant.

Not authorised—indicative only

Not authorised—indicative only

Division 2 Powers for out-of-control events

Subdivision 1 Authorisation for using powers

53BE Authorisation by senior police officer

(1) A senior police officer may authorise the use of out-of-control event powers (an ***event authorisation***) in relation to an event if the police officer reasonably believes—

(a) the event is an out-of-control event; or

(b) the event is likely to become an out-of-control event.

(2) The event authorisation must be written and state the following—

(a) the date and time the authorisation is given;

(b) the location of the event;

(c) the circumstances that led the senior police officer to authorise using the out-of-control event powers in relation to the event;

(d) the restrictions, if any, on using the out-of-control event powers in relation to the event.

(3) However, the event authorisation is not invalid merely because it is not in writing if the senior police officer makes a written record as required under subsection (2) at the first reasonable opportunity after a police officer exercises an out-of-control event power under the authorisation.

(4) The event authorisation has effect for 24 hours or a lesser period decided, after the authorisation is given, by—

(a) the senior police officer who gave the authorisation; or

(b) another senior police officer.

Subdivision 2 Using powers

53BF Use of powers only if authorised

A police officer may take action under this subdivision only if—

(a) an event authorisation is given in relation to an event; and

(b) the officer acts in accordance with the event authorisation.

53BG Taking action for out-of-control event

(1) A police officer has the powers under subsection (2) for 1 or more of the following purposes in relation to an event—

(a) preventing the event becoming an out-of-control event;

(b) if the event is an out-of-control event, stopping the event from continuing or starting in another location;

(c) dispersing persons associated with the event;

(d) minimising the impact of the event on public order or safety;

(e) identifying a person organising the event;

(f) identifying a person committing an offence under division 3.

(2) For the purposes mentioned in subsection (1), a police officer may exercise any 1 or more of the following powers—

(a) stop a vehicle or enter a place without a warrant;

(b) give a person or group of persons a direction to—

(i) stop any conduct; or

(ii) immediately leave a place; or

(iii) not return to a place within a stated period of not more than 24 hours, unless the person or group resides at the place; or

Not authorised—indicative only

Not authorised—indicative only

(c) take any other steps the police officer considers reasonably necessary.

Division 3 Offences and costs orders

Subdivision 1 Offences

53BH Organising an out-of-control event

(1) A person commits an offence if—

(a) the person organises an event; and

(b) the event becomes an out-of-control event.

Maximum penalty—

(a) if the event is held at a place where the person does not reside or for which the person does not have lawful authority to use—165 penalty units or 3 years imprisonment; or

(b) otherwise—110 penalty units or 1 year's imprisonment.

(2) If the person organising the event is a child, the parent of the child is instead liable for the offence if the parent gave the child permission to organise the event.

(3) In a proceeding for an offence under this section, it is a defence for a person to prove that the person took reasonable steps to prevent the event becoming an out-of-control event.

Examples of taking reasonable steps—

- hiring an appropriate number of security officers for the event
- ending the event as soon as possible after persons who are not invited to the event enter the place where the event is being held

53BI Causing an out-of-control event

(1) A person commits an offence if the person—

(a) has been refused entry to an event; and

(b) engages in out-of-control conduct near the event; and

(c) as a result of the person's conduct, the event becomes an out-of-control event.

Maximum penalty—110 penalty units or 1 year's imprisonment.

(2) A person may be liable for an offence against subsection (1) even if another person's conduct contributed to the event becoming an out-of-control event.

53BJ Offence to contravene direction

A person must not, without reasonable excuse, contravene a direction given by a police officer under section 53BG(2).

Maximum penalty—

(a) if the person contravenes the direction by doing any of the following—

(i) unlawfully assaulting, or threatening to assault, another person;

(ii) unlawfully destroying or damaging, or threatening to destroy or damage, property;

(iii) throwing, releasing or placing a thing in a way that endangers, or is likely to endanger, the life, health or safety of another person;

165 penalty units or 3 years imprisonment; or

(b) otherwise—110 penalty units or 1 year's imprisonment.

Subdivision 2 Costs orders

53BK Costs order—adult

(1) This section applies if a person, other than a child, is found guilty by a court of an offence under subdivision 1 in relation to an event.

Not authorised—indicative only

Not authorised—indicative only

(2) The court may, on its own initiative or an application by the commissioner, order the person to pay some or all of the commissioner's reasonable costs in relation to the event.

(3) An order made under subsection (2) is taken to be an order for compensation under the *Penalties and Sentences Act 1992*, part 3, division 4, payable to the State.

53BL Costs order—child

(1) This section applies if a child is found guilty by a court of an offence under subdivision 1 in relation to an event.

(2) The court may, on its own initiative or an application by the commissioner, consider whether the child has the capacity to pay the commissioner's reasonable costs in relation to the event.

(3) If the court considers the child has the capacity to pay the commissioner's reasonable costs, the court may order the child to pay some or all of the costs.

(4) An order made by the court under this section is taken to be an order under the *Youth Justice Act 1992*, section 310, payable to the State.

53BM Costs order—parent of child offender

(1) This section applies if—

(a) a court considers the matters mentioned in section 53BL(2); and

(b) decides under the section that a child does not have the capacity to pay the commissioner's reasonable costs.

(2) The court may, on its own initiative or an application by the commissioner, decide to call on the child's parent to show cause why the parent should not pay the commissioner's reasonable costs in relation to the event.

(3) If the court decides to call on the child's parent to show cause—

(a) notice must be given to the parent in the way required under the *Youth Justice Act 1992*, section 258(4) to (8); and

(b) the show cause hearing must be conducted in the way required under the *Youth Justice Act 1992*, section 259(1) to (4); and

(c) the *Youth Justice Act 1992*, section 259(5) applies as if the reference to 'section 258(1)(a), (b) and (c)' were a reference to subsection (5)(a) and (b); and

(d) the *Youth Justice Act 1992*, section 259(6) to (12) applies to the court's decision and orders.

(4) For applying subsection (3)—

(a) a reference to compensation in the *Youth Justice Act 1992*, sections 258 and 259 is taken to be a reference to the commissioner's reasonable costs; and

(b) a reference to the prosecution in the *Youth Justice Act 1992*, sections 258 and 259 is taken to be a reference to the commissioner.

(5) For subsection (3)(c), the matters are—

(a) the parent contributed to the fact the offence happened by not adequately supervising the child; and

(b) it is reasonable the parent pay some or all of the commissioner's reasonable costs.

(6) The *Youth Justice Act 1992*, section 260 applies to the commissioner's reasonable costs ordered to be paid under subsection (5) as if it were an order for compensation to be paid to the State under the *Youth Justice Act 1992*, section 259.

53BN Costs orders and other sentencing

(1) A court may make an order under this subdivision in addition to any other sentence to which a person, including a child, is liable.

Not authorised—indicative only

Not authorised—indicative only

(2) To remove any doubt, it is declared that sections 53BL and 53BM apply in addition to the *Youth Justice Act 1992*, part 7.

Chapter 3 Powers relating to vehicles and traffic

53C Application of corresponding HVNL(Q) penalty amounts

(1) This section applies to a penalty for an offence against a provision of this chapter (the ***relevant PP&R provision***) if the penalty provides for an amount of penalty to be the corresponding HVNL(Q) penalty amount.

(2) For the relevant PP&R provision, the corresponding HVNL(Q) penalty amount is the same dollar amount that, when the offence is committed, is the amount of penalty applying for an offence against the relevant PP&R provision's corresponding HVNL(Q) provision.

Note—

If the amount of penalty applying for an offence against a corresponding HVNL(Q) provision is increased under section 737 of the Heavy Vehicle National Law (Queensland), the Regulator under the Law is required under that section to publish the new amount on the Regulator's website.

(3) For a provision of this Act listed in column 1 of the following table, the corresponding HVNL(Q) provision is the provision of the Heavy Vehicle National Law (Queensland) listed in column 2 of the table.

Table

Column 1 Provision of this Act that is a relevant PP&R provision	Column 2 Provision of Heavy Vehicle National Law (Queensland) that is the corresponding HVNL(Q) provision
section 60(2)	section 513(4)
section 61(4)	section 516(3)
section 62(2)	section 514(3)
section 65(3)	section 522(5)
section 66(3)	section 529
section 66(5)	section 526(4)
section 66(6)	section 528(3)
section 68(3)	section 577(4)

54 Power of inquiry into road use contraventions

(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland) has been committed.

(2) Also, it is lawful for a police officer to arrange for someone else to make any reasonably necessary inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland) has been committed.

55 Power to require information about identity of drivers of vehicles etc.

(1) This section applies if a person alleges to a police officer or a police officer reasonably suspects a contravention of the Road

Not authorised—indicative only

Not authorised—indicative only

Use Management Act or the Heavy Vehicle National Law (Queensland) involving a vehicle or tram has been committed.

(2) A police officer may require any of the following to give to the police officer information that will identify or help identify the person who was in control of the vehicle or tram when the contravention happened—

(a) an owner of the vehicle or tram;

(b) a person in possession of the vehicle or tram;

(c) a person in whose name the vehicle is registered;

(d) a person who may reasonably be expected to be able to give the information.

(3) Also, a police officer may require the driver of the vehicle or tram to give to the police officer information about the identity of the owner of the vehicle or tram.

Note—

See section 791 (Offence to contravene direction or requirement of police officer).

56 Additional power of inquiry for relevant vehicle incidents

(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination or test—

(a) to obtain information about a vehicle, train, tram, animal or other property involved in a relevant vehicle incident; or

(b) to obtain information about the cause of a relevant vehicle incident and the circumstances in which it happened.

(2) Also, it is lawful for a police officer to make any reasonably necessary inquiry or investigation to obtain information about a person involved in a relevant vehicle incident.

(3) For subsection (1) or (2), a police officer may require a person to answer any question put to the person by the police officer or provide information relevant to the incident.

(4) A person who is required by a police officer to provide information relevant to the incident must not provide any information the person knows to be false.

Maximum penalty for subsection (4)—40 penalty units or 6 months imprisonment.

57 Power of entry for ss 54–56

(1) For sections 54 to 56, a police officer may enter a place and stay on the place for the time reasonably necessary for the purpose of the entry.

(2) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

58 Production of driver licence

(1) This section applies if a police officer—

(a) finds a person committing an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland); or

(b) reasonably suspects a person has committed an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland); or

(c) is making inquiries or investigations for establishing whether or not a person has committed an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland); or

(d) reasonably suspects a person who was present at the scene of a relevant vehicle incident may be able to give information or evidence about the incident; or

(e) reasonably considers it is necessary for enforcing the Road Use Management Act in relation to a heavy vehicle or for enforcing the Heavy Vehicle National Law (Queensland).

Not authorised—indicative only

Not authorised—indicative only

(2) The police officer may require the person to produce the person's driver licence for inspection.

Note—

See section 791 (Offence to contravene direction or requirement of police officer).

(3) A person who holds an open driver licence issued under the Road Use Management Act but is unable to comply with the requirement immediately may comply with the requirement by producing the licence to the officer in charge of a nominated police establishment or police station within 48 hours after the requirement is made.

(4) The place nominated under subsection (3) must be reasonable in the circumstances.

(5) Subsection (3) does not apply to a person in control of a heavy vehicle.

59 Power for regulating vehicular and pedestrian traffic

(1) A police officer may give to a driver of a vehicle or to a pedestrian on or about to enter a road, or to a passenger in a vehicle, any direction the police officer reasonably considers necessary for the safe and effective regulation of traffic on the road.

(2) Also, if an emergency exists, a police officer may give to a driver of or passenger in a train any direction the police officer reasonably considers necessary.

(3) Without limiting subsection (1), a police officer may act under that subsection if the police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct traffic and pedestrians.

Examples for subsection (3)—

1 a siege where firearms are being discharged and members of the public may be hurt

2 a serious or fatal road accident requiring treatment of injured persons, removal of bodies, wreckage to be cleared or evidence to be gathered for investigating the cause of the accident

(4) A direction under subsection (1) may include a direction to the owner or driver of a parked vehicle to move the vehicle as soon as practicable.

60 Stopping vehicles for prescribed purposes

(1) A police officer may require the person in control of a vehicle, other than a train or a vehicle being pulled by an animal, to stop the vehicle for a prescribed purpose.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle, if the purpose for stopping the vehicle is HVNL(Q) compliance or enforcement—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $6,000. Generally, see section 53C.

(c) otherwise—90 penalty units.

Example of a reasonable excuse for subsection (2)—

It is a reasonable excuse for a person not to comply with a requirement if—

(a) the person reasonably believes that to immediately comply would endanger the person or someone else; and

(b) the person complies with the requirement at the first reasonable opportunity.

(3) The prescribed purposes are as follows—

(a) for enforcing a transport Act or the Heavy Vehicle National Law (Queensland);

(b) to check whether the vehicle complies, or the person is complying, with a transport Act or the Heavy Vehicle National Law (Queensland);

(c) for monitoring or enforcing a liquor provision;

Not authorised—indicative only

Not authorised—indicative only

(d) for enforcing a contravention of law involving putting, dropping and leaving litter on a public place from a vehicle;

(e) to conduct a breath test or saliva test;

(f) to investigate the emission of excessive noise from—

(i) a motor vehicle on a road or in a public place; or

(ii) a motorbike being driven on a place other than a road;

(g) to give a noise abatement direction to the person responsible for the emission of excessive noise from—

(i) a motor vehicle on a road or in a public place; or

(ii) a motorbike being driven on a place other than a road;

Note—

For the power to give noise abatement directions, see section 581.

(h) to impound or immobilise a motor vehicle under chapter 4;

(i) for enforcing the *Tobacco and Other Smoking Products Act 1998*, section 26VC;

(j) to give the person any of the following under the *Peace and Good Behaviour Act 1982*—

(i) a public safety order;

(ii) a restricted premises order;

(iii) a fortification removal order;

(k) to give a person, under section 53BAC, an official warning for consorting.

(4) For monitoring or enforcing a liquor provision, the police officer may exercise any of the following powers if the officer reasonably suspects the exercise of the power may be effective for the purpose—

(a) enter the vehicle and remain in it for the time reasonably necessary for the purpose;

(b) search the vehicle and anything in it;

(c) inspect, measure, test, photograph or film the vehicle or anything in it;

(d) take samples of anything in or on the vehicle;

(e) seize anything the officer reasonably suspects is evidence of the commission of an offence against a liquor provision;

(f) copy a document in the vehicle;

(g) move the vehicle's load.

(5) For conducting a breath test or saliva test, the police officer may enter the vehicle and remain in it for the time reasonably necessary for the purpose.

Examples for subsection (5)—

1 The police officer may hold a breath or saliva testing device in or through an open window of a car so the driver can provide a specimen of breath or saliva.

2 The police officer may board a boat so the driver of the boat can provide a specimen of breath or saliva.

(6) In this section—

excessive noise means excessive noise mentioned in section 576(1) and to which chapter 19, part 3 applies.

in, for a vehicle, includes on the vehicle.

liquor provision means any of the following provisions—

(a) the *Liquor Act 1992*, section 168B, 168C, 169 or 171;

(b) the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 34 or 38.

monitor, a liquor provision, means check whether the provision is being complied with.

Not authorised—indicative only

Not authorised—indicative only

61 Power to require vehicles to be moved

(1) This section applies to a vehicle that is stationary or has been stopped under section 60.

(2) To enable a police officer to exercise a power for a prescribed purpose, the police officer may require the person in control of the vehicle to move the vehicle to a stated reasonable place.

Example for subsection (2)—

The officer may require the person to move the vehicle onto a weighing or testing device.

(3) However, the place must be—

(a) for a private vehicle—within a 5km radius from where the vehicle was stationary or stopped; or

(b) for another vehicle—within a 30km radius from—

(i) where the vehicle was stationary or stopped; or

(ii) if the requirement is given within the course of the vehicle's journey—any point along the forward route of the journey.

(4) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle, if the power to be exercised by the police officer as mentioned in subsection (2) is for HVNL(Q) compliance or enforcement—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $6,000. Generally, see section 53C.

(c) otherwise—90 penalty units.

(5) For a vehicle, other than a private vehicle, if the person does not comply with the requirement, the police officer may move the vehicle to the required place.

(6) However, if the vehicle is an aircraft or boat, the police officer may move the vehicle only if the officer has the necessary qualification, or has received appropriate training, to control the vehicle.

62 Requirement to remain at a place

(1) This section applies if the person in control of a vehicle is required—

(a) to stop the vehicle under section 60; or

(b) to move the vehicle to a place under section 61.

(2) The person must ensure the vehicle remains at the place where it is stopped or moved to, for the time reasonably necessary to enable the police officer to perform a function or exercise a power under those sections.

Maximum penalty—

(a) for a heavy vehicle, if the function to be performed or power to be exercised by the police officer is for HVNL(Q) compliance or enforcement—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $6,000. Generally, see section 53C.

(b) otherwise—60 penalty units.

63 Power to inspect vehicles

(1) This section applies to a motor vehicle that—

(a) is stationary on a road; or

(b) has been stopped under section 60 or under the Heavy Vehicle National Law (Queensland); or

(c) is at a place to which it has been moved under section 61.

Not authorised—indicative only

Not authorised—indicative only

(2) To check whether the vehicle complies with a transport Act or the Heavy Vehicle National Law (Queensland), a police officer may inspect or test it.

(3) To enable the police officer to inspect or test the vehicle, the police officer may do anything reasonable to be done for the inspection or test.

Examples of what may be reasonable for an inspection or test—

The police officer may—

(a) enter the vehicle; or

(b) unlock, unfasten, open or remove any part of it; or

(c) move its load.

64 Power to enter vehicles etc. other than for vehicle inspection

(1) This section applies to a police officer who reasonably suspects—

(a) a vehicle at a place the police officer has entered under this Act or the Heavy Vehicle National Law (Queensland) is used, or is being used, to transport dangerous goods; or

(b) a heavy vehicle or prescribed vehicle is being, or has just been, used to transport dangerous goods; or

(c) a vehicle is being, or has just been, used to commit an offence against a transport Act or the Heavy Vehicle National Law (Queensland); or

(d) a vehicle, or a thing in or on it, may provide evidence of the commission of an offence against a transport Act or the Heavy Vehicle National Law (Queensland); or

(e) the driver of a heavy vehicle is required under the Heavy Vehicle National Law (Queensland) to keep a document relating to driving hours.

(2) The police officer may, for enforcing a transport Act or the Heavy Vehicle National Law (Queensland)—

(a) enter the vehicle; or

(b) search any part of the vehicle; or

(c) inspect, measure, weigh, test, photograph or film the vehicle or anything in or on it; or

(d) take samples of the vehicle or anything in it; or

(e) copy, or take an extract from, a document in the vehicle; or

Example—

download information contained on a disk, tape or other device

(f) move the vehicle's load; or

(g) take the persons, equipment and materials the officer reasonably requires into the vehicle.

(3) In this section—

document includes a work diary as defined in the Heavy Vehicle National Law (Queensland), section 221.

prescribed vehicle means a prescribed vehicle under the Road Use Management Act.

65 Power to require vehicle inspections

(1) If a police officer reasonably suspects a vehicle may not comply with a transport Act or the Heavy Vehicle National Law (Queensland), the police officer may require either of the following to have the vehicle inspected at a stated reasonable time and place—

(a) the owner of the vehicle;

(b) if there is a registered operator for the vehicle and the registered operator, apart from being the registered operator, is not the owner of the vehicle—the registered operator for the vehicle.

(2) The requirement—

(a) must be made by notice in the approved form; or

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(b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice in the approved form as soon as practicable.

(3) A person must comply with a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—

(a) for a heavy vehicle, if the inspection relates to compliance with the Heavy Vehicle National Law (Queensland)—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $6,000. Generally, see section 53C.

(b) otherwise—60 penalty units.

(4) In this section—

owner, of a vehicle, has the meaning given under the Road Use Management Act, schedule 4.

66 Power to prohibit use of vehicles

(1) If a police officer reasonably suspects a vehicle is unsafe or defective, the police officer may, by notice in the approved form, require its owner or, if there is a registered operator for the vehicle and the registered operator, apart from being the registered operator, is not the owner of the vehicle, its registered operator, not to use it, or permit it to be used, on a road until—

(a) it is inspected at a stated reasonable place and found to comply with the Road Use Management Act or the Heavy Vehicle National Law (Queensland); or

(b) stated reasonable action is taken in relation to the vehicle to ensure it complies with the Road Use Management Act or the Heavy Vehicle National Law (Queensland).

Examples of action that may be reasonable under paragraph (b)—

1 the vehicle's load be adjusted or moved

2 stated repairs be carried out to the vehicle and the vehicle be inspected at a stated place and found to comply with the Road Use Management Act

(2) Without limiting subsection (1), the police officer may issue a defect notice for the vehicle or attach a defective vehicle label to the vehicle.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (1), unless the person has a reasonable excuse.

Maximum penalty—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle, if the requirement under subsection (1) relates to compliance with the Heavy Vehicle National Law (Queensland)—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $3,000. Generally, see section 53C.

(c) otherwise—90 penalty units.

(4) It is a reasonable excuse for subsection (3) if—

(a) the vehicle's registration is cancelled and the person gives the police officer who issued the defect notice written notice of that fact within 7 days after the cancellation; or

(b) the vehicle is disposed of to a motor dealer and the person gives the chief executive of the department within which the Road Use Management Act is administered written notice of the name and address of the motor dealer within 7 days after the disposal.

(5) If the driver to whom a defect notice is given is not the owner or registered operator, the driver must immediately give the

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defect notice to the owner or registered operator, unless the driver has a reasonable excuse.

Maximum penalty—

(a) for a heavy vehicle, if the requirement under subsection (1) relates to compliance with the Heavy Vehicle National Law (Queensland)—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $3,000. Generally, see section 53C.

(b) otherwise—30 penalty units.

(6) A person must not remove a defective vehicle label attached to a vehicle from the vehicle, unless the person has a reasonable excuse.

Maximum penalty—

(a) for a heavy vehicle, if the requirement under subsection (1) relates to compliance with the Heavy Vehicle National Law (Queensland)—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $3,000. Generally, see section 53C.

(b) otherwise—30 penalty units.

(7) However, a police officer may remove the label if the police officer is reasonably satisfied the vehicle is no longer defective.

(8) In this section—

defective vehicle label has the meaning given under the Road Use Management Act.

defect notice has the meaning given under the Road Use Management Act.

motor dealer means a motor dealer under the *Motor Dealers and Chattel Auctioneers Act 2014*.

owner, of a vehicle, has the meaning given under the Road Use Management Act, schedule 4.

67 Power to prohibit persons driving

(1) This section applies to the person in control of a motor vehicle that is stationary on a road or has been stopped under section 60 or under the Heavy Vehicle National Law (Queensland).

(2) If a police officer reasonably suspects the person in control would contravene the Road Use Management Act by driving the vehicle, the officer may, by notice in the approved form, require the person in control not to drive the vehicle in contravention of that Act.

(3) A person must not contravene, or attempt to contravene, a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

(a) for a private vehicle—60 penalty units; or

(b) otherwise—90 penalty units.

68 Power to enable effective and safe exercise of other powers

(1) A police officer may require the person in control of a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this chapter in relation to the vehicle.

Examples of requirements for effectively exercising powers—

1 requiring the vehicle to be held stationary on a weighing device to enable the vehicle to be weighed

2 requiring the vehicle's bonnet to be opened to enable the engine to be inspected

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(2) A police officer may require the person in control of a vehicle, or a person who is in or has just left the vehicle, to do or not to do anything the police officer reasonably believes is necessary—

(a) to enable the police officer to safely exercise a power under a transport Act or the Heavy Vehicle National Law (Queensland) in relation to the vehicle; or

(b) to preserve the safety of the police officer, the person or other persons.

Examples of safety requirements—

1 requiring the persons in a vehicle to get out of the vehicle while the police officer inspects the vehicle's undercarriage

2 requiring a person who has just left the vehicle to stand back from the road

3 requiring a person to remain in control of a vehicle for a reasonable time

(3) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—

(a) for a private vehicle—60 penalty units; or

(b) for a heavy vehicle, if the requirement relates to the safe exercise of a power under the Heavy Vehicle National Law (Queensland)—the corresponding HVNL(Q) penalty amount; or

Note—

On the commencement of this note, the corresponding HVNL(Q) penalty amount was $10,000. Generally, see section 53C.

(c) otherwise—90 penalty units.

Chapter 4 Motor vehicle impounding and immobilising powers for prescribed offences and motorbike noise direction offences

Part 1 Preliminary

Division 1 Interpretation

69 Definitions for ch 4

In this chapter—

applied section 258 see section 103.

applied section 259 see section 103.

burn out, for a motor vehicle, means wilfully drive the motor vehicle in a way that causes a sustained loss of traction of one or more of the wheels with the road surface.

Examples—

- driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a road surface so that the tyres or a substance poured onto the road surface smokes
- driving a motor vehicle in a way that causes a sustained loss of traction of one or more of the drive wheels with a wet or gravelled road surface, regardless of whether or not the tyres smoke because of the loss of traction

excessive noise means excessive noise mentioned in section 576(1) and to which chapter 19, part 3 applies.

forfeiture order, for a motorbike noise order offence, see section 91(2).

immobilise, for a motor vehicle, includes restrict the use of the motor vehicle by way of an immobilising device or the

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removal and confiscation of the motor vehicle's number plates.

immobilising device, for a motor vehicle, includes a wheel clamp.

immobilising notice, for a vehicle related offence, see section 78(2).

impounding notice—

(a) for a vehicle related offence—see section 78(2); or

(b) for a motorbike noise direction offence or a motorbike noise order offence—see section 81(2).

impounding order, for a motorbike noise order offence, see section 86(2).

initial impoundment period, for a motor vehicle, means—

(a) a period of 48 hours starting when the motor vehicle is impounded; or

(b) if the period of 48 hours ends at any time after 5p.m. and before 8a.m. on a day, a period starting when the motor vehicle is impounded and ending at 8a.m. next occurring on a business day after the period of 48 hours ends.

initiating immobilisation, of a motor vehicle, means the immobilisation of the motor vehicle for the initiating immobilisation offence.

initiating immobilisation offence means the vehicle related offence for which a motor vehicle is immobilised under this chapter.

initiating impoundment, of a motor vehicle, means the impoundment of the motor vehicle for the initiating impoundment offence.

initiating impoundment offence means—

(a) the vehicle related offence for which a motor vehicle is impounded under this chapter; or

(b) for a motorbike noise order offence—the motorbike noise order offence because of which a police officer

applies for an impounding order or a forfeiture order for the motorbike involved in the commission of the offence.

magistrate includes a Childrens Court magistrate.

modify, a motor vehicle, includes remove the engine or gearbox from the motor vehicle.

motorbike noise direction offence means the contravention of a noise abatement direction given in relation to excessive noise emitted by a motorbike being driven on a place other than a road.

motorbike noise order offence means the contravention of a noise abatement order given in relation to excessive noise emitted by a motorbike being driven on a place other than a road.

number plate means a plate or other device designed to be attached to a motor vehicle to identify the motor vehicle.

number plate confiscation notice see section 74H(2).

number plate confiscation period see section 74H(3).

offence, in relation to which an application is made, means the initiating application offence and any other offence relied on for the purposes of any order under this chapter.

prescribed impoundment information means—

(a) information about how the owner of a motorbike impounded under this chapter may recover the motorbike; and

(b) a statement that, before the motorbike may be recovered, the owner may be required to produce satisfactory evidence of the ownership of the motorbike; and

(c) a statement that, if the driver is an adult, the driver will be required to pay the costs of removing and keeping the motorbike; and

(d) a statement that, if the driver is a child and the child is found guilty of the offence for which the motorbike was

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impounded, the court may order the child or the child's parent or guardian to pay the costs of removing and keeping the motorbike; and

(e) a statement that, if the owner of a motorbike fails to recover the motorbike after the period of impounding ends and the owner was the driver of the motorbike when it was impounded, the owner is liable to pay the costs of keeping the motorbike for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the motorbike is impounded; and

(f) a statement that, if the owner of the motorbike fails to recover the motorbike after the period of impounding ends and the owner was not the driver of the motorbike when it was impounded, the owner is liable to pay the costs of keeping the motorbike for each day after the period of impoundment ends that is more than 2 business days after the owner is given the impounding notice; and

(g) the penalty for unlawfully removing the motorbike from the place at which it is held.

prescribed impoundment period, for a motor vehicle, means—

(a) a period prescribed under this Act to be the period of impoundment for the motor vehicle starting when the motor vehicle is impounded; or

Example for paragraph (a)—

A motor vehicle is impounded at 3p.m. on 1 August. If the period of impoundment prescribed under this Act is 7 days, the prescribed impoundment period ends at 3p.m. on 8 August.

(b) if the period prescribed ends at any time other than between 8a.m. and 5p.m. on a business day, a period starting when the motor vehicle is impounded and ending at 8a.m. next occurring on a business day after the period prescribed ends.

Examples for paragraph (b)—

1 A motor vehicle is impounded at 3a.m. on Wednesday, 1 August. If the period of impoundment prescribed under this Act is 7 days, the period of 7 days ends at 3a.m. on Wednesday, 8 August. However, the prescribed impoundment period ends at 8a.m. on Wednesday, 8 August.

2 A motor vehicle is impounded at 7p.m. on Sunday, 1 April. If the period of impoundment prescribed under this Act is 90 days, the period of 90 days ends at 7p.m. on Saturday, 30 June. However, the prescribed impoundment period ends at 8a.m. on Monday, 2 July.

prescribed offence means—

(a) a motorbike noise order offence; or

(b) a vehicle related offence.

prescribed period, in relation to an application for an impounding order or a forfeiture order—

(a) for a vehicle related offence—means the relevant period and any period from the end of the relevant period to and including the day on which the application is heard and decided; or

(b) for a motorbike noise order offence—the period for which the motorbike noise order to which the offence relates is in force and any period from the end of that period to and including the day on which the application is heard and decided.

relevant court, in relation to an application for an impounding order or a forfeiture order for a motor vehicle, means—

(a) the Magistrates Court for the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence to which the application relates; or

(b) if the driver of the motor vehicle is a child—a Childrens Court constituted by a magistrate sitting in the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence to which the application relates.

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relevant period, in relation to a motor vehicle impounded or immobilised for a type 1 vehicle related offence or a type 2 vehicle related offence, means the period of not more than 5 years before the initiating impoundment or initiating immobilisation for the motor vehicle.

type 1 vehicle related offence see section 69A.

type 2 vehicle related offence see section 69A.

vehicle production notice see section 74K(2).

vehicle related offence means—

(a) a type 1 vehicle related offence; or

(b) a type 2 vehicle related offence.

69A Meaning of *type 1* and *type 2 vehicle related offences*

(1) A ***type 1 vehicle related offence*** means—

(a) any of the following offences committed in circumstances that involve a speed trial, a race between motor vehicles, or a burn out—

(i) an offence against the Criminal Code, section 328A committed on a road or in a public place;

(ii) an offence against the Road Use Management Act, section 83;

(iii) an offence against the Road Use Management Act, section 85;

(iv) an offence against the Road Use Management Act involving wilfully starting a motor vehicle, or driving a motor vehicle, in a way that makes unnecessary noise or smoke; or

(b) an evasion offence; or

(c) an offence against the Road Use Management Act, section 85A.

Notes—

Under the *Acts Interpretation Act 1954*, section 7(1) a reference to a law includes a reference to statutory instruments made or in force under the law.

At the enactment of this definition, a relevant offence for paragraph (a)(iv), for example, is an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 291(1)(b).

(2) A ***type 2 vehicle related offence*** means any of the following offences—

(a) an offence against the *Motor Accident Insurance Act 1994*, section 20 that happens at the same time as an offence against the Road Use Management Act involving the use on a road of a vehicle that is not registered as required under that Act;

(b) an offence against the Road Use Management Act, section 78(1);

(c) an offence against the Road Use Management Act, section 79 in circumstances in which the driver of the motor vehicle involved in the offence is over the high alcohol limit within the meaning of the Road Use Management Act, section 79A;

(d) an offence against the Road Use Management Act, section 80(5A), (11) or (22D);

(e) an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland) prescribed under a regulation for this paragraph involving a motor vehicle being driven on a road if—

(i) a defect notice has been issued in relation to the motor vehicle under this Act, the Road Use Management Act or the Heavy Vehicle National Law (Queensland); and

(ii) under the notice, the motor vehicle must be inspected by an authorised officer under the Road Use Management Act or the Heavy Vehicle National Law (Queensland) to ensure it complies with that Act or Law;

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(f) an offence against the Road Use Management Act involving a driver of a motor vehicle in circumstances in which the driver exceeds a speed limit, applying to the driver for the length of road where the driver is driving, by more than 40km/h.

Example of relevant offence for paragraph (f)—

an offence against the *Transport Operations (Road Use Management—Road Rules) Regulation 2009*, section 20.

(3) For subsection (2)(e), a regulation may only prescribe an offence that involves—

(a) the motor vehicle (including its equipment) being modified in a way that required the owner to ensure that the modification had been approved under the Road Use Management Act or the Heavy Vehicle National Law (Queensland); or

(b) the motor vehicle (including its equipment) being modified so that driving the motor vehicle on the road is an offence under the Road Use Management Act or the Heavy Vehicle National Law (Queensland).

(3A) A reference in subsection (2)(e) to an offence involving a motor vehicle being driven on a road includes an offence involving modifying a vehicle if the modified vehicle is driven on a road.

(4) A reference in subsection (2) to an offence against section 78(1) or 80(22D) of the Road Use Management Act does not include an offence relating to a suspension that could in law only be imposed because section 80 of the Road Use Management Act had been amended by the amendment.

(5) A reference in subsection (2) to an offence against section 80(5A) or (11) of the Road Use Management Act does not include an offence that in the circumstances could in law only be committed, or that the person could in law only be taken to be guilty of, because section 80 of the Road Use Management Act had been amended by the amendment.

Note for subsections (4) and (5)—

These subsections effectively exclude anything associated with saliva testing and saliva analysis under the Road Use Management Act from the operation of subsection (2).

(6) In this section—

amendment means the *Transport Legislation and Another Act Amendment Act 2007*, section 57.

defect notice includes a vehicle defect notice under the Heavy Vehicle National Law (Queensland).

70 References to motor vehicle includes motorbike

To remove any doubt, it is declared that—

(a) a reference in this chapter to a motor vehicle in relation to a prescribed offence includes a reference to a motorbike; and

(b) a reference in this chapter to a motor vehicle in relation to a vehicle related offence includes a reference to a motorbike.

71 When a person is charged for this chapter in relation to a prescribed offence

(1) This section applies for this chapter if a proceeding for a prescribed offence is started against a person by notice to appear or arrest.

(2) This section also applies for this chapter if a police officer serves an infringement notice on a person for an infringement notice offence that is a vehicle related offence.

(3) If the proceeding is started by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.

(4) If the proceeding is started by arrest, the person is taken to be charged with having committed the offence when the person is arrested.

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(5) If a person is served with an infringement notice, the person is taken to be charged with having committed the offence when the infringement notice is served on the person.

Note—

See the *State Penalties Enforcement Act 1999*, sections 13 (Service of infringement notices—generally) and 14 (Service of infringement notices for infringement notice offences involving vehicles).

71A When a charge for an offence for this chapter is taken to not be decided if a proceeding for the offence is started by infringement notice

(1) This section applies for this chapter if a police officer serves an infringement notice on a person for an infringement notice offence that is a vehicle related offence.

(2) The charge for the offence is taken to not be decided if—

(a) there has been no payment of a penalty, in full or by instalments, under the *State Penalties Enforcement Act 1999*; and

(b) the registrar under the *State Penalties Enforcement Act 1999* has not registered a default certificate for the infringement notice under that Act; and

(c) the person has not otherwise been found guilty of the offence.

72 Punishment under this chapter is in addition to other punishment for the same offence

The impounding, immobilisation or forfeiture of a motor vehicle or the imposition of community service on a person under this chapter arising out of the commission of a prescribed offence is in addition to any other penalty that may be imposed on the person for the prescribed offence.

Division 2 Relationship with other legislation

73 National Credit Code

Nothing in this chapter affects the rights of a credit provider to repossess a motor vehicle under the National Credit Code and sell it.

Part 2 Impounding and immobilising motor vehicles and forfeiture of motor vehicles

Division 1 Impounding powers for type 1 vehicle related offences and forfeiture of motor vehicles in particular circumstances

74 Impounding motor vehicles for first type 1 vehicle related offence

(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 1 vehicle related offence in relation to the motor vehicle.

Note—

For when a person is charged with an offence, see section 71.

(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 90 days.

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74A Impounding motor vehicles for second or subsequent type 1 vehicle related offence

(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 1 vehicle related offence in relation to the motor vehicle and—

(a) the driver of the motor vehicle has been charged with having committed a type 1 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided; or

(b) the driver of the motor vehicle has previously been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period.

Notes—

1 For when a person is charged with an offence, see section 71.

2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

(2) A motor vehicle impounded under subsection (1) may be impounded until the end of proceedings for all charges under this section.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

(3) This section applies subject to division 2.

Note—

Division 2 contains provisions relating to applications for release of impounded or immobilised motor vehicles.

74B Forfeiture of motor vehicles if driver found guilty of second or subsequent type 1 vehicle related offence

(1) This section applies in relation to a motor vehicle impounded under section 74A if the driver of the motor vehicle—

(a) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion within the relevant period; and

(b) is found guilty of a second or subsequent type 1 vehicle related offence mentioned in section 74A(1).

(2) On the driver being found guilty—

(a) the motor vehicle becomes the property of the State; and

(b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.

(3) This section applies subject to division 2.

Note—

Under division 2 the commissioner may grant an application for the release of an impounded or immobilised motor vehicle.

(4) However, subsection (5) applies if—

(a) before the driver of the motor vehicle is found guilty of the offence mentioned in subsection (1)(b), the motor vehicle is released under section 79D, 79F or 79H with a condition; and

(b) the motor vehicle is later impounded or immobilised under section 79P because of a breach of the condition.

(5) Subsection (2) applies in relation to the motor vehicle as if the motor vehicle had not been released under section 79D, 79F or 79H.

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Not authorised—indicative only

Division 1A Impounding powers for type 2 vehicle related offences and forfeiture of motor vehicles in particular circumstances

74C Impounding motor vehicles for second or subsequent type 2 vehicle related offence

(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence in relation to the motor vehicle and—

(a) the driver of the motor vehicle has been charged with having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment; or

(b) the driver of the motor vehicle has previously been found guilty of a type 2 vehicle related offence committed on 1 previous occasion within the relevant period.

Note—

For when a person is charged with an offence, see section 71.

(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 7 days.

74D Impounding motor vehicles for third or subsequent type 2 vehicle related offence

(1) A police officer may impound a motor vehicle if the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence and—

(a) the driver of the motor vehicle has been charged with having committed type 2 vehicle related offences on 2 previous occasions within the relevant period and the charges have not been decided before the initiating impoundment; or

(b) the driver of the motor vehicle has previously been found guilty of type 2 vehicle related offences committed on 2 previous occasions within the relevant period; or

(c) the driver of the motor vehicle—

(i) has previously been found guilty of having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period; and

(ii) has been charged with having committed a type 2 vehicle related offence on 1 previous occasion within the relevant period and the charge has not been decided before the initiating impoundment.

Notes—

1 For when a person is charged with an offence, see section 71.

2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

(2) A motor vehicle may be impounded under subsection (1) for the prescribed impoundment period.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

(3) The prescribed impoundment period for a motor vehicle impounded under subsection (1) is 90 days.

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74E Impounding motor vehicles for fourth or subsequent type 2 vehicle related offence

(1) A police officer may impound a motor vehicle if—

(a) the driver of the motor vehicle is charged with having committed a type 2 vehicle related offence; and

(b) the driver of the motor vehicle has been charged with having committed type 2 vehicle related offences on 3 previous occasions within the relevant period; and

(c) for each of the charges mentioned in paragraph (b)—

(i) the charge has not been decided; or

(ii) the driver has been found guilty.

Notes—

1 For when a person is charged with an offence, see section 71.

2 For when a charge for an offence is taken to be not decided if the proceeding for the offence is started by the service of an infringement notice, see section 71A.

(2) A motor vehicle impounded under subsection (1) may be impounded until the end of proceedings for all charges under this section.

Note—

See section 117 about the release of a motor vehicle if the driver of the motor vehicle is found not guilty of the prescribed offence or the proceeding is discontinued.

(3) This section applies subject to division 2.

Note—

Division 2 contains provisions relating to applications for release of impounded or immobilised motor vehicles.

74F Forfeiture of motor vehicles if driver found guilty of fourth or subsequent type 2 vehicle related offence

(1) This section applies in relation to a motor vehicle impounded under section 74E if the driver of the motor vehicle—

(a) has been found guilty of 3 type 2 vehicle related offences committed within the relevant period; and

(b) is found guilty of the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1).

(2) On the driver being found guilty—

(a) the motor vehicle becomes the property of the State; and

(b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.

(3) This section applies subject to division 2.

Note—

Under division 2 the commissioner may grant an application for the release of an impounded or immobilised motor vehicle.

(4) However, subsection (5) applies if—

(a) before the driver of the motor vehicle is found guilty of the offence mentioned in subsection (1)(b), the motor vehicle is released under section 79D, 79F or 79H with a condition; and

(b) the motor vehicle is later impounded or immobilised under section 79P because of a breach of the condition.

(5) Subsection (2) applies in relation to the motor vehicle as if the motor vehicle had not been released under section 79D, 79F or 79H.

Division 1B Immobilising powers for type 1 and type 2 vehicle related offences

Subdivision 1 Preliminary

74G Purpose of div 1B

The purpose of this division is to provide another way for keeping a motor vehicle, that may be impounded under division 1 or 1A, at a place other than a holding yard.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Confiscation of number plate powers

74H Power to remove and confiscate number plates

(1) This section applies if—

(a) a police officer may impound a motor vehicle under division 1 or 1A; and

(b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard for the impoundment period.

(2) The police officer may attach a notice (a ***number plate confiscation notice***) to the motor vehicle stating all of the following—

(a) that the vehicle must not be operated;

(b) the period for which the vehicle is prohibited from being operated;

(c) that the notice must not be removed from the vehicle;

(d) the date the notice is attached to the motor vehicle.

(2A) If the police officer attaches a number plate confiscation notice to the motor vehicle and number plates are attached to the motor vehicle, the police officer must also remove and confiscate the number plates.

(3) Except as provided under this chapter, a motor vehicle to which a number plate confiscation notice is attached under this section is prohibited from being operated for the period stated in the notice (the ***number plate confiscation period***) for which the vehicle would have been kept in a holding yard and commencing on the day the notice is attached to the vehicle.

(4) To remove any doubt, it is declared that a number plate confiscation notice may be attached to a motor vehicle whether or not number plates are attached to the vehicle.

Note—

See sections 105B and 105C for number plate offences.

74I Moving motor vehicle to which number plate confiscation notice is attached

A motor vehicle to which a number plate confiscation notice is attached under section 74H may be moved (for example, by being driven or towed) to a place authorised by a police officer where the motor vehicle may lawfully stand.

Subdivision 3 Immobilising device powers

74J Power to attach immobilising device

(1) This section applies if—

(a) a police officer may impound a motor vehicle under division 1 or 1A; and

(b) the police officer decides that it is appropriate in the circumstances for the motor vehicle to be kept at a place other than a holding yard for the impoundment period.

(2) The police officer may attach an immobilising device, or arrange for an immobilising device to be attached, to the motor vehicle.

(3) Except as provided under this chapter, a motor vehicle to which an immobilising device is attached under this section is prohibited from being operated for the period for which the vehicle would have been kept in a holding yard commencing on the day the device is attached to the vehicle.

Note—

See sections 105D and 105E for immobilising device offences.

Division 1C Vehicle production notices

74K Power to require motor vehicle to be produced

(1) This section applies if a police officer may—

(a) impound a motor vehicle under division 1 or 1A; or

Not authorised—indicative only

Not authorised—indicative only

(b) immobilise a motor vehicle under division 1B.

(2) The police officer may require the owner or driver by notice in the approved form (a ***vehicle production notice***) to produce the vehicle at a stated place and stated time for impoundment or immobilisation.

(3) The time or place stated in the notice must be reasonable in the circumstances.

(4) If for any reason it is not practicable to give a vehicle production notice, the requirement may be made orally and confirmed by a vehicle production notice as soon as practicable.

74L Period of impoundment or immobilisation starts only when motor vehicle produced

(1) This section applies to a motor vehicle in relation to which a vehicle production notice has been given under section 74K.

(2) The period for which the motor vehicle is impounded under division 1 or 1A, or immobilised under this division, starts only when the motor vehicle is produced at the place stated in the notice.

74M Vehicle production notices generally

(1) The date stated in a vehicle production notice for production of a motor vehicle must be a date that is no later than the first business day occurring 5 days after the notice is given.

(2) The disposal of a motor vehicle within the period of 5 days after a vehicle production notice is given in relation to the motor vehicle does not affect the requirement to produce the motor vehicle in accordance with the notice, except as provided by subsection (3).

(3) A vehicle production notice ceases to have effect in relation to a motor vehicle if it is withdrawn by the commissioner by notice in writing given to—

(a) the owner of the motor vehicle; or

(b) a person who purchased the motor vehicle after the production notice was given who satisfies the commissioner that the purchase was made in good faith for value and without notice, at the time of the purchase, of the production notice.

Division 1D General provisions relating to impounding and immobilising motor vehicles

75 Particular powers for impounding or immobilising motor vehicles

(1) To impound a motor vehicle under divisions 1, 1A or part 2A, division 1, or to immobilise a motor vehicle under division 1B, a police officer may—

(a) stop the motor vehicle if it is moving, whether or not the motor vehicle is on a road; or

(b) require the driver of the motor vehicle if it is stationary to remain at the place where it is stopped for the time reasonably necessary; or

(c) direct the person who has the key needed to move the motor vehicle—

(i) to give the key to a police officer; or

(ii) if the motor vehicle is in a dwelling, to move the motor vehicle out of the dwelling, and to give the key to a police officer; or

(d) if it is necessary to enter the motor vehicle to impound or immobilise it, enter the motor vehicle to impound or immobilise it; or

(e) enter a place, other than the part of the place that is a dwelling, and stay for a reasonable time on the place; or

(f) do anything else reasonably necessary for impounding or immobilising the motor vehicle.

Not authorised—indicative only

Not authorised—indicative only

(2) Also, when impounding or immobilising a motor vehicle that is not registered under a transport Act, a police officer may require the driver of the motor vehicle to state the name and address of the owner of the motor vehicle.

Note—

Failure to comply with a direction or requirement given or made under this section is an offence against section 791.

(2A) After impounding a motor vehicle, a police officer may move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way the police officer considers appropriate.

Example of ways of moving a motor vehicle after it is impounded—

driving, pushing, towing or transporting the motor vehicle

(3) Subsection (1)(a) and (b) is in addition to, and does not limit, section 60 or 61.

(4) Also, the powers exercisable under subsection (1)(a) and (b) may be exercised before or after the motor vehicle is impounded or immobilised.

76 Release of motor vehicle in particular circumstances

(1) If a motor vehicle that is impounded or immobilised is a motor vehicle that is being unlawfully used or has been stolen or is a rental motor vehicle—

(a) the motor vehicle must be released to the owner as soon as reasonably practicable; and

(b) an application for an impounding order or a forfeiture order about the motor vehicle must not be made.

(2) In this section—

rental motor vehicle means a motor vehicle made available by a person in the course of a business in which the person rents vehicles to members of the public.

Not authorised—indicative only

77 Police officer may authorise tow

(1) This section applies if a police officer—

(a) arranges for an impounded motor vehicle to be towed to a holding yard; or

(b) arranges for an immobilised motor vehicle to be towed to a place.

(2) A police officer may sign a towing authority for the impounded or immobilised motor vehicle.

(3) The driver of a tow truck towing the impounded or immobilised motor vehicle under a towing authority must tow the motor vehicle to—

(a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard or place—the holding yard or the place; or

(b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.

(4) In this section—

towing authority means—

(a) a towing authority under the *Tow Truck Act 1973*; or

(b) another document authorising a person to tow a motor vehicle.

78 Impounding notice or immobilising notice for vehicle related offence

(1) This section applies if a motor vehicle is impounded or immobilised for a vehicle related offence.

(2) As soon as reasonably practicable, a police officer must give written notice in the approved form (***impounding notice***) of the impounding, or written notice in the approved form (***immobilising notice***) of the immobilising, to—

(a) the driver of the motor vehicle; and

Not authorised—indicative only

(b) if the driver is not the owner or not the only owner of the motor vehicle—the owner or each other owner of the motor vehicle.

(3) If the driver is a child, the impounding notice or the immobilising notice must also be given to the child's parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice under subsection (2).

(4) The impounding notice or the immobilising notice must state—

(a) the period that the motor vehicle is impounded or immobilised for; and

(b) information about how the owner of a motor vehicle impounded or immobilised under this chapter may recover the motor vehicle; and

(c) any other information prescribed under a regulation.

(5) When giving an impounding notice or immobilising notice under this section to a child or the child's parent or guardian, the police officer giving the notice must also give the person an explanation of the matters stated in the impounding notice or immobilising notice.

(6) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.

(7) An impounding notice or immobilising notice given to a driver under subsection (2)(a) must be given personally to the driver.

(8) If the name of an owner of the motor vehicle is not known, an impounding notice or immobilising notice required to be given to the owner under subsection (2)(b) may be given by making the information required to be included on the impounding notice or immobilising notice, other than the owner's name and address, available on the police service internet website.

Division 2 Other provisions relating to impounded or immobilised motor vehicles

Subdivision 1 Preliminary

79 Definitions for div 2

In this division—

eligible person, for a motor vehicle, means an owner or usual driver of the motor vehicle.

information notice, for a decision of the commissioner under this division, means a notice stating—

(a) the decision; and

(b) the reasons for the decision; and

(c) that the person to whom the notice is given may appeal against the decision within 28 days after the person receives the notice; and

(d) how the person may appeal against the decision.

vehicle release notice, for a motor vehicle, means a notice stating—

(a) the decision of the commissioner made under this division; and

(b) the time and date when the impoundment, or immobilisation, of the vehicle ends; and

(c) any conditions to which the release of the motor vehicle is subject.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Application for release of impounded or immobilised motor vehicle

79A Application for release of impounded or immobilised motor vehicle on basis of severe hardship

(1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, on the basis that the person would suffer severe hardship if the motor vehicle was not released.

(2) The application must be—

(a) made in the approved form; and

(b) supported by enough information to enable the commissioner to decide the application.

Note—

See section 79B(4) and (5) for particular information the applicant must give to the commissioner.

(3) An application may be made under this section regardless of whether the motor vehicle may be liable to forfeiture.

79B Decision on application for release of impounded or immobilised motor vehicle on basis of severe hardship

(1) The commissioner must consider an application for the release of a motor vehicle under section 79A after receiving all necessary information relevant to the application and either—

(a) grant the application; or

(b) refuse to grant the application.

(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.

(3) The commissioner may grant the application only if the commissioner is satisfied a refusal to grant the application would—

(a) cause severe financial hardship to the applicant or the applicant's family by depriving the applicant of the applicant's means of earning a living; or

(b) cause severe physical hardship to the applicant or the applicant's family.

(4) For subsection (3)(a), the applicant must give the following to the commissioner—

(a) a statement made by the applicant outlining how a refusal to grant the application would cause severe financial hardship to the applicant or the applicant's family;

(b) if the applicant is not self-employed—a statement made by the applicant's employer confirming the applicant would be deprived of the applicant's means of earning a living if the application is refused.

(5) For subsection (3)(b), the applicant must give the commissioner a statement made by the applicant that—

(a) outlines how a refusal to grant the application would cause severe physical hardship to the applicant or the applicant's family; and

(b) has attached to it statutory declarations from persons other than the applicant, other documentary evidence, or certified copies of documentary evidence, in support of each matter stated in the statement.

(6) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

(7) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.

(8) The commissioner may grant the application with or without conditions.

Not authorised—indicative only

Not authorised—indicative only

Examples of conditions—

1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle

2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

(9) A condition made by the commissioner under this section expires on the earlier of the following—

(a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;

(b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

(10) In this section—

certified copy, of documentary evidence, means certified by a justice of the peace or commissioner for declarations in writing to be a true copy of the documentary evidence.

79C Application for release of impounded or immobilised motor vehicle on basis prescribed offence happened without owner's consent

(1) The owner of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, may apply to the commissioner for the release of the motor vehicle on the basis that the offence happened without the consent of the person.

(2) The application must be—

(a) made in the approved form; and

(b) supported by enough information to enable the commissioner to decide the application.

(3) An application may be made under this section regardless of whether the motor vehicle may be liable to forfeiture.

79D Decision on application for release of impounded or immobilised motor vehicle on basis prescribed offence happened without owner's consent

(1) The commissioner must consider an application for the release of a motor vehicle under section 79C after receiving all necessary information relevant to the application and either—

(a) grant the application; or

(b) refuse to grant the application.

(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.

(3) The commissioner may grant the application only if the commissioner is satisfied the relevant prescribed offence happened without the consent of the owner.

(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.

(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle

2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

Not authorised—indicative only

Not authorised—indicative only

(7) A condition made by the commissioner under this section expires on the earlier of the following—

(a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;

(b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

(8) In this section—

relevant prescribed offence means the prescribed offence because of which the impoundment or immobilisation has happened.

79E Application for release of impounded or immobilised motor vehicle on basis that circumstances giving rise to offence have been rectified

(1) This section applies if a motor vehicle is impounded under division 1 or 1A, or immobilised under division 1B, because of the commission of a relevant type 2 vehicle related offence.

(2) An eligible person may apply to the commissioner for the release of the motor vehicle on the basis that the circumstances giving rise to the offence have been rectified.

(3) The application must be—

(a) made in the approved form; and

(b) supported by enough information to enable the commissioner to decide the application.

Examples for paragraph (b)—

a receipt issued by the department within which the Road Use Management Act is administered indicating the payment of vehicle registration fees for an impounded motor vehicle or a copy of a license issued by that department

(4) In this section—

relevant type 2 vehicle related offence means—

(a) an offence against the Road Use Management Act involving the use on a road of a vehicle that is not registered as required under that Act; or

(b) an offence against the Road Use Management Act, section 78(1).

79F Decision on application for release of impounded or immobilised motor vehicle on basis that circumstances giving rise to offence have been rectified

(1) The commissioner must consider an application for the release of a motor vehicle under section 79E after receiving all necessary information relevant to the application and either—

(a) grant the application; or

(b) refuse to grant the application.

(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.

(3) The commissioner may grant the application if the commissioner is satisfied the circumstances giving rise to the offence have been rectified.

(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.

(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle

Not authorised—indicative only

Not authorised—indicative only

2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

(7) A condition made by the commissioner under this section expires on the earlier of the following—

(a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;

(b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

79G Application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable

(1) An eligible person may apply to the commissioner for the release of a motor vehicle impounded under division 1 or 1A, or immobilised under division 1B, on the basis that there were not reasonable grounds to impound or immobilise the motor vehicle.

(2) The application must be—

(a) made in the approved form; and

(b) supported by enough information to enable the commissioner to decide the application.

79H Decision on application for release of impounded or immobilised motor vehicle on basis that grounds for impoundment or immobilisation unreasonable

(1) The commissioner must consider an application for the release of a motor vehicle under section 79G after receiving all necessary information relevant to the application and either—

(a) grant the application; or

(b) refuse to grant the application.

(2) The commissioner must, if reasonably practicable, decide the application within 5 business days of receiving the application and other documents required under this subdivision.

(3) The commissioner may grant the application if the commissioner is not satisfied that there were reasonable grounds to impound or immobilise the motor vehicle.

(4) If the commissioner decides to grant the application, the commissioner must give the applicant a vehicle release notice for the motor vehicle.

(5) If the commissioner decides to refuse to grant the application, the commissioner must as soon as practicable give the applicant an information notice for the decision.

(6) The commissioner may grant the application with or without conditions.

Examples of conditions—

1 a condition that the owner of the motor vehicle does not allow the person who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded to use the motor vehicle

2 a condition that the owner of the motor vehicle who committed, or is alleged to have committed, the offence for which the motor vehicle was impounded, is to only use the motor vehicle for work related purposes

(7) A condition made by the commissioner under this section expires on the earlier of the following—

(a) if the driver is found not guilty of the prescribed offence for which the motor vehicle was impounded or immobilised or the proceeding for the offence is discontinued—the day the driver is found not guilty or the proceeding is discontinued;

(b) when the period of impoundment or immobilisation that would have applied to the motor vehicle had it not been released by way of a decision of the commissioner under this section ends.

Not authorised—indicative only

Not authorised—indicative only

79I Impoundment or immobilisation ends if application for release of motor vehicle granted

(1) If the commissioner grants an application for the release of a motor vehicle under this division, the impoundment of the motor vehicle under division 1 or 1A, or the immobilisation of the motor vehicle under division 1B, ends.

(2) This section applies subject to section 79P.

Subdivision 3 Appeals

79J Who may appeal

(1) A person who is aggrieved by a decision of the commissioner under section 79B, 79D, 79F or 79H may appeal against the decision.

(2) In this section—

decision includes a condition made by the commissioner under section 79B, 79D, 79F or 79H in relation to granting an application for the release of a motor vehicle.

79K How to start appeal

(1) The appeal is started by filing a notice of appeal with the clerk of a Magistrates Court.

(2) The appellant must serve a copy of the notice on—

(a) the other persons entitled to appeal against the decision; and

(b) the commissioner.

(3) Despite subsection (2), the clerk of the court may ask the commissioner to serve a copy of the notice on a person mentioned in subsection (2)(a) whom the appellant is unable to serve.

(4) The notice of appeal must be filed within 28 days after the person is given an information notice for the decision.

(5) The court may at any time extend the period for filing the notice of appeal.

(6) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

79L Effect of appeal on decision

(1) The start of an appeal against a decision of the commissioner does not affect the operation of the decision or prevent the taking of action to implement the decision.

(2) However, the court may make an order staying the operation of the decision being appealed against until the appeal is finally decided.

(3) The court may act under subsection (2) on the application of the appellant or on its own initiative.

79M Commissioner has right of appearance

The commissioner has a right to appear and be heard before the court on an appeal under this subdivision.

79N Hearing procedures

(1) An appeal must be decided on the evidence before the commissioner.

(2) However, the court may order that the appeal be heard afresh, in whole or part.

79O Powers of Magistrates Court

In deciding an appeal, the court may—

(a) confirm the decision appealed against; or

(b) set aside the decision and substitute another decision that it considers appropriate.

Not authorised—indicative only

Not authorised—indicative only

Subdivision 4 Miscellaneous

79P Power to take certain action if breach of condition

(1) This section applies if—

(a) the commissioner grants an application under this division for the release of an impounded or immobilised motor vehicle with a condition; and

(b) the condition is breached.

(2) A police officer may impound or immobilise the motor vehicle for the remainder of the period for which the vehicle would have been impounded or immobilised.

(3) For impounding or immobilising a motor vehicle under this section, a police officer may exercise any of the powers under section 75 if the police officer reasonably considers the exercise of the power may be effective for the purpose.

79Q Delegation—commissioner

The commissioner may delegate any of the commissioner's powers under this division including, for example, considering an application for the release of an impounded or immobilised vehicle under subdivision 2 and making a decision about the application, to a police officer of at least the rank of inspector.

Part 2A Impounding motorbikes for motorbike noise direction offences or motorbike noise order offences

Division 1 Impounding powers for motorbike noise direction offences or motorbike noise order offences

80 Impounding motorbike for motorbike noise direction offence or motorbike noise order offence

(1) A police officer may impound a motorbike if—

(a) the driver of the motorbike is charged with having committed—

(i) a motorbike noise direction offence; or

(ii) a motorbike noise order offence; or

(b) the driver of the motorbike is a child and the police officer reasonably suspects the child has committed—

(i) a motorbike noise direction offence; or

(ii) a motorbike noise order offence.

Note—

For when a person is charged with an offence, see section 71.

(2) A motorbike impounded under subsection (1) may be impounded for the initial impoundment period.

81 Impounding notice for motorbike noise direction offence or motorbike noise order offence

(1) This section applies if a motorbike is impounded for a motorbike noise direction offence or a motorbike noise order offence.

Not authorised—indicative only

Not authorised—indicative only

(2) As soon as reasonably practicable, a police officer must give written notice in the approved form (***impounding notice***) of the impounding to—

(a) the driver of the motorbike; and

(b) if the driver is not the owner or not the only owner of the motorbike—the owner or each other owner of the motorbike.

(3) If the driver is a child, the impounding notice must also be given to the child's parent or guardian if it is reasonably practicable to do so, unless the parent or guardian is given notice under subsection (2).

(4) If the motorbike is impounded for a motorbike noise direction offence, the impounding notice must include the information required under section 82.

(5) If the motorbike is impounded for a motorbike noise order offence, the impounding notice must include the information required under section 83 or 84.

(6) When giving an impounding notice under this section to a child or the child's parent or guardian, the police officer giving the impounding notice must also give the person an explanation of the matters stated in the notice.

(7) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.

(8) An impounding notice given to a driver under subsection (2)(a) must be given personally to the driver.

(9) Also, if the name of the owner of the motorbike is not known, an impounding notice required to be given to the owner under subsection (2)(b) may be given by making the information required to be included on the impounding notice, other than the owner's name and address, available on the police service internet website.

Division 2 Notice requirements for motorbikes impounded for motorbike noise direction offences or motorbike noise order offences

82 Content of notice for motorbike noise direction offence

(1) This section applies if a motorbike has been impounded because a police officer reasonably suspects the driver of the motorbike has committed a motorbike noise direction offence.

(2) The impounding notice must state—

(a) that the motorbike is impounded for the initial impoundment period; and

(b) the prescribed impoundment information; and

(c) that an application will be made to the relevant court for a noise abatement order within 48 hours after the end of the impoundment period.

83 Content of notice for first motorbike noise order offence

(1) This section applies if a motorbike has been impounded because of a motorbike noise order offence and section 84 does not apply to the driver of the motorbike.

(2) The impounding notice must state—

(a) that the motorbike is impounded for the initial impoundment period; and

(b) the prescribed impoundment information; and

(c) that an application will be made to the relevant court for an order that the motorbike be impounded for 3 months if the driver of the motorbike is found guilty of a motorbike noise order offence relating to the motorbike.

Not authorised—indicative only

Not authorised—indicative only

84 Content of notice for second or subsequent motorbike noise order offence

(1) This section applies if a motorbike has been impounded because of a motorbike noise order offence and—

(a) the driver of the motorbike has been found guilty of having committed a motorbike noise order offence relating to that motorbike on at least 1 previous occasion and has been charged with having committed another motorbike noise order offence that has not been decided and relates to that motorbike; or

(b) the driver of the motorbike has been charged with having committed a motorbike noise order offence relating to that motorbike on at least 2 previous occasions and the charges have not been decided;

within 2 years after a noise abatement order is made in relation to the driver of the motorbike.

Note—

See section 71 for when a person is charged for this chapter. Also, this section, unlike the corresponding provisions about motor vehicle related offences, does not rely on the suspicion of a police officer because the principal operation of the section in fact relates to children and processes under the *Youth Justice Act 1992* apply.

(2) The impounding notice must state—

(a) that the motorbike is impounded for the initial impoundment period; and

(b) that an application will be made to the relevant court for an order that the motorbike be forfeited to the State if either of the following apply to the driver—

(i) the driver of the motorbike has previously been found guilty of a motorbike noise order offence relating to that motorbike;

(ii) the driver of the motorbike has been charged with having committed a motorbike noise order offence relating to that motorbike on at least 2 previous occasions and the charges have not been decided; and

(c) the prescribed impoundment information.

Part 3 Obtaining impounding orders for motorbike noise order offences

86 Application for impounding order for motorbike noise order offence

(1) This section applies to the driver of a motorbike that is impounded for a motorbike noise order offence if the driver has been charged with the offence and an application for a forfeiture order for the motorbike can not be made under section 91.

(2) Within 48 hours after charging the person with the offence, a police officer must apply in the approved form for an order that the motorbike be held at a holding yard for a period of not more than 3 months (***impounding order***).

(3) The application must be made to the relevant court but may be started by application to a magistrate under section 800 and subsection (5) of this section.

(4) Subsection (3) applies even though the value of the motorbike may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

(5) If the application is properly made to a magistrate under section 800, the magistrate must—

(a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and

(b) give a copy of the application and the order to the clerk of the court of the relevant court.

Not authorised—indicative only

Not authorised—indicative only

88 Orders on application for impounding order if motorbike noise order offence not decided

(1) This section applies if—

(a) an application is made to a relevant court under section 86 for an impounding order for a motorbike; and

(b) any proceeding on a charge of a motorbike noise order offence in relation to which the application is made has not been decided.

(2) The court must adjourn the application until the driver has been found guilty of the offence.

89 Advice to owner of motorbike of date of hearing

(1) As soon as reasonably practicable after a date is set for the hearing of an application for an impounding order in relation to a motorbike, a police officer must give the driver of the motorbike and each owner of the motorbike written notice of the date, time and place of the hearing.

(2) If the driver or owner is a child and it is reasonably practicable to do so, notice must also be given to the child's parent or guardian.

Part 4 Obtaining forfeiture orders for motorbike noise order offences

91 Application for forfeiture order for motorbike noise order offence

(1) This section applies in relation to a motorbike impounded under section 74 for a motorbike noise order offence if the driver of the motorbike—

(a) has been—

(i) found guilty of having committed a motorbike noise order offence relating to that motorbike on at least 1 previous occasion; and

(ii) charged with having committed another motorbike noise order offence relating to that motorbike and the charge has not been decided; or

(b) has been charged with having committed a motorbike noise order offence relating to that motorbike on at least 2 previous occasions and the charges have not been decided.

(2) Within 48 hours after charging the person with the offence in relation to which the motorbike was impounded under section 74, a police officer must apply in the approved form for an order that the motorbike be forfeited to the State (***forfeiture order***).

(3) The application must be made in relation to at least 2 motorbike noise order offences the circumstances of which apply to the driver under subsection (1)(a) or (b).

(4) The application must be made to the relevant court but may be started by application to a magistrate under section 800 and subsection (6) of this section.

(5) Subsection (4) applies even though the value of the motorbike may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

(6) If the application is properly made to a magistrate under section 800, the magistrate must—

(a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and

(b) give a copy of the application and the order to the clerk of the court of the relevant court.

93 Orders on application for forfeiture order if motorbike noise order offence not decided

(1) This section applies if a police officer applies to a relevant court under section 91 for a forfeiture order for a motorbike and any proceeding on a charge of a motorbike noise order

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offence in relation to which the application is made has not been decided.

(2) If the driver of the motorbike has not been found guilty of motorbike noise order offences in relation to offences committed on 2 occasions within the prescribed period, the court must adjourn the application until the driver has been found guilty of charges in relation to motorbike noise order offences committed on at least 2 occasions within the prescribed period.

(3) However, if the application relates to at least 1 motorbike noise order offence of which the driver has been found guilty, the court may make an order under subsection (4) if satisfied the motorbike should be impounded to stop the commission of another motorbike noise order offence.

(4) The court may order that the motorbike be impounded, or continue to be impounded, for a stated period of not more than 3 months.

94 Advice to owner of motorbike of date of hearing

(1) As soon as reasonably practicable after a date is set for the hearing of an application for a forfeiture order in relation to a motorbike, a police officer must give the driver of the motorbike and each owner of the motorbike written notice of the date, time and place of the hearing.

(2) If the driver or owner is a child and it is reasonably practicable to do so, notice must also be given to the child's parent or guardian.

Part 5 Deciding applications

Division 1 Where and when an application may be heard

95 Where application is to be decided

An application for an impounding order or a forfeiture order for a motorbike noise order offence must be heard and decided by the relevant court.

97 When application to be heard—motorbike noise order offence

(1) An application for an impounding order for a motorbike noise order offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 1 motorbike noise order offence.

(2) An application for a forfeiture order for a motorbike noise order offence must be heard and decided as soon as practicable after the person to whom the application relates is found guilty of 2 motorbike noise order offences committed on 2 occasions within the prescribed period.

(3) However, if, after an application for a forfeiture order in relation to a motorbike noise order offence is made—

(a) the person to whom the application relates is found not guilty of 1 of the motorbike noise order offences or the proceeding for 1 of the offences is discontinued; and

(b) no motorbike has previously been impounded for a motorbike noise order offence committed within the relevant period on an application for an impounding order made in relation to that person for an offence to which the application for the forfeiture order relates;

the relevant court may hear and decide the application for the forfeiture order as if it were an application for an impounding order.

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(4) An application to which subsection (3) applies is taken, for division 3, to be an application for an impounding order.

Division 2 Consideration of application if made for motorbike noise order offence

100 Consideration of application for impounding order

(1) On the hearing of an application for an impounding order for a motorbike noise order offence, the relevant court may order that the motorbike be impounded for 3 months if the driver of the motorbike has been found guilty of a motorbike noise order offence.

(2) Also, if the driver of the motorbike was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 103.

(3) Despite subsection (1), the relevant court may—

(a) make an order under section 102 for the performance by the driver of the motorbike of community service as decided by the court; and

(b) order that the motorbike be released to the owner.

(4) Also, if an owner of the motorbike raises the defence mentioned in section 107 and the relevant court is satisfied the defence has been made out, the court may order that the motorbike be released to the owner.

101 Consideration of application for forfeiture order

(1) On the hearing of an application for a forfeiture order for a motorbike noise order offence, the relevant court may order that the motorbike be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the driver of the motorbike has been found guilty of a motorbike noise order offence committed on 2 occasions within the prescribed period.

(2) If—

(a) under subsection (1), the relevant court orders the impounding of the motorbike to which the application relates; and

(b) a relevant court has previously made an impounding order under section 100 for a motorbike noise order offence committed within the relevant period and forming the basis of the application;

the motorbike is impounded under subsection (1) for the motorbike noise order offence giving rise to the application for the forfeiture order and not for the motorbike noise order offence to which the impounding order under section 100 relates.

(3) Also, if the driver of the motorbike was a child when the last offence was committed, the relevant court must consider whether to make a costs order under section 103.

(4) Despite subsection (1), the relevant court may—

(a) make an order under section 102 for the performance by the driver of the motorbike of community service as decided by the court; and

(b) order that the motorbike be released to the owner.

(5) Also, if an owner of the motorbike raises the defence mentioned in section 107 and the relevant court is satisfied the defence has been made out, the court may order that the motorbike be released to the owner.

(6) On the making of a forfeiture order for a motorbike—

(a) the motorbike becomes the property of the State; and

(b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the motorbike is extinguished.

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Not authorised—indicative only

Division 3 Community service orders in relation to motorbike noise direction offences or motorbike noise order offences

102 Community service instead of impounding or forfeiture order

(1) This section applies if—

(a) the relevant court is satisfied impounding or forfeiting a motorbike will cause severe financial or physical hardship to an owner or usual driver of the motorbike; and

(b) the driver to whom the application relates was an adult when he or she committed the last offence in relation to which the application is made.

(2) The court may, instead of ordering the impounding or forfeiture of the motorbike, order the driver to perform not more than 240 hours community service.

(3) An order made under subsection (2)—

(a) is taken to be an order made under the *Penalties and Sentences Act 1992* for the performance of community service under a fine option order under that Act; and

(b) is taken to have been made in the proceeding for the vehicle related offence or motorbike noise order offence giving rise to the application for the impounding order or forfeiture order.

Part 5A Other provisions about applications and orders

Division 1 Costs orders for child drivers

103 Costs order for child drivers

(1) This section applies if—

(a) all of the following apply—

(i) a court finds a person guilty of a prescribed offence;

(ii) the person was a child when he or she committed the offence;

(iii) the motor vehicle to which the offence relates is impounded or immobilised; or

(b) a relevant court makes an impounding order or a forfeiture order for a motorbike noise order offence and the driver of the motorbike was a child when he or she committed the last offence in relation to which the order is made.

(2) The court must consider whether the child has the capacity to pay the costs of removing or keeping the motor vehicle and, if the court considers the child has the capacity to pay those costs, may order the child to pay the costs of removing or keeping the motor vehicle.

(3) If, after considering any submissions made by the child or the child's parent, the court considers the child does not have the capacity to pay the costs of removing or keeping the motor vehicle, the court may call on the child's parent under applied section 258 to show cause under applied section 259, as directed by the court, why the parent should not pay the costs of removing or keeping the motor vehicle.

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(4) The court may, under applied section 259(5), order the child's parent to pay the costs of removing or keeping the motor vehicle.

(5) In this section—

applied section 258 means the *Youth Justice Act 1992*, section 258, as applied by section 104.

applied section 259 means the *Youth Justice Act 1992*, section 259, as applied by section 104.

parent includes a guardian other than the chief executive (child safety).

104 Application of applied sections for s 103

(1) This section states how applied sections 258 and 259 apply for section 103.

(2) Applied section 258 applies as if—

(a) subsections (1) and (9) were omitted; and

(b) a reference in the applied section—

(i) to compensation were a reference to the costs of removing or keeping a motor vehicle impounded or immobilised under this chapter; and

(ii) to the prosecution were a reference to—

(A) the applicant for the impounding order or forfeiture order; or

(B) otherwise—the prosecution for the prescribed offence.

(3) Applied section 259 applies as if—

(a) a reference in the applied section—

(i) to compensation were a reference to the costs of removing or keeping a motor vehicle impounded or immobilised under this chapter; and

(ii) to the prosecution were a reference to—

(A) the applicant for the impounding order or forfeiture order; or

(B) otherwise—the prosecution for the prescribed offence; and

(b) a reference in applied section 259(4)to a show cause hearing is a reference to the hearing and determination of the issue of whether a parent should be ordered, under applied section 259(5), to pay the costs of removing or keeping a motor vehicle impounded or immobilised under this chapter; and

(c) applied section 259(4), to the extent it mentions the director of public prosecutions, does not apply; and

(d) the expression in applied section 259(5) 'of the matters mentioned in section 258(1)(a), (b) and (c)' read instead as 'that the parent should be ordered to pay the costs of removing or keeping a motor vehicle impounded or immobilised under the *Police Powers and Responsibilities Act 2000*, chapter 4'.

(4) Also, in relation to an order made under applied section 259(5)—

(a) the *Youth Justice Act 1992*, section 260 does not apply to that order; and

(b) the order is instead taken to be an order fining a person for an offence for the purposes of the *State Penalties Enforcement Act 1999*, section 34.

Division 2 Offences

105 Offence to remove vehicle from holding yard

(1) A person must not unlawfully remove a motor vehicle impounded under this chapter from a holding yard.

Maximum penalty—40 penalty units.

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(2) For subsection (1), it does not matter how the motor vehicle came to be in the holding yard.

105A Failure to comply with requirement to produce motor vehicle

A person must comply with a requirement under section 74K, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

105B Offence to operate vehicle during number plate confiscation period

A person must not operate a motor vehicle during a number plate confiscation period applying to the vehicle without reasonable excuse or unless the motor vehicle is moved under section 74I.

Maximum penalty—40 penalty units.

105C Offence to remove, tamper with or modify number plate confiscation notice

A person must not, without reasonable excuse, remove, tamper with, or modify a number plate confiscation notice that has been attached to a motor vehicle under section 74H.

Maximum penalty—40 penalty units.

105CA Offence to modify, sell or dispose of motor vehicle during number plate confiscation period

(1) This section applies if a number plate confiscation notice was attached to a motor vehicle under section 74H.

(2) The owner of the motor vehicle must not, without reasonable excuse, modify or sell or otherwise dispose of the motor vehicle during the number plate confiscation period.

Maximum penalty for subsection (2)—40 penalty units.

105D Offence to tamper with, remove or modify immobilising device

A person must not, without reasonable excuse, tamper with, remove or modify an immobilising device attached to a motor vehicle.

Maximum penalty—40 penalty units.

105E Offence to operate motor vehicle if immobilising device unlawfully removed, tampered with or modified

A person must not, without reasonable excuse, operate a motor vehicle if an immobilising device attached to the motor vehicle has been unlawfully removed, tampered with or modified.

Maximum penalty—40 penalty units.

105F Offence to breach condition made on release of motor vehicle

A person must not contravene a condition made on the release of a motor vehicle by the commissioner under part 2, division 2 unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

106 Offence to modify, sell or dispose of motorbike before application decided

(1) This section applies if a motorbike that is the subject of an application for an impounding order or a forfeiture order is released to the owner of the motorbike before the application is decided.

(2) The owner of the motorbike must not modify or sell or otherwise dispose of the motorbike until the application for the impounding order or forfeiture order is decided or otherwise ends.

Maximum penalty for subsection (2)—40 penalty units.

Not authorised—indicative only

Not authorised—indicative only

106A Offence to modify, sell or dispose of motor vehicle subject to vehicle production notice

(1) This section applies if a motor vehicle is the subject of a vehicle production notice.

(2) The owner of the motor vehicle must not, without reasonable excuse, modify or sell or otherwise dispose of the motor vehicle while the motor vehicle is the subject of the vehicle production notice.

Maximum penalty for subsection (2)—40 penalty units.

107 Defence in relation to motorbike noise order offences

In a proceeding for an impounding order or a forfeiture order in relation to a motorbike, it is a defence for an owner of the motorbike to prove that a motorbike noise order offence happened without the knowledge and consent of the owner.

Example—

A parent lends a motorbike to his or her child to visit friends and the child commits a motorbike noise order offence on the motorbike. If the Magistrates Court is satisfied, on evidence tendered or submissions made by the parent, that the child committed the offence without the knowledge and consent of the parent, the Magistrates Court may order the motorbike's return to the parent.

108 Counting the occasions—general

(1) For sections 74A, 74B, 74C, 74D, 74E, 74F and 101, for an occasion of the commission of an offence to be counted in addition to another occasion counted, an occasion must be a separate occasion, that is, an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.

(2) However, if a series of events that would, apart from this subsection, be treated as a single occasion of the commission of an offence under subsection (1) includes the intervention in any way by a police officer between the commission of 1 vehicle related offence and another vehicle related offence or 1 motorbike noise offence and another motorbike noise

offence in the course of the events, the events that happen after the police officer's intervention must be treated as a separate occasion.

Example for subsection (2)—

A driver commits a vehicle related offence at 10p.m. on 1 January. The driver is stopped by a police officer. Before the driver can be given a notice to appear in relation to the vehicle related offence, the driver continues to commit the offence but using another motor vehicle. A police officer again stops the driver. The police officer impounds both motor vehicles. Because a police officer has intervened between the happening of the first and second offences, the occasions must be treated as 2 separate occasions for this chapter.

108A References to previous occasions in ss 74A, 74B, 74C, 74D, 74E, 74F and 91

In sections 74A, 74B, 74C, 74D, 74E, 74F and 91, a reference to a vehicle related offence or a motorbike noise order offence committed on a previous occasion is a reference to a vehicle related offence or motorbike noise order offence committed on an occasion before the occasion on which the initiating impoundment offence was committed.

108B Matters for decisions under ss 74A, 74B, 74C, 74D, 74E, 74F and 101

(1) Subject to sections 108 and 108A, for a decision under sections 74A, 74B, 74C, 74D, 74E, 74F and 101 of whether or not a person has, or has previously, been charged with, or found guilty of, a vehicle related offence or motorbike noise order offence committed on a previous occasion or any occasion or occasions, the following do not matter—

(a) whether or not any finding of guilt relied on relates to a charge heard and decided together with another charge or other charges relating to another or other findings of guilt being relied on;

(b) whether or not findings of guilt relied on relate to charges that were heard and decided in the order in

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Not authorised—indicative only

which the occasions of the commission of offences to which they related happened;

(c) whether or not any occasion of the commission of an offence, or any charge or any finding of guilt, relied on happened before or after any occasion of the commission of an offence, charge or finding of guilt also relied on.

Example—

An offender commits vehicle related offences on 1 January (offence 1), 1 May (offence 2) and 1 June (offence 3). The offender is charged with offence 1 on 1 January, offence 2 on 1 May and offence 3 on 1 June. The offender is convicted of offence 3 on 15 June and offences 1 and 2 on 1 October. When a court or magistrate considers the application for impoundment or forfeiture on 1 December, for the purpose of counting the occasions mentioned in this subsection, there are 3 occasions the court may rely on to make an order.

(2) For a decision under section 100 or 101, the following do not matter—

(a) whether or not any finding of guilt relied on is for an offence in relation to which the application was originally started;

Example for paragraph (a)—

An application may relate to particular vehicle related offences but before the application is decided, the driver is found guilty of another vehicle related offence. The court may rely on the latter finding of guilt when making an order under the sections mentioned.

(b) whether or not any finding of guilt relied on in an application relates to an offence committed before or after the application was started.

109 Appeal

(1) An order made against a person under section 102 for the performance of community service may be appealed against as a sentence imposed on the person.

(2) A person may appeal against any other order of a relevant court or magistrate under this chapter to the District Court within 28 days after the day the order is made.

(3) Also, a person may appeal against an order of the District Court under this division to the Court of Appeal within 28 days after the day the order is made.

(4) On the appellant's application, an appeal under subsection (2) may be by way of rehearing from the start.

110 Powers for enforcing court order

(1) This section applies if a relevant court, on an application under this chapter for an impounding order or forfeiture order for a motorbike, makes an impounding order or a forfeiture order for the motorbike.

(2) For giving effect to the impounding order or forfeiture order, the relevant court may, in the order, authorise a police officer, without warrant, to enter any place the police officer reasonably suspects is a place where the motorbike may be found and search for, impound, or if the motorbike is forfeited to the State, take possession of, and remove the motorbike.

(3) If the impounding order or forfeiture order authorises a police officer to enter a place for giving effect to the order as mentioned in subsection (2), power to enter the place includes, and is taken always to have included, power to re-enter the place as often as is reasonably necessary for the purpose.

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Part 6 Other provisions

Division 1 Liability for cost of impounding or immobilisation

111 State's liability to pay costs of impounding or immobilisation

(1) Unless otherwise expressly provided by this division, the State is not liable to pay the costs of removing a motor vehicle impounded or immobilised under this chapter and keeping it for the period for which it is impounded or immobilised.

(2) However, the State is liable to pay the costs of removing an impounded or immobilised vehicle and keeping it if—

(a) the driver of the motor vehicle—

(i) was a child when he or she committed the offence for which it was impounded or immobilised; or

(ii) is found not guilty of the offence for which the motor vehicle was impounded or immobilised; or

(b) the proceeding for the offence for which the motor vehicle was impounded or immobilised is withdrawn.

112 Liability to pay costs of impounding or immobilisation—adult driver

(1) This section applies in relation to a motor vehicle impounded or immobilised for a prescribed offence or a motorbike noise direction offence if the driver of the motor vehicle was an adult when he or she committed the offence for which it was impounded or immobilised.

(2) The driver of the motor vehicle is liable to pay the costs of removing or keeping the motor vehicle.

(3) If the driver is found guilty of the prescribed offence or motorbike noise direction offence, any costs paid by someone

else on the driver's behalf become a debt payable to the other person by the driver.

113 Liability to pay costs of impounding or immobilisation—child driver

(1) This section applies in relation to a motor vehicle impounded or immobilised because of a prescribed offence or a motorbike noise direction offence if the driver of the motor vehicle was a child when he or she committed the offence for which it was impounded or immobilised.

(2) If the child is found guilty by a court of a prescribed offence or motorbike noise direction offence in relation to the motor vehicle—

(a) the child is liable to pay the costs of removing or keeping the motor vehicle if the court orders under section 103 that the child pay the costs; or

(b) if the court orders, under that section, the child's parent to pay the costs of removing or keeping the motor vehicle under applied section 259, the child's parent is liable to pay the costs of removing or keeping the motor vehicle.

(3) If the court orders the child to pay the costs of removing or keeping the motor vehicle, any costs paid by the State under section 111(2) become a debt payable to the State by the child.

(4) If the court orders the child's parent or guardian to pay the costs of removing or keeping the motor vehicle, any costs paid by the State under section 111(2) become a debt payable to the State by the child's parent or guardian.

114 Payment of costs if motor vehicle not recovered

(1) This section applies if a person who is entitled to recover a motor vehicle after a period of impoundment ends fails to recover the motor vehicle after the period ends.

(2) If—

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(a) before the period of impoundment ends, the owner was personally given an impounding notice for the motor vehicle; and

(b) the owner was the driver when the vehicle was impounded;

the owner is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends, whether or not the driver is found guilty of the offence for which the vehicle is impounded.

(3) If—

(a) before the period of impoundment ends, the owner was given an impounding notice for the motor vehicle; and

(b) the owner was not the driver of the motor vehicle when it was impounded;

the owner is liable to pay the costs of keeping the vehicle for each day that is more than 2 business days after the owner is given the impounding notice, whether or not the driver is found guilty of the offence for which the vehicle is impounded.

(4) If, after the period of impoundment ends, the owner was given an impounding notice for the motor vehicle, the owner is liable to pay the costs of keeping the motor vehicle for each day that is more than 2 business days after the owner is given the impounding notice, whether or not the owner was the driver and whether or not the driver is found guilty of the offence for which the vehicle is impounded.

(5) If the owner was not the driver of the motor vehicle and pays the costs of keeping the motor vehicle as required under subsection (2), (3) or (4), the owner may recover the costs paid from the driver as a debt.

115 Registration of costs under State Penalties Enforcement Act 1999

(1) If an adult who is liable to pay costs under section 113(4) fails to pay the costs, the commissioner may give particulars of the

costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—

(a) the commissioner were the registrar of a court; and

(b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.

(2) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.

(3) For this section, the adult who is liable to pay costs under this division fails to pay the costs if—

(a) the commissioner obtains an order for payment of costs against the person; and

(b) the commissioner gives the person a copy of the order and a letter of demand for payment of the costs; and

(c) the person fails to pay the costs within 28 days after receiving the copy of the order and the letter of demand, or the longer period agreed to by the commissioner.

Division 2 Release of impounded or immobilised vehicle

116 Release of motor vehicle impounded or immobilised under this chapter

(1) This section applies if—

(a) an impounding notice or immobilising notice under section 78 was given to a person; or

(b) an impounding notice under section 81 was given to a person.

(2) If the owner of the motor vehicle is liable to pay the costs of removing the motor vehicle to, and keeping it at, the holding yard at which it is kept, including under an impounding order, the owner is entitled, when the impoundment period for which

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Not authorised—indicative only

the motor vehicle is impounded ends, and on payment of the costs, to recover the motor vehicle from the holding yard.

(2A) Also, if the owner of the motor vehicle is liable to pay the costs of removing the motor vehicle to, and keeping it at, a place at which it is kept, the owner is entitled, when the period for which the motor vehicle is immobilised ends, and on payment of the costs, to recover the motor vehicle from the place.

(3) If, under section 111(2), the State is liable to pay the costs of removing the motor vehicle to, and keeping it at, the holding yard or place at which it is kept, the owner is entitled, when the impoundment period for which the motor vehicle is impounded ends, or the period for which the motor vehicle is immobilised ends, to recover the motor vehicle from the holding yard or place, whether or not the State has paid the costs.

(4) At the request of the owner, the person holding the motor vehicle must release the motor vehicle to the owner, or a person appointed in writing by the owner, at the first reasonably practicable opportunity, during business hours on a business day, after the request is made and on payment of any costs for which the owner is liable as mentioned in subsection (2) or (2A).

(5) In this section—

business hours means 8a.m. to 5p.m.

117 Release of motor vehicle if driver found not guilty etc.

(1) If a driver is found not guilty of the prescribed offence or the proceeding is discontinued, the motor vehicle must be released to the owner as soon as reasonably practicable if it is impounded under this chapter.

(2) However, a motor vehicle may not be released under subsection (1) if the driver has been charged with having committed another prescribed offence for which the motor vehicle may be impounded or immobilised.

(3) If subsection (2) applies to the motor vehicle, the motor vehicle may be impounded or immobilised for the prescribed impoundment period that would have applied if the offence mentioned in subsection (1) had not happened.

Examples of operation of subsections (2) and (3)—

1 A driver is charged with having committed a type 1 vehicle related offence (the ***first offence***) while driving motor vehicle A. Motor vehicle A is impounded for a prescribed impoundment period of 90 days under section 74. A week later, the driver is charged with having committed another type 1 vehicle related offence while driving motor vehicle B. Motor vehicle B is impounded under section 74A. On the next day, the charge for the first offence is withdrawn. Motor vehicle A must be released under this section. However, motor vehicle B may be impounded until the prescribed impoundment period of 90 days ends as if it had been impounded under section 74.

2 A driver is charged with having committed a second type 2 vehicle related offence while driving motor vehicle A (the ***second offence***). Motor vehicle A is impounded for a prescribed impoundment period of 7 days under section 74C. Motor vehicle A is then returned to the driver. A week later the driver is charged during the relevant period with having committed a third type 2 vehicle related offence while driving motor vehicle A. The charge for second offence has not been decided at that time. Motor vehicle A is impounded for a prescribed impoundment period of 90 days under section 79D. Thirty days after motor vehicle A is impounded, the charge for the second offence is withdrawn. Motor vehicle A must be released under this section as the prescribed impoundment period of 7 days under section 74C would have already ended.

(4) A reference in subsection (1) to a proceeding being discontinued includes, for a prescribed offence that is a vehicle related offence for which an infringement notice has been served under section 71, the withdrawal of the infringement notice under the *State Penalties Enforcement Act 1999*.

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Division 3 Sale, transfer or disposal of impounded, immobilised or forfeited motor vehicle

118 Sale of motor vehicle if not recovered after impounding ends

(1) This section applies if, within 30 days after a period of impounding ends—

(a) the owner of the motor vehicle does not recover the motor vehicle; or

(b) after making reasonable inquiries, a police officer can not find out who owns the motor vehicle.

(2) The commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.

(3) For subsection (2), the motor vehicle is taken to have been forfeited to the State.

(4) Notice of the proposed sale or disposal must be published on the police service website.

(5) If the name and address of the owner of the motor vehicle is known—

(a) the commissioner must also give written notice of the proposed sale or disposal to the owner; and

(b) the owner's name and address must not be published on the police service website.

118A Sale of impounded motor vehicle if driver fails to appear

(1) This section applies in relation to a motor vehicle impounded under section 74A if—

(a) the motor vehicle is impounded until the end of proceedings under section 74A(2); and

(b) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the second or subsequent type 1 vehicle related offence mentioned in section 74A(1).

(2) This section also applies in relation to a motor vehicle impounded under section 74E if—

(a) the motor vehicle is impounded until the end of proceedings under section 74E(2); and

(b) a court orders that a warrant issue for the arrest of the driver of the motor vehicle to be brought before the court to be dealt with according to law because the driver fails to appear before the court in relation to the charge for the fourth or subsequent type 2 vehicle related offence mentioned in section 74E(1).

(3) On the warrant being issued the motor vehicle is taken to have been forfeited to the State.

(4) The commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.

(5) Notice of the proposed sale or disposal must be published on the police service website.

(6) If the name and address of the owner of the motor vehicle is known—

(a) the commissioner must also give written notice of the proposed sale or disposal to the owner; and

(b) the owner's name and address must not be published on the police service website.

119 Voluntary transfer of ownership of motor vehicle to State

(1) This section applies to a motor vehicle that is—

(a) impounded under this chapter and held at a holding yard; or

Not authorised—indicative only

Not authorised—indicative only

(b) a motorbike the subject of an application for an impounding order or a forfeiture order, released to the owner of the motorbike before the application is decided.

(2) Despite another section of this chapter, the owner of the motor vehicle may agree to transfer ownership of the motor vehicle to the State.

(3) The agreement must be written and witnessed by a person who may witness a statutory declaration.

(4) If the commissioner agrees in writing to the transfer of the motor vehicle—

(a) the following end—

(i) the impoundment period for the motor vehicle;

(ii) the application for the impounding order or forfeiture order; and

(b) the motor vehicle becomes the property of the State; and

(c) the commissioner may sell or dispose of the motor vehicle and anything in or on it in the way the commissioner considers appropriate.

120 Disposal of forfeited motor vehicle

The commissioner may dispose of a motor vehicle forfeited to the State under this chapter in the way the commissioner considers appropriate, including by selling it.

121 Application of proceeds of sale

(1) This section applies if the commissioner decides to sell a motor vehicle under section 118, 118A, 119 or 120.

(2) The proceeds of the sale are to be applied in the following order—

(a) in payment of the expenses of the sale;

(b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle's impounding or immobilisation;

(c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing to the holder of the security interest;

(d) if the motor vehicle is sold under section 118 or 119—in payment of any balance to the owner;

(da) if the motor vehicle is sold under section 118A—

(i) if the owner was not the subject of a warrant mentioned in section 118A(1)(b) or (2)(b)—in payment of any balance to the owner; or

(ii) otherwise—in payment to the consolidated fund;

(e) if the motor vehicle is sold under section 120—in payment to the consolidated fund.

121A Compensation for disposal of motor vehicle if driver found not guilty etc.

(1) This section applies if—

(a) a driver is found not guilty of a prescribed offence or the proceeding for the offence is discontinued; and

(b) the commissioner has before the happening of the event mentioned in paragraph (a) received the motor vehicle to which the offence relates under this chapter; and

(c) the commissioner has—

(i) sold the motor vehicle; or

(ii) otherwise disposed of the vehicle.

(2) Compensation is payable by the State to the person whose motor vehicle is sold or otherwise disposed of.

(3) The Minister is to decide the amount of the compensation.

Not authorised—indicative only

Not authorised—indicative only

(4) A person who is dissatisfied with the Minister's decision under subsection (3) may apply to a court, within 28 days, for compensation under this section.

(5) If the person applies under subsection (4), the court may decide the amount of the compensation.

Division 4 Other provisions

122 Protection from liability

(1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle, including the motor vehicle's number plates, during the impounding or immobilisation of the motor vehicle.

(2) If subsection (1) prevents liability attaching to a police officer, liability instead attaches to the State.

(3) Also, if a police officer signs a towing authority under section 77 for the motor vehicle, the State is not liable for any damage, loss or depreciation to the motor vehicle while it is being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the motor vehicle or immobilised at a place.

123 Third party protection relating to forfeiture

(1) This section applies in relation to—

(a) a person, other than the defendant, who has an interest in a motor vehicle forfeited to the State under part 2, division 1 or 1A; or

(b) a person, other than the defendant, who did not appear at the hearing of an application for a forfeiture order and has an interest in the motor vehicle forfeited to the State under the order.

(1A) The person may apply to the determining court for an order under subsection (6).

(2) Subsection (1A) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

(3) Unless the determining court gives leave, the application must be made—

(a) for forfeiture under part 2, division 1 or 1A—before the end of the period of 6 months starting on the day the motor vehicle became the property of the State; or

(b) for a forfeiture order—before the end of the period of 6 months starting on the day the forfeiture order was made.

(4) The relevant court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant's neglect.

(5) Unless the relevant court gives leave, a person who was given notice of the application for the forfeiture order can not apply to the court for an order under subsection (6).

(6) On an application, an order may be made—

(a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the motor vehicle; and

(b) directing the State—

(i) if the motor vehicle is still vested in the State—to transfer the motor vehicle to the applicant; or

(ii) if the motor vehicle is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest under section 121(2)(c).

(7) The relevant court must, and may only, make the order if it is satisfied—

Not authorised—indicative only

Not authorised—indicative only

(a) the applicant has or, apart from the forfeiture, would have a genuine interest in the motor vehicle; and

(b) the relevant prescribed offence happened without the knowledge and consent of the applicant.

(8) For all applications, including applications for leave to apply—

(a) the applicant must give notice of the making of the application to the commissioner; and

(b) the party given notice is a party to the application.

(9) In this section—

defendant means the person found guilty of the prescribed offence because of which the forfeiture under part 2, division 1 or 1A happened or the forfeiture order was made.

determining court means—

(a) for forfeiture under part 2, division 1 or 1A—the Magistrates Court for the Magistrates Court district, or division of the district, in which the motor vehicle was impounded for the prescribed offence; or

(b) for a forfeiture order—the relevant court to which the application for the order was made.

relevant prescribed offence means the prescribed offence because of which the forfeiture under part 2, division 1 or 1A happened or the forfeiture order was made.

Chapter 5 Removal powers generally for vehicles or loads or things on roads

Part 1 Power to seize or remove

124AA Definitions for pt 1

In this part—

load includes any goods, equipment or thing—

(a) that is carried by, in or on a vehicle, or is attached to a vehicle; or

(b) that was carried by, in or on a vehicle or attached to a vehicle, but has become separated from the vehicle.

moving expenses, for a vehicle, load or other thing, means actual expenses relating to 1 or more of the following acts in relation to the exercise of a power in prescribed circumstances—

(a) calling a service or towing vehicle to the vehicle, load or other thing;

(b) seizing or moving the vehicle, load or other thing;

(c) removing the vehicle, load or other thing;

(d) storing the vehicle, load or other thing after it has been removed;

(e) releasing a vehicle, load or other thing mentioned in paragraph (d) from storage;

(f) disposing of a vehicle, load or other thing mentioned in paragraph (c) other than by selling it.

prescribed circumstance means a prescribed circumstance under section 125.

used includes held in possession.

Not authorised—indicative only

Not authorised—indicative only

124 Removal of vehicle or load or other thing

(1) A police officer may, in a prescribed circumstance, seize and move a vehicle, load or other thing mentioned in the prescribed circumstance, or arrange for it to be moved, to another place for safe keeping.

(2) In a prescribed circumstance mentioned in section 125(1)(c) or (d), the police officer may, without seizing a vehicle or load, instead move the vehicle or load, or arrange for it to be moved, to another place where it can be located by its driver or owner or person in control of it.

(2A) In the prescribed circumstance mentioned in section 125(2), the police officer may, without seizing the vehicle, load or other thing instead move the vehicle, load or other thing, or arrange for it to be moved, off the road including to another place.

(3) Subsections (1) to (2A) do not prevent the driver, or owner or person in control of the vehicle, load or other thing taking possession of it, with the consent of the police officer, before or while it is being moved.

125 Prescribed circumstances for s 124

(1) The prescribed circumstances for section 124 are as follows—

(a) the person in control of a vehicle or load has been arrested;

(b) a police officer reasonably suspects the person who was last in control of a vehicle or load has abandoned it;

(c) a police officer—

(i) reasonably suspects a vehicle or load has been involved in a relevant vehicle incident; and

(ii) reasonably believes it is necessary to keep the vehicle or load for completing inquiries and investigations into the incident;

(d) a police officer reasonably suspects a vehicle or load has been left in circumstances that are an offence against

any of the following and the person in control of the vehicle or load can not be easily located or fails to comply with a direction of the police officer to move the vehicle or load immediately—

- the Heavy Vehicle National Law (Queensland)
- the Road Use Management Act
- the *Brisbane Forest Park Act 1977*
- the *Recreation Areas Management Act 2006*
- the *Nature Conservation Act 1992*.

(2) Also, without limiting subsection (1) it is a prescribed circumstance for section 124 if—

(a) either—

(i) a vehicle or load on a road is immobilised by a breakdown, collision or fuel shortage or is otherwise stationary; or

(ii) another thing that is not abandoned is placed or comes to rest on a road; or

(iii) without limiting subsection (1)(b), a police officer reasonably suspects a vehicle, load or other thing on a road is abandoned; and

(b) a police officer—

(i) can not immediately find the person in control of the vehicle, load or other thing; or

(ii) can immediately find the person in control of the vehicle, load or other thing but reasonably believes the person is unable or unwilling to move the vehicle, load or other thing immediately; and

(c) the police officer reasonably believes that it is necessary for the vehicle, load or other thing to be moved off the road for the safety or convenience of people using the road.

Not authorised—indicative only

Not authorised—indicative only

Example of inconvenience—

A vehicle is stopped on a median strip on a road but, due to the distraction caused by it, traffic is banking up.

Part 2 Other provisions about seizure or moving

125A Recovering moving and seizure expenses in particular circumstances

(1) The commissioner may recover as a debt the moving expenses for a vehicle, load or other thing incurred by a police officer in exercising powers in the prescribed circumstances.

(2) The moving expenses may be recovered from—

(a) the person who was in control of the vehicle, load or other thing immediately before it was seized or moved; or

(b) if the identity of the person mentioned in paragraph (a) can not be discovered—the vehicle, load or other thing's owner, unless the vehicle, load or other thing was being used without the owner's consent.

(3) The moving expenses claimed under subsection (1) must be reasonable.

(4) If moving expenses were incurred because of the paramount or high degree of importance given to moving the vehicle, load or other thing off a road quickly as mentioned in section 128B(2)(a), a court must act on the basis that the expenses were reasonable.

126 Steps after seizing a vehicle, load or other thing

(1) As soon as practicable, but within 14 days after seizing or moving a vehicle, load or other thing under this chapter, the police officer who seized or moved it must give or arrange for another police officer to give to the owner, if known, a notice stating—

(a) how the owner may recover the vehicle, load or other thing; and

(b) that, before the vehicle, load or other thing may be recovered, the person—

(i) may be required to produce satisfactory evidence of the ownership of the vehicle, load or other thing; and

(ii) must pay the moving expenses; and

(c) the penalty for unlawfully removing the vehicle, load or other thing from the place at which it is held.

(2) If practicable, the notice must be given to the owner personally.

(3) If it is not practicable to comply with subsection (2), the notice may be published on the police service website.

(3A) A police officer need not give the notice required by this section in relation to a vehicle seized or moved in the prescribed circumstances mentioned in section 125(2) if—

(a) the police officer reasonably believes the vehicle is abandoned; and

(b) either—

(i) the proceeds of the vehicle's sale are not likely to cover—

(A) the moving expenses for the vehicle; and

(B) the expenses incurred by the commissioner in selling the vehicle; or

(ii) it is otherwise impracticable to give the notice.

(3B) A police officer need not give the notice required by this section in relation to something other than a vehicle seized or moved in the prescribed circumstances mentioned in section 125(2) if—

(a) the police officer reasonably believes the thing is abandoned; or

Not authorised—indicative only

Not authorised—indicative only

(b) the proceeds of the thing's sale are not likely to cover—

(i) the moving expenses for the thing; and

(ii) the expenses incurred by the commissioner in selling the thing; or

(c) it is otherwise impracticable to give the notice.

(4) A requirement under this Act to return the vehicle, load or other thing applies subject to section 127.

(5) In this section—

something other than a vehicle, for subsection (3B), includes anything, including the load of a vehicle, that has become separated from the vehicle during the exercise of powers under this chapter.

vehicle, for subsection (3A), includes the vehicle's load to the extent it has remained with the vehicle during the exercise of powers under this chapter.

127 Disposal of seized or moved vehicle, load or other thing

(1) If, within 1 month after notice of the seizure or moving of a vehicle, load or other thing under this chapter is given, the owner does not recover the vehicle, load or other thing, the commissioner may sell the vehicle, load or other thing by public auction or dispose of it in the way the commissioner considers appropriate.

(2) Notice of the proposed sale must be published on the police service website.

128 Application of proceeds of sale

(1) The proceeds of the sale of a vehicle, load or other thing under section 127 must be applied in the following order—

(a) in payment of the expenses of the sale;

(b) in payment of the moving expenses and giving notice under section 126;

(c) if there is an amount owing to an entity under a security interest registered for the vehicle, load or other thing under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

(d) in payment of any balance to the owner.

(2) Compensation is not recoverable against the State for a payment under this section.

128A Immediate disposal in particular circumstances

(1) Despite any other provision of this part, a police officer exercising powers under part 1 may dispose of something other than a vehicle when and in the way the police officer considers appropriate if—

(a) the police officer reasonably suspects the thing has been abandoned; or

(b) the proceeds of any sale of the thing are unlikely to cover—

(i) the moving expenses for the thing; and

(ii) the expenses likely to be incurred by the chief executive in selling the thing; or

(c) it is otherwise impracticable to retain the removed thing.

Example—

The police officer may immediately dispose of gravel spilled on a road by a passing truck by having it bulldozed off the side of the road.

(2) In this section—

something other than a vehicle—

(a) includes anything, including the load of a vehicle, that has become separated from the vehicle during the exercise of powers under this chapter; and

(b) does not include a vehicle's load to the extent it has remained with the vehicle during the exercise of powers under this chapter.

Not authorised—indicative only

Not authorised—indicative only

128B Protection for persons exercising power under ch 5

(1) This section applies to proceedings in relation to liability for breach of duty arising out of damage to a vehicle, load or other thing that happens when a person exercises power, or assists another person exercising power, under this chapter in relation to the seizure or moving of a vehicle, load or other thing.

(2) The person, or a person assisting the person, is not civilly liable—

(a) because of the paramount or high degree of importance the person gave to moving the vehicle, load or other thing off the road quickly; or

(b) to the extent there was an increased likelihood that vehicles, loads or other things would be damaged in the exercise of power mentioned in subsection (1), because of the nature of the power.

Part 3 General towing authority

129 Police officer may authorise tow after seizure under any Act

(1) This section applies if—

(a) a police officer seizes a vehicle, load or other thing under an Act; or

(b) the owner of a damaged vehicle, load or other thing, or the owner's agent, is away from the vehicle, load or other thing or incapacitated.

(2) A police officer may sign a towing authority for the vehicle, load or other thing.

(3) The driver of a tow truck towing the vehicle, load or other thing under the towing authority must tow the vehicle, load or other thing to—

(a) the nearest holding yard available to the driver; or

(b) if directed by a police officer, the nearest police establishment or other place directed by the police officer.

(4) A person must not unlawfully remove a vehicle, load or other thing from the place to which it is towed under subsection (3).

Maximum penalty for subsection (4)—40 penalty units.

(5) In this section—

tow includes carry, lift and tow, lift and carry and lift for the purpose of towing.

towing authority means—

(a) a towing authority under the *Tow Truck Act 1973*; or

(b) another document authorising a person to tow a vehicle, load or other thing.

Chapter 6 Powers relating to animals

Part 1 Interpretation

130 Definition for ch 6

In this chapter—

person in charge, of an animal, means—

(a) a person who owns or has a lease, licence or other proprietary interest in the animal; or

(b) a person who has care, control or custody of the animal; or

(c) a person who is employing or has engaged someone else who has care, control or custody of the animal and the care, control or custody is within the scope of the employment or engagement.

Not authorised—indicative only

Not authorised—indicative only

Part 2 General powers

131 Power of inquiry into road use contraventions involving an animal

(1) It is lawful for a police officer to make any reasonably necessary inquiry, investigation, inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed involving an animal.

(2) Also, it is lawful for a police officer to arrange for someone else to make any reasonably necessary inspection, examination, or test for establishing whether or not an offence against the Road Use Management Act has been committed involving an animal.

132 Power to require information about identity of person in charge of animal

(1) This section applies if a person alleges to a police officer, or a police officer reasonably suspects, a contravention of the Road Use Management Act involving an animal has been committed.

(2) A police officer may require any of the following to give to the police officer information that will identify or help identify the person who was in charge of the animal when the contravention happened—

(a) an owner of the animal;

(b) a person in possession of the animal;

(c) a person who may reasonably be expected to be able to give the information.

Note—

Failure to comply with a requirement under this section is an offence against section 791.

133 Power of entry for ss 131–132

(1) For sections 131 and 132, a police officer may enter a place and stay on the place for the time reasonably necessary for the purpose of the entry.

(2) However, the police officer may use reasonably necessary force to enter the place only if the entry is authorised by a police officer of at least the rank of inspector.

134 Power for regulating animal traffic

(1) A police officer may give to a person in charge of an animal any direction the police officer reasonably considers necessary for the safe and effective regulation of animal traffic on the road.

(2) Without limiting subsection (1), a police officer may act under that subsection if the police officer reasonably suspects an emergency exists or it is otherwise necessary to temporarily prohibit, divert or direct animal traffic and pedestrians.

(3) The direction may include a direction to the person in charge of an animal to move the animal as soon as practicable.

Part 3 Stopping animals for prescribed purposes

135 Stopping animals for prescribed purposes

(1) A police officer may require the person in control of an animal, whether or not the animal is pulling a vehicle, to stop the animal for a prescribed purpose.

(2) The person must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—60 penalty units.

(3) The prescribed purposes are as follows—

(a) for enforcing a transport Act;

Not authorised—indicative only

Not authorised—indicative only

(b) to check whether the vehicle the animal is pulling or the person in control of the animal is complying with a transport Act;

(c) for monitoring or enforcing a liquor provision;

(d) for enforcing a contravention of law involving putting, dropping and leaving litter on a public place.

(4) For monitoring or enforcing a liquor provision, the police officer may exercise any of the following powers if the police officer reasonably suspects the exercise of the power may be effective for the purpose—

(a) if the animal is pulling a vehicle—enter the vehicle and remain in it for the time reasonably necessary for the purpose;

(b) search anything on the animal or in the vehicle;

(c) photograph or film—

(i) the animal and anything on the animal; and

(ii) if the animal is pulling a vehicle, the vehicle or anything in it;

(d) if the animal is pulling a vehicle, inspect, measure or test the vehicle or anything in it;

(e) take samples of anything on the animal or in the vehicle;

(f) seize anything the officer reasonably suspects is evidence of the commission of an offence against a liquor provision;

(g) copy a document in something on the animal or in the vehicle;

(h) move the vehicle's load.

(5) In this section—

in, for a vehicle, includes on the vehicle.

liquor provision means any of the following provisions—

(a) the *Liquor Act 1992*, section 168B, 168C, 169 or 171;

(b) the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*, section 34 or 38.

monitor, a liquor provision, means check whether the provision is being complied with.

136 Power to enable effective and safe exercise of other powers

(1) A police officer may require the person in control of an animal pulling a vehicle to give the officer reasonable help to enable the officer to effectively exercise a power under this part in relation to the animal or vehicle.

(2) Also, a police officer may require the person in control of an animal pulling a vehicle, or a person who is on or has just left the animal or is in or on or has just left the vehicle, to do or not to do anything the police officer reasonably believes is necessary—

(a) to enable the police officer to safely exercise a power under a transport Act in relation to the animal or vehicle; or

(b) to preserve the safety of the police officer, the person or other persons.

(3) A person must comply with a requirement under subsection (1) or (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—60 penalty units.

Part 4 Removal powers for animals

137 Removal of animals from roads and other places

(1) A police officer may, in prescribed circumstances, seize and move an animal, or arrange for it to be moved, to another place for safe keeping.

Not authorised—indicative only

Not authorised—indicative only

(2) In the prescribed circumstances mentioned in section 138(c), (d) or (e), the police officer may instead move the animal, or arrange for it to be moved, to another place where it can be located by the person in charge of the animal.

(3) Subsections (1) and (2) do not prevent the person in charge of the animal taking possession of it, with the consent of the police officer, before or while it is being moved.

138 Prescribed circumstances for removing animals

The prescribed circumstances for removal of animals are as follows—

(a) the person in charge of an animal has been arrested;

(b) a police officer reasonably suspects the person who was last in charge of an animal has abandoned it;

(c) a police officer—

(i) reasonably suspects an animal has been involved in a relevant vehicle incident; and

(ii) reasonably believes it is necessary to detain the animal for completing inquiries and investigations into the incident;

(d) a police officer reasonably suspects an animal has been left on a road unattended, temporarily or otherwise, and because of the time for which it has been left unattended, the way it has been left unattended, or the place, condition, or circumstances in which it has been left unattended, its presence on the road—

(i) may be dangerous to others; or

(ii) may prevent or hinder the lawful use by others of the road or a part of the road;

(e) a police officer reasonably suspects an animal has been left in circumstances that are an offence against any of the following Acts and the person in charge of the animal can not be easily located or fails to comply with

a direction of the police officer to move the animal immediately—

- the Road Use Management Act
- the *Brisbane Forest Park Act 1977*
- the *Recreation Areas Management Act 2006*
- the *Nature Conservation Act 1992*;

(f) a police officer reasonably suspects—

(i) a contravention of an Act has happened; and

(ii) the contravention involves an animal; and

(iii) it is necessary to take steps to protect the animal.

139 Steps after seizing animal

(1) As soon as practicable, but within 14 days after seizing and moving an animal under this part, the police officer who seized it must give or arrange for another police officer to give to the owner, if known, a notice stating—

(a) how the owner may recover the animal; and

(b) that, before the animal may be recovered, the person—

(i) may be required to produce satisfactory evidence of the ownership of the animal; and

(ii) must pay the costs of removing and keeping the animal.

(2) If practicable, the notice must be given to the owner personally.

(3) If it is not practicable to comply with subsection (2), the notice may be published on the police service website.

(4) A requirement under this Act to return the animal applies subject to section 140.

Not authorised—indicative only

Not authorised—indicative only

140 Recovery of seized animal

(1) If, within 1 month after notice of the seizure of an animal under this part is given, the owner does not recover the animal, the commissioner may sell the animal and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.

(2) Notice of the proposed sale must be published on the police service website.

141 Application of proceeds of sale

(1) The proceeds of the sale of an animal under section 140 must be applied in the following order—

(a) in payment of the expenses of the sale;

(b) in payment of the cost of seizing and keeping the animal and giving notice of its seizure;

(c) if there is an amount owing to an entity under a security interest registered for the animal under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing under the security interest;

(d) in payment of any balance to the owner.

(2) Compensation is not recoverable against the State for a payment under this section.

Part 5 Animal welfare directions

142 Application of pt 5

(1) This part applies if a police officer reasonably suspects—

(a) a person has committed, is committing or is about to commit, an animal welfare offence; or

(b) an animal—

(i) is not being cared for properly; or

(ii) is experiencing undue pain; or

(iii) requires veterinary treatment; or

(iv) should not be used for work.

Example for subparagraph (iv)—

A horse with 'saddle sore' should not be used by a riding school.

(2) This part also applies if an animal has been seized under section 146(2)(d).

(3) In this section—

animal means an animal under the Animal Care and Protection Act.

veterinary treatment, of an animal, means—

(a) consulting with a veterinary surgeon about the animal's condition; or

(b) a medical or surgical procedure performed on the animal by a veterinary surgeon; or

(c) a medical procedure of a curative or preventive nature performed on the animal by someone other than a veterinary surgeon if the procedure is performed under a veterinary surgeon's directions.

143 Power to give animal welfare direction

(1) The police officer may give a written direction (an ***animal welfare direction***) requiring stated action about the animal or its environment.

Note—

See the Animal Care and Protection Act, section 161 (Failure to comply with animal welfare direction) and the schedule, definition *animal welfare direction*.

(2) The direction may be given to—

(a) a person in charge of the animal; or

(b) a person whom the police officer reasonably suspects is a person in charge of the animal; or

Not authorised—indicative only

Not authorised—indicative only

(c) if the animal has been seized under section 137(1), 146(2)(c) or (d) or 157(1)(h)—

(i) a person who, immediately before the seizure, was a person in charge of the animal; or

(ii) a person whom the police officer reasonably suspects was, immediately before the seizure, a person in charge of the animal.

(3) Also, the direction may be given to a person who holds a mortgage or other security interest in the animal only if the person has taken a step to enforce the mortgage or other security interest.

(4) Without limiting subsection (1), the direction may require any of the following action to be taken—

(a) care for, or treat, the animal in a stated way;

(b) provide the animal with stated accommodation, food, rest, water or other living conditions;

(c) consult a veterinary surgeon about the animal's condition before a stated time;

(d) move the animal from the place where it is situated when the direction is given to another stated place for a purpose mentioned in paragraph (a), (b) or (c);

(e) not to move the animal from the place where it is situated when the direction is given.

(5) However, action may be required only if the police officer considers it to be necessary and reasonable in the interests of the animal's welfare.

(6) The direction may state how the person given the direction may show that the stated action has been taken.

144 Requirements for giving animal welfare direction

(1) An animal welfare direction must—

(a) be in the approved form for an animal welfare direction under the Animal Care and Protection Act; and

(b) describe—

(i) the animal in a way that reasonably allows the person given the direction to identify it; or

(ii) if the direction is given because the police officer reasonably suspects a person has committed, is committing or is about to commit, an animal welfare offence—the type of animal to which the offence relates; and

(c) state—

(i) each requirement; and

(ii) a time for the person to comply with each requirement; and

(d) include an information notice under the Animal Care and Protection Act about the decision to give the direction.

(2) Despite subsection (1)(a), an animal welfare direction may be given orally if—

(a) the police officer considers it to be in the interests of the animal's welfare to give the direction immediately; and

(b) for any reason it is not practicable to immediately give the direction in the approved form; and

(c) the police officer warns the person it is an offence not to comply with the direction unless the person has a reasonable excuse.

(3) If the direction is given orally, the police officer must confirm the direction by also giving it in the approved form as soon as practicable after giving it orally.

(4) An animal welfare direction may state that a police officer proposes, at a stated time or at stated intervals, to enter the following where an animal the subject of the direction is kept at to check compliance with the direction—

(a) a vehicle of which the person is the person in control;

(b) another place of which the person is the occupier.

Not authorised—indicative only

Not authorised—indicative only

145 Review and appeal for animal welfare direction

If an animal welfare direction has been given, the Animal Care and Protection Act, chapter 7, part 4, applies to the decision to give the direction as if—

(a) the decision were an original decision under that Act; and

(b) the person given the direction were, under that part, an interested person for the decision.

Part 6 Other provisions about animals

146 Power in relation to offences involving animals

(1) This section applies if—

(a) a police officer reasonably suspects—

(i) an offence involving an animal has been, is being or is about to be committed at or involving a place; or

(ii) an animal at a place has just sustained a severe injury and the injury is likely to remain untreated, or untreated for an unreasonable period; or

(iii) there is an imminent risk of death or injury to an animal at a place because of an accident or an animal welfare offence; or

(b) the occupier of a place has been given an animal welfare direction under this Act or the Animal Care and Protection Act and—

(i) the direction states a time or interval for a police officer to enter the place to check compliance with the direction; and

(ii) a police officer proposes to enter the place at the stated time or interval to check compliance with the direction.

(2) The police officer may enter the place and do any of the following—

(a) search for and inspect—

(i) any animal; or

(ii) any brand, mark, branding instrument, pliers or other device used to identify an animal;

(b) open anything in the relevant place that is locked;

(c) seize anything the officer reasonably suspects is evidence of the commission of an offence involving an animal;

(d) seize an animal at the place if—

(i) the police officer reasonably suspects the animal is under an imminent risk of death or injury, requires veterinary treatment or is experiencing undue pain and the interests of its welfare require its immediate seizure; or

Examples of imminent risk of death or injury—

1 A prohibited event under the Animal Care and Protection Act is being conducted at the place.

2 The animal is being beaten or tortured.

(ii) the person in charge of the animal has contravened, or is contravening, an animal welfare direction, under this Act or the Animal Care and Protection Act, or a court order about the animal;

(e) muster, yard, detain, clip or otherwise deal with the animal;

(f) take reasonable measures to relieve the pain of an animal at the place.

Examples of measures—

feeding, untethering or watering the animal

(3) Also, the police officer may, for exercising powers under subsection (2), stop—

(a) travelling livestock; and

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Not authorised—indicative only

(b) a vehicle apparently being used to transport animals; and

(c) a vehicle apparently being used by someone accompanying the animals.

(4) In this section—

animal includes livestock.

147 Powers to provide relief to animal

(1) Subsection (2) applies if—

(a) a police officer reasonably suspects—

(i) an animal at a place, other than a vehicle, is suffering from lack of food or water or is entangled; and

(ii) the person in charge of the animal is not, or is apparently not, present at the place; and

(b) the animal is not at a part of the place at which a person resides, or apparently resides.

(2) The police officer may enter and stay at the place while it is reasonably necessary to provide the food or water or to disentangle the animal.

(3) A police officer may enter a vehicle if the officer reasonably suspects there is a need to enter the vehicle to relieve an animal in pain in the vehicle or prevent an animal in the vehicle from suffering pain.

(4) If a police officer enters a vehicle under subsection (3), the officer may take reasonable measures to relieve the pain of an animal at the place.

Examples of measures—

feeding, untethering or watering the animal

(5) This section does not limit section 146.

148 Power to destroy animal

A police officer may destroy an animal, or cause it to be destroyed, if—

(a) the animal has been seized under section 137(1), 146(2)(c) or (d) or 157(1)(h) or the animal's owner has given written consent to the destruction; and

(b) the police officer reasonably believes that the animal is in pain to the extent that it is cruel to keep it alive.

149 Offence to interfere with seized animals

(1) This section applies if an animal is seized under this Act.

(2) A person, other than a police officer or a person authorised by a police officer for the purpose, must not—

(a) interfere with the animal; or

(b) enter or be on the place where the animal is being kept; or

(c) move the animal from where it is being kept; or

(d) attempt to do anything mentioned in paragraph (a), (b) or (c); or

(e) have the animal in the person's possession or under the person's control.

Maximum penalty—20 penalty units or 6 months imprisonment.

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Not authorised—indicative only

Chapter 7 Search warrants, obtaining documents, accessing registered digital photos and other information, and crime scenes

Part 1A Preliminary

149A Definitions for chapter

In this chapter—

access information, for a digital device, means information necessary for a person to access or read device information from the device.

Examples—

userid, username, passcode, password

control order property means anything under a person's control that the person is prohibited from possessing under a control order or a registered corresponding control order under the *Penalties and Sentences Act 1992*.

crime scene threshold offence means—

(a) an indictable offence for which the maximum penalty is at least 4 years imprisonment; or

(b) an offence involving deprivation of liberty.

device information, from a digital device, means—

(a) information stored on the device; or

(b) information accessed, communicated or distributed by using the device, including by using an application on the device.

Examples—

- images stored on a computer

- location data stored on or sent from a mobile phone
- emails or text messages sent from a smart phone
- messages or videos distributed from a social media application on a tablet computer

digital device—

(a) means a device on which information may be stored or accessed electronically; and

(b) includes a computer, memory stick, portable hard drive, smart phone and tablet computer.

employee includes a person who works under a contract for services.

issuer see section 150(7).

relevant evidence means—

(a) evidence of the commission of an offence; or

(b) evidence that may be confiscation related evidence.

specified person—

1 A *specified person*, in relation to a digital device at, or seized from, a place for which a search warrant is or was issued, or for which a crime scene is or was established, means any of the following persons—

(a) a person reasonably suspected of having committed an offence for which the search warrant is or was issued, or the crime scene is or was established;

(b) the owner of the device;

(c) a person in possession of the device;

(d) an employee of the owner or person in possession of the device;

(e) a person who uses or has used the device;

(f) a person who is or was a system administrator for the computer network of which the device forms or formed a part.

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2 A person mentioned in any of paragraphs (1)(a) to (e) is a *specified person* only if the person has, or is likely to have, knowledge about how to gain access to the digital device.

3 A person mentioned in paragraph (1)(f) is a *specified person* only if the person has, or is likely to have, knowledge about how to gain access to the computer network of which the device forms or formed a part.

warrant evidence or property means the evidence or property mentioned in section 150(1) for which a warrant is issued under section 151.

Part 1 Searching places with warrants

150 Search warrant application

(1) A police officer may apply for a warrant to enter and search a place (a ***search warrant***)—

(a) to obtain evidence of the commission of an offence; or

(b) to obtain evidence that may be confiscation related evidence; or

(c) to find a vehicle that is or is to be impounded or immobilised under chapter 4 or 22; or

(d) to find control order property; or

(e) if the place is premises at which a senior police officer reasonably believes 1 or more disorderly activities have taken place and are likely to take place again—to find prohibited items at the place.

(2) The application may be made to any justice, unless the application must be made to a magistrate or Supreme Court judge under subsection (3) or (4).

(3) Unless the application must be made to a Supreme Court judge under subsection (4), the application must be made to a

magistrate if the thing to be sought under the proposed warrant is—

(a) evidence of the commission of an offence only because—

(i) it is a thing that may be liable to forfeiture or is forfeited; or

(ii) it may be used in evidence for a forfeiture proceeding; or

(iii) it is a property tracking document; or

(b) evidence of the commission of an indictable offence committed in another State that, if it were committed in Queensland, would be an indictable offence in Queensland; or

(c) confiscation related evidence; or

(d) control order property; or

Example for paragraph (a)(ii)—

The search may be for evidence for which an application for a restraining order may be made under chapter 2 or chapter 3 of the Confiscation Act.

(e) a prohibited item.

(4) The application must be made to a Supreme Court judge if, when entering and searching the place, it is intended to do anything that may cause structural damage to a building.

(5) An application under this section must—

(a) be sworn and state the grounds on which the warrant is sought; and

(b) include information required under the responsibilities code about any search warrants issued within the previous year in relation to—

(i) for an application relating to SDOCO related evidence—the person convicted of the qualifying offence to which the application relates; or

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(ii) for an application relating to premises at which a senior police officer reasonably believes 1 or more disorderly activities have taken place and are likely to take place again—the premises; or

(iii) for another application—

(A) the place or a person suspected of being involved in the commission of the offence or suspected offence to which the application relates; or

(B) the confiscation related activity to which the application relates.

(6) Subsection (5)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the officer otherwise actually knows.

(7) The justice, magistrate or judge (the ***issuer***) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

151 Issue of search warrant

The issuer may issue a search warrant only if satisfied—

(a) there are reasonable grounds for suspecting the evidence or property mentioned in section 150(1)(a), (b), (c) or (d) is—

(i) at the place; or

(ii) likely to be taken to the place within the next 72 hours; or

(b) there are reasonable grounds for believing the prohibited items mentioned in section 150(1)(e) are—

(i) at the place; or

(ii) likely to be taken to the place within the next 72 hours.

152 If justice refuses application for search warrant

(1) If a justice refuses to issue a warrant, the police officer may apply to a magistrate or a judge for the issue of the warrant.

(2) However, the police officer must tell the magistrate or judge that the application is made because a justice refused to issue a warrant.

(3) Subsection (1) does not apply if the justice who refuses the warrant is or has been a Supreme Court judge, a District Court judge or a magistrate.

153 Order in search warrant about documents

If the issuer is a magistrate or a judge, the issuer may, in a search warrant, order the person in possession of documents at the place to give to the police officer all documents of a type stated in the warrant.

154 Order in search warrant about device information from digital device

(1) If the issuer is a magistrate or a judge, the issuer may, in a search warrant, order a specified person to do any of the following in relation to a digital device at the place—

(a) give a police officer access to the device;

(b) give a police officer access information for the device or any assistance necessary for the officer to gain access to device information from the device;

(c) allow a police officer to—

(i) use access information for the device to gain access to device information from the device; or

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Not authorised—indicative only

(ii) examine device information from the device to find out whether the information may be relevant evidence; or

(iii) make a copy of device information from the device that may be relevant evidence, including by using another digital device; or

(iv) convert device information from the device that may be relevant evidence into documentary form, or another form, that enables the information to be understood by a police officer.

(2) If the issuer is a magistrate or a judge, the issuer may also, in the search warrant, order that a specified person is required to do a thing mentioned in subsection (1)(b) or (c) in relation to a digital device seized and removed from the place, after the device has been removed.

(3) An order made under subsection (2) must state—

(a) the time at or by which the specified person must give a police officer the information or assistance mentioned in subsection (1)(b); and

(b) the place where the specified person must provide the information or assistance; and

(c) any conditions to which the provision of the information or assistance is subject; and

(d) that failure to comply with the order may be dealt with under the Criminal Code, section 205A.

154A Order after digital device has been seized

(1) This section applies if—

(a) a digital device is seized under a search warrant and removed from a place, and either—

(i) the search warrant did not contain an order made under section 154(1) or (2); or

(ii) the search warrant contained an order made under section 154(1) or (2) but further access information is required for a police officer to gain access to device information from the device that may be relevant evidence; or

(b) a digital device is otherwise lawfully seized under this Act, other than under section 176(1)(j), and removed from a place.

(2) On the application of a police officer, a magistrate or a judge may make an order requiring a specified person to do a thing mentioned in section 154(1)(b) or (c).

(3) An application made under subsection (2)—

(a) may be made at any time after the digital device has been seized; and

(b) must be made—

(i) if the digital device was seized under a search warrant issued by a Supreme Court judge—to a Supreme Court judge; or

(ii) otherwise—to a magistrate.

(4) An order made under subsection (2) must state—

(a) the time at or by which the specified person must give a police officer the information or assistance mentioned in section 154(1)(b); and

(b) the place where the specified person must provide the information or assistance; and

(c) any conditions to which the provision of the information or assistance is subject; and

(d) that failure to comply with the order may be dealt with under the Criminal Code, section 205A.

(5) A magistrate or a judge (the ***judicial officer***) may make an order under subsection (2) only if—

(a) for a digital device seized under a search warrant issued by a magistrate or judge—the judicial officer is satisfied

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Not authorised—indicative only

there are reasonable grounds for suspecting that device information from the digital device may be relevant evidence; or

(b) otherwise—the judicial officer is satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of—

(i) a crime scene threshold offence; or

(ii) an offence against any of the following sections of the Criminal Code—

- section 223
- section 227A
- section 227B.

154B Compliance with order about device information from digital device

A person is not excused from complying with an order made under section 154(1) or (2) or 154A(2) on the basis that complying with the order might tend to incriminate the person or expose the person to a penalty.

155 When search warrant ends

(1) A search warrant issued because there are reasonable grounds for suspecting there is warrant evidence or property at a place ends—

(a) if the search warrant is for stock, whether or not it is also for anything else—21 days after it is issued; or

(b) otherwise—7 days after it is issued.

(2) A search warrant issued because there are reasonable grounds for suspecting warrant evidence or property is likely to be taken to a place within the next 72 hours ends 72 hours after it is issued.

Not authorised—indicative only

156 What search warrant must state

(1) A search warrant must state—

(a) a police officer may exercise search warrant powers under the warrant; and

(b) if the warrant is issued in relation to—

(i) an offence—brief particulars of the offence for which the warrant is issued; or

(ii) a forfeiture proceeding—the Act under which the forfeiture proceeding is authorised; or

(iii) a confiscation related activity—brief particulars of the activity; or

(iv) a vehicle that is or is to be impounded or immobilised under chapter 4 or 22—brief particulars of the authorisation to impound or immobilise; or

(v) control order property—brief details of the control order or registered corresponding control order under the *Penalties and Sentences Act 1992*; or

(vi) premises at which a senior police officer reasonably believes 1 or more disorderly activities have taken place and are likely to take place again—brief details of the disorderly activities; and

(c) the warrant evidence or property that may be seized under the warrant; and

(d) if the warrant is to be executed at night, the hours when the place may be entered; and

(e) the day and time the warrant ends.

(2) If the warrant relates to an offence and the offence has been, is being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it, the warrant may also state that a police officer may search anyone or anything in or on or about to board, or to be put in or on, the vehicle.

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(3) If a magistrate or a judge makes an order under section 153 or 154(1) or (2), the warrant must also state that failure to comply with the order may be dealt with under—

(a) for section 153—the Criminal Code, section 205; or

(b) for section 154(1) or (2)—the Criminal Code, section 205A.

157 Powers under search warrant

(1) A police officer may lawfully exercise the following powers under a search warrant (***search warrant powers***)—

(a) power to enter the place stated in the warrant (the ***relevant place***) and to stay on it for the time reasonably necessary to exercise powers authorised under the warrant and this section;

(b) power to pass over, through, along or under another place to enter the relevant place;

(c) power to search the relevant place for anything sought under the warrant;

(d) power to open anything in the relevant place that is locked;

(e) power to detain anyone at the relevant place for the time reasonably necessary to find out if the person has anything sought under the warrant;

(f) if the warrant relates to an offence and the police officer reasonably suspects a person on the relevant place has been involved in the commission of the offence, power to detain the person for the time taken to search the place;

(g) power to dig up land;

(h) power to seize a thing found at the relevant place, or on a person found at the relevant place, that the police officer reasonably suspects may be warrant evidence or property to which the warrant relates;

(i) power to muster, hold and inspect any animal the police officer reasonably suspects may provide warrant evidence or property to which the warrant relates;

(j) power to photograph anything the police officer reasonably suspects may provide warrant evidence or property to which the warrant relates, whether or not the thing is seized under the warrant;

(k) power to remove wall or ceiling linings or floors of a building, or panels of a vehicle, to search for warrant evidence or property;

(l) if the police officer is searching for stock—power to use any equipment, cut out camps, stockyards, dips, dams, ramps, troughs and other facilities on the place being searched that are reasonably needed to be used in the management of stock.

(2) Also, a police officer has the following powers if authorised under a search warrant (also ***search warrant powers***)—

(a) power to search anyone found at the relevant place for anything sought under the warrant that can be concealed on the person;

(b) power to do whichever of the following is authorised—

(i) to search anyone or anything in or on or about to board, or be put in or on, a transport vehicle;

(ii) to take a vehicle to, and search for evidence of the commission of an offence that may be concealed in a vehicle at, a place with appropriate facilities for searching the vehicle.

(3) Power to do anything at the relevant place that may cause structural damage to a building, may be exercised only if the warrant—

(a) authorises the exercise of the power; and

(b) is issued by a Supreme Court judge.

Not authorised—indicative only

Not authorised—indicative only

158 Copy of search warrant to be given to occupier

(1) If a police officer executes a search warrant for a place that is occupied, the police officer must—

(a) if the occupier is present at the place—give to the occupier a copy of the warrant and a statement in the approved form summarising the person's rights and obligations under the warrant; or

(b) if the occupier is not present—leave the copy in a conspicuous place.

(2) If the police officer reasonably suspects giving the person the copy may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (1), but only for so long as—

(a) the police officer continues to have the reasonable suspicion; and

(b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep the place under observation.

Part 2 Search of place to prevent loss of evidence

159 Application of pt 2

This part applies only in relation to the following offences (a ***part 2 offence***)—

(a) an indictable offence;

(b) an offence involving gaming or betting;

(c) an offence against any of the following Acts—

- Confiscation Act
- *Explosives Act 1999*
- *Nature Conservation Act 1992*

- *Weapons Act 1990*;

(d) an offence against the *Liquor Act 1992*, section 168B or 168C.

160 Search to prevent loss of evidence

(1) This section applies if a police officer reasonably suspects—

(a) a thing at or about a place, or in the possession of a person at or about a place is evidence of the commission of a part 2 offence; and

(b) the evidence may be concealed or destroyed unless the place is immediately entered and searched.

(2) This section also applies if a police officer reasonably suspects a part 2 offence has been, is being, or may be committed in, on or in relation to a transport vehicle and involves the safety of the vehicle or anyone who may be in or on it.

(3) A police officer may enter the place and exercise search warrant powers, other than power to do something that may cause structural damage to a building, at the place as if they were conferred under a search warrant.

161 Post-search approval

(1) As soon as reasonably practicable after exercising powers under section 160, the police officer must apply to a magistrate in writing for an order approving the search (***post-search approval order***).

(2) The application must be sworn and state the grounds on which it is sought.

(3) The applicant need not appear at the consideration of the application, unless the magistrate otherwise requires.

(4) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Not authorised—indicative only

Not authorised—indicative only

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

162 Making of post-search approval order

(1) The magistrate may make a post-search approval order only if satisfied—

(a) in the circumstances existing before the search—

(i) the police officer, before exercising the powers, had a reasonable suspicion for exercising the powers; and

(ii) there was a reasonable likelihood that the evidence would be concealed or destroyed or may have caused injury to a person; or

(b) having regard to the nature of the evidence found during the search it is in the public interest to make the order.

(2) The magistrate may also make an order under section 693 or 694, whether or not a post-search approval order is made.

163 Appeal

(1) Within 28 days after either of the following happens, the commissioner may appeal against the order to the Supreme Court—

(a) a magistrate refuses to make a post-search approval order;

(b) a magistrate makes an order under section 162(2).

(2) If the police officer appeals, the police officer must retain the thing seized until the appeal is decided.

(3) The court may make an order under section 693 or 694 whether or not the appeal is upheld.

Part 3 Crime scenes

Division 1AA Preliminary

163A Definitions for part

In this part—

crime scene see section 163B.

responsible officer see section 165(1).

163B What is a *crime scene*

A place is a ***crime scene*** if—

(a) either of the following apply—

(i) a crime scene threshold offence happened at the place;

(ii) there may be evidence at the place, of a significant probative value, of the commission of a crime scene threshold offence that happened at another place; and

(b) it is necessary to protect the place for the time reasonably necessary to search for and gather evidence of the commission of the crime scene threshold offence.

Division 1 Establishment of crime scenes

164 Gaining access to crime scenes

(1) It is lawful for a police officer—

(a) to enter a place to reach another place that the police officer reasonably suspects is a crime scene; and

(b) to enter a place that the police officer reasonably suspects is a crime scene and stay on the place for the

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time reasonably necessary to decide whether or not to establish a crime scene.

(2) What is a reasonable time for subsection (1)(b) will depend on the particular circumstances including—

(a) the nature of any information obtained or any observation made that suggests the place is a crime scene; and

(b) visible evidence that will help decide whether it is a crime scene; and

(c) any preliminary inspection of the place.

165 Initial establishment of crime scene

(1) If a police officer enters a place that may be a crime scene, or is lawfully at a place, and decides the place is a crime scene, the police officer (the ***responsible officer***) may establish a crime scene and exercise crime scene powers at the place.

Note—

For crime scene powers, see division 3.

(2) If another police officer assumes control of the crime scene, that police officer becomes the responsible officer instead of the other officer.

(3) The responsible officer may establish the crime scene in any way that gives anyone wanting to enter the place enough notice that the place is a crime scene.

Examples—

1 A police officer may stand at a door to stop people entering a building and tell them they can not enter the building.

2 A police officer may put around a place barricades or tapes indicating the place is a crime scene.

3 A police officer may display a written notice stating the place is a crime scene and unauthorised entry is prohibited.

166 Responsibility after establishing crime scene

(1) As soon as reasonably practicable after the responsible officer establishes the crime scene, a police officer must apply to a Supreme Court judge or magistrate for a crime scene warrant.

Note—

For provisions about crime scene warrants, see division 2.

(2) Subsection (1) does not apply if the place is a public place.

(3) However, if the place is a public place only while it is ordinarily open to the public and the occupier of the place requires a police officer at the place to leave the place, the police officer may apply under division 2 for a crime scene warrant.

(4) The application must be made to a Supreme Court judge for a crime scene warrant if it is intended to do something that may cause structural damage to a building.

(5) Subsection (4) applies whether or not a magistrate has issued a crime scene warrant for the place.

(6) If a judge or magistrate refuses to issue a crime scene warrant for the place, the place stops being a crime scene.

167 Deciding limits of crime scene

The responsible officer at a crime scene must—

(a) identify what is the crime scene; and

(b) decide the boundaries necessary to protect the crime scene; and

(c) mark the limits of the crime scene in a way that sufficiently identifies it to the public as a crime scene.

Example for paragraph (b)—

It may be necessary to establish a buffer zone around the crime scene.

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Not authorised—indicative only

168 Restricting access to crime scene

(1) The responsible officer must immediately take the steps he or she considers to be reasonably necessary to protect anything at the crime scene from being damaged, interfered with or destroyed, including for example, steps necessary—

(a) to ensure people, including police officers, whose presence at the crime scene is not essential do not enter the crime scene; and

(b) to prevent unnecessary movement inside the boundaries of the crime scene; and

(c) to establish a safe walking area in the crime scene for reducing the risk of damage to any evidence that may be on the place.

(2) Also, a person, other than the responsible officer, must not enter a crime scene unless—

(a) the person has a special reason, associated with the investigation, for entering the crime scene; or

(b) the person is a police officer who is asked to enter the crime scene by the responsible officer or an investigating police officer; or

(c) the person is an authorised assistant; or

(d) the presence of the person is necessary to preserve life or property at a crime scene; or

(e) the person is authorised to enter by the responsible officer.

Examples for subsection (2)(a)—

1 a police officer removing someone from the crime scene who should not be there

2 a police officer investigating the offence

3 a person accompanying a police officer to assist in the investigation or who has special knowledge of the place that is relevant to the investigation

(3) For subsection (2)(e), the responsible officer may authorise the entry subject to stated requirements.

(4) The responsible officer must ensure a record is made of the name of each person who is present when the crime scene is established or enters it after it is established, when each person entered the place after it is established, and the purpose of the entry.

169 Preserving evidence at crime scene

The responsible officer at a crime scene must ensure that nothing in the crime scene is unnecessarily touched or moved—

(a) until all necessary forensic and technical examinations are finished; or

(b) unless there is a possibility that the thing could be damaged, interfered with or destroyed if it is not moved.

Examples of when evidence may be damaged or destroyed if a thing is not moved—

1 if the arrival of the investigator, or an authorised assistant or specialist officer will be delayed and the scene is exposed to the weather

2 if falling or threatened rain may damage fingerprints that may be on a knife left on the ground

Division 2 Crime scene warrants

170 Application for crime scene warrant

(1) A police officer may apply to a Supreme Court judge or a magistrate for a warrant (a ***crime scene warrant***) to establish a crime scene at a place.

(2) The application must be sworn and state the grounds on which it is sought.

(3) The occupier of the place must, if reasonably practicable, be given notice of the making of the application.

(4) Subsection (3) does not apply if the police officer reasonably suspects giving the notice would frustrate or otherwise hinder

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the investigation of the offence to which the application relates.

(5) If present when the application is made, the occupier may make submissions to the judge or magistrate (the ***issuer***), but not submissions that will unduly delay the consideration of the application.

(6) The issuer may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

171 Consideration of application and issue of crime scene warrant

(1) Before issuing a crime scene warrant, the issuer must have regard to the following—

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

(b) the likely extent of interference to be caused to the occupier of the place;

(c) the time, of not more than 7 days, for which it is reasonable to maintain a crime scene;

(d) any submissions made by the occupier.

(2) The issuer may issue a crime scene warrant only if reasonably satisfied the place is a crime scene.

(3) If before the application is considered, the place stops being a crime scene, the issuer may issue a crime scene warrant that has effect only for the time the place was a crime scene.

172 What crime scene warrant must state

(1) A crime scene warrant must state—

(a) that a stated police officer may establish a crime scene at the place and exercise crime scene powers at the place; and

(b) the day, not more than 7 days after the warrant is issued, the warrant ends, unless extended under section 173(2).

(2) If the issuer is a Supreme Court judge, the warrant must state whether or not a police officer may, under the warrant, do something that may cause structural damage to a building.

173 Duration, extension and review of crime scene warrant

(1) A crime scene warrant stops having effect on the day fixed under the warrant or a later time fixed under subsection (2).

(2) The issuer may, on the application of a police officer made before a crime scene warrant stops having effect, extend the warrant for a stated reasonable time of not more than 7 days.

174 Review of crime scene warrant

(1) If an application for a crime scene warrant was made in the absence, and without the knowledge, of the occupier of the place or the occupier had a genuine reason for not being present, the occupier may apply to the issuer for an order revoking the warrant.

(2) The issuer may revoke or refuse to revoke the warrant.

(3) The making of an application under subsection (1) or the *Judicial Review Act 1991* for review of the warrant's issue does not stay the effect of the warrant.

175 Copy of crime scene warrant to be given to occupier

(1) If a police officer exercises powers under a crime scene warrant for a place that is occupied, the police officer must give to the occupier a copy of the warrant and a statement in the approved form summarising the person's rights and obligations under the warrant.

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(2) If the occupier is not present, the police officer must leave the copy in a conspicuous place.

Division 3 Powers at crime scenes

176 Powers at crime scene

(1) The responsible officer at a crime scene, or a police officer acting under the direction of the responsible officer, may do any of the following in relation to the crime scene—

(a) enter the crime scene;

(b) if reasonably necessary, enter another place to gain access to the crime scene;

(c) perform any necessary investigation, including, for example, a search and inspection of the crime scene and anything in it to obtain evidence of the commission of an offence;

(d) open anything at the crime scene that is locked;

(e) take electricity for use at the crime scene;

(f) dig up anything at the crime scene;

(g) remove wall or ceiling linings or floors of a building, or panels or fittings of a vehicle;

(h) remove or cause to be removed an obstruction from the crime scene;

(i) photograph the crime scene and anything in it;

(j) seize all or part of a thing that may provide evidence of the commission of an offence.

Example for paragraph (j)—

It may be necessary to seize and remove a vehicle for scientific examination to obtain evidence that may be in the vehicle.

(2) However, if it is necessary to do anything at the place that may cause structural damage to a building, the thing must not be done unless a Supreme Court judge issues a crime scene

warrant for the place before the thing is done and the warrant authorises the doing of the thing.

(3) An authorised assistant at a crime scene may also do a thing mentioned in subsection (1).

(4) However, the authorised assistant may do either of the following only if asked by a responsible officer to do something at the crime scene—

(a) enter the crime scene;

(b) if reasonably necessary, enter another place to gain access to the crime scene.

177 Powers of direction etc. at crime scene

The responsible officer or a police officer acting under the direction of the responsible officer may, at a crime scene, do any of the following—

(a) direct a person to leave the crime scene or remove a vehicle or animal from the crime scene;

(b) remove or cause to be removed from the crime scene—

(i) a person who fails to comply with a direction to leave the crime scene; or

(ii) a vehicle or animal a person fails to remove from the crime scene;

(c) direct a person not to enter the crime scene;

(d) prevent a person from entering the crime scene;

(e) prevent a person from removing evidence from or otherwise interfering with the crime scene or anything in it and, for that purpose, detain and search the person;

(f) direct the occupier of the place or a person apparently in charge of the place to maintain a continuous supply of electricity at the place.

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Not authorised—indicative only

178 Exercise of crime scene powers in public place

(1) It is lawful for a police officer to exercise powers under sections 176 and 177 at a public place without a crime scene warrant.

(2) However, if—

(a) the place is a public place only while it is ordinarily open to the public; and

(b) the occupier of the place asks a police officer or an authorised assistant to leave the place;

the police officer or authorised assistant may, despite the request, continue to act under subsection (1) for the time reasonably necessary for an application for a crime scene warrant for the place to be made and decided.

(3) An authorised assistant at a crime scene may also do a thing mentioned in section 176(1).

(4) However, the authorised assistant may do either of the following only if asked by a responsible officer to do something at the crime scene—

(a) enter the crime scene;

(b) if reasonable necessary, enter another place to gain access to the crime scene.

178A Order about digital device at or seized from a crime scene

(1) On the application of a police officer, a Supreme Court judge or a magistrate may make an order requiring a specified person to do a thing mentioned in subsection (2) in relation to a digital device—

(a) situated at a crime scene; or

(b) seized from a crime scene under section 176(1)(j).

(2) The specified person may be required to—

(a) give a police officer access to the device; or

(b) give a police officer access information for the device or any assistance necessary for the officer to gain access to device information from the device; or

(c) allow a police officer to—

(i) use access information for the device to gain access to device information from the device; or

(ii) examine device information from the device to find out whether the information may be evidence of the commission of a crime scene threshold offence; or

(iii) make a copy of device information from the device that may be evidence of the commission of a crime scene threshold offence, including by using another digital device; or

(iv) convert device information from the device that may be evidence of the commission of a crime scene threshold offence into documentary form, or another form, that enables the information to be understood by a police officer.

(3) The judge or magistrate may make the order only if satisfied there are reasonable grounds for suspecting that device information from the digital device may be evidence of the commission of the offence for which the crime scene was, or is to be, established.

(4) The order must state—

(a) the time at or by which the specified person must give a police officer the information or assistance mentioned in subsection (2)(b); and

(b) the place where the specified person must provide the information or assistance; and

(c) any conditions to which the provision of the information or assistance is subject; and

(d) that failure to comply with the order may be dealt with under the Criminal Code, section 205A.

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(5) Without limiting when the application for the order may be made, the application may be made at the same time the police officer applies for a crime scene warrant for the crime scene and the judge or magistrate may include the order in the crime scene warrant.

178B Compliance with order about device information from digital device

A person is not excused from complying with an order made under section 178A(1) on the basis that complying with the order might tend to incriminate the person or expose the person to a penalty.

Division 4 General

179 Alternative accommodation to be provided in some cases

(1) This section applies to the occupier of a dwelling if—

(a) the occupier can not continue to live in the dwelling while the crime scene is established because of a direction given at a crime scene; or

(b) the occupier can not continue to live in the dwelling because of damage caused to the dwelling in the exercise of powers under this part.

(1A) A police officer must inform the occupier of the occupier's right to suitable alternative accommodation for the time the occupier can not live in the dwelling.

(2) The commissioner must arrange suitable alternative accommodation for the occupier for the time the occupier can not live in the dwelling, if requested to do so by the occupier.

(3) The accommodation must, if reasonably practicable, be in the same locality as, and of at least a similar standard to, the occupier's dwelling.

(4) This section does not apply to an occupier who is detained in lawful custody.

Part 3A Searching places for high-risk missing persons

Division 1 Preliminary

179A Definitions for part

In this part—

commissioned officer means a police officer of at least the rank of inspector.

missing person see section 179B.

missing person powers means the powers provided for in sections 179P and 179Q.

missing person scene means that part of a place in which missing person powers may be exercised.

missing person warrant see section 179J(1).

residence, for a person, includes a place at which the person regularly sleeps.

responsible officer see section 179D.

179B Who is a *missing person*

A person is a ***missing person*** if—

(a) another person fears for the safety of the person, or is concerned for the welfare of the person, because he or she is unable to contact or locate the person; and

(b) the other person reports his or her fear or concern to a police officer; and

(c) after a police officer makes reasonable inquiries to contact or locate the person, the person's whereabouts remain unknown to the police officer.

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179C When a missing person is high-risk

(1) This section applies to a police officer, Supreme Court judge or magistrate in deciding under division 2 or 3 whether a missing person is high-risk.

(2) The police officer, Supreme Court judge or magistrate may be satisfied a missing person is high-risk if—

(a) the person is under 13 years; or

(b) the officer, judge or magistrate reasonably suspects the person may suffer serious harm if not found as quickly as possible.

(3) In making a decision about a missing person under subsection (2)(b), the police officer, Supreme Court judge or magistrate may have regard to any of the following matters—

(a) the person's age;

(b) any disability of the person attributable to a cognitive, intellectual, neurological, physical or psychiatric impairment;

(c) evidence the person may commit suicide;

(d) the person's ability to interact safely with other persons or in an unfamiliar environment;

(e) the person's need for medication;

(f) an addiction the person may have;

(g) the person's recent behaviour that is out of character for the person;

(h) whether the person is suspected of being the victim of a crime;

(i) any history of domestic violence or other relationship problems affecting the person;

(j) any ongoing bullying or harassment of the person;

(k) a previous disappearance or exposure to serious harm that affected the person;

(l) whether the person is experiencing any financial problems;

(m) a reason why the person may wish to go missing;

(n) if the person is suspected of being lost within a particular area, the climate or other environmental factors relevant to the area;

(o) any suspicious circumstances relating to the person's disappearance.

Example of a suspicious circumstance—

The missing person has suddenly stopped his or her regular activities, including banking or social activities.

(4) In this section—

serious harm means harm, including the cumulative effect of any harm, that—

(a) endangers, or is likely to endanger, a person's life; or

(b) is, or is likely to be, significant and longstanding.

Division 2 Establishment of missing person scenes

179D Establishing missing person scene

(1) A police officer (the ***responsible officer***) may establish a missing person scene at a place if authorised to do so—

(a) under a missing person warrant; or

(b) under section 179E.

(2) If another police officer assumes control of the missing person scene, that police officer becomes the responsible officer for the scene instead of the other officer.

(3) The police officer may establish the missing person scene in any way that gives a person wanting to enter the place notice that the place is a missing person scene.

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Examples—

1 A police officer may stand at a door to stop people entering a building and tell them they can not enter the building.

2 A police officer may put around a place barricades or tapes indicating the place is a missing person scene.

3 A police officer may display a written notice stating the place is a missing person scene and unauthorised entry is prohibited.

179E Authorisation if, as a matter of urgency, it is necessary to establish missing person scene before obtaining missing person warrant

(1) This section applies if a police officer is satisfied—

(a) a missing person is high-risk; and

(b) as a matter of urgency, it is necessary to establish a missing person scene at a place before obtaining a missing person warrant.

(2) The police officer may establish the missing person scene if authorised to do so by a commissioned officer.

(3) The commissioned officer may authorise establishing the missing person scene if—

(a) the commissioned officer is satisfied the missing person is high-risk; and

(b) the commissioned officer—

(i) for a place that is the missing person's residence, place of employment or vehicle—reasonably suspects the person may be at the place or an inspection of the place may provide information about the person's disappearance; or

(ii) for any other place—reasonably believes the person may be at the place or an inspection of the place may provide information about the person's disappearance; and

(c) the commissioned officer is satisfied it is reasonably necessary to exercise missing person powers at the place

to search for the person or to gather information about the person's disappearance; and

(d) the commissioned officer is satisfied, as a matter of urgency, it is necessary to establish a missing person scene at the place before obtaining a missing person warrant.

179F Responsibility after establishing missing person scene before obtaining missing person warrant

(1) This section applies if a police officer establishes a missing person scene at a place before obtaining a missing person warrant.

(2) As soon as reasonably practicable after establishing the missing person scene, a police officer must apply under section 179J to a Supreme Court judge or magistrate for a missing person warrant.

(3) Subsection (2) does not apply if the place is a public place, unless the place is a public place only while it is ordinarily open to the public and the occupier of the place requires a police officer at the place to leave the place.

179G Deciding limits of missing person scene

When establishing a missing person scene, the responsible officer for the scene must—

(a) identify what is the missing person scene; and

(b) decide the boundaries necessary to protect the missing person scene; and

(c) mark the limits of the missing person scene in a way that sufficiently identifies it to the public as a missing person scene.

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179H Restricting access to missing person scene

(1) Immediately after establishing a missing person scene, the responsible officer for the scene must take the steps the officer considers reasonably necessary to protect anything at the scene from being damaged, interfered with or destroyed, including, for example, steps necessary to—

(a) ensure people, including police officers, whose presence at the scene is not essential do not enter the scene; and

(b) prevent unnecessary movement inside the boundaries of the scene; and

(c) establish a safe walking area in the scene for reducing the risk of damage to anything that may be at the scene.

(2) A person, other than the responsible officer, must not enter the missing person scene unless—

(a) the person has a special reason, associated with the investigation, for entering the scene; or

Examples—

- a police officer removing someone from the missing person scene who should not be there
- a police officer investigating the disappearance of the missing person the subject of the investigation
- a person accompanying a police officer to assist in the investigation or who has special knowledge of the place that is relevant to the investigation

(b) the person is a police officer who is asked to enter the scene by the responsible officer or an investigating police officer; or

(c) the person is an authorised assistant; or

(d) the presence of the person is necessary to preserve life or property at the scene; or

(e) the person is authorised to enter by the responsible officer.

(3) For subsection (2)(e), the responsible officer may authorise the entry subject to stated requirements.

(4) The responsible officer must ensure a record is made of—

(a) the name of each person who is present when the missing person scene is established or enters it after it is established; and

(b) when each person entered the missing person scene after it was established, and the purpose of the entry.

179I When place stops being missing person scene

(1) If a missing person scene is established at a place, the place stops being a missing person scene at the end of 48 hours after the scene is established.

(2) However, if a missing person warrant issued for the place is extended under section 179M, the place stops being a missing person scene at the end of the extension.

(3) Also, the place stops being a missing person scene before the end of the 48 hours, or any extension, if and when any of the following events happen—

(a) a judge or magistrate refuses to issue a missing person warrant for the place;

(b) a missing person warrant for the place stops having effect under section 179M;

(c) the responsible officer for the scene becomes aware that the missing person—

(i) has been found; or

(ii) is not a person who is likely to be high-risk;

(d) the responsible officer for the scene decides there is no longer a need to exercise missing person powers at the place.

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Not authorised—indicative only

Division 3 Missing person warrants

179J Applying for missing person warrant

(1) A police officer may apply to a Supreme Court judge or a magistrate for a warrant (a ***missing person warrant***) to—

(a) establish a missing person scene; or

(b) confirm a missing person scene established under section 179E.

(2) However, the police officer may only apply for a warrant to establish a missing person scene if authorised to do so by a commissioned officer.

(3) The application must—

(a) be sworn and state the grounds on which it is sought; and

(b) include the information required under the responsibilities code.

(4) A police officer must, if reasonably practicable, give notice of the making of the application to the occupier of the place.

(5) Subsection (4) does not apply if the police officer reasonably suspects giving the notice would frustrate or otherwise hinder the investigation to which the application relates.

(6) If present when the application is made, the occupier may make submissions to the judge or magistrate (the ***issuer***), but not submissions that will unduly delay the consideration of the application.

(7) The issuer may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

179K Considering application and issuing missing person warrant

(1) This section applies if a Supreme Court judge or magistrate is considering an application for a missing person warrant in relation to a place.

(2) In deciding the application, the judge or magistrate must have regard to the following—

(a) the nature and seriousness of the disappearance of the missing person;

(b) the likely extent of interference to be caused to the occupier of the place;

(c) the time for which it is reasonable to maintain a missing person scene;

(d) any submissions made by the occupier of the place.

(3) The judge or magistrate (the ***issuer***) may issue the missing person warrant if—

(a) the issuer is satisfied the missing person is high-risk; and

(b) the issuer—

(i) for a place that is the person's residence, place of employment, or vehicle—reasonably suspects the person may be at the place or an inspection of the place may provide information about the person's disappearance; or

(ii) for any other place—reasonably believes the person may be at the place or an inspection of the place may provide information about the person's disappearance; and

(c) the issuer is satisfied it is reasonably necessary to exercise missing person powers at the place to search for the person or to gather information about the person's disappearance.

(4) If, before the application is considered, the place stops being a missing person scene, the judge or magistrate may issue a

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Not authorised—indicative only

missing person warrant that has effect only for the time the place was a missing person scene.

179L What missing person warrant must state

(1) A missing person warrant must state—

(a) that a stated police officer may establish a missing person scene at the place and exercise missing person powers at the scene; and

(b) the day and time, of not more than 48 hours after the missing person scene is established, that the warrant ends.

(2) If a Supreme Court judge issues the missing person warrant, the warrant must state whether or not a police officer may, under the warrant, do something that may cause structural damage to a building.

179M Duration, extension and review of missing person warrant

(1) A missing person warrant stops having effect at the time fixed under the warrant or a later time fixed under subsection (2).

(2) A Supreme Court judge or magistrate may, on the application of a police officer made before a missing person warrant stops having effect, extend the warrant for a stated reasonable time of not more than 48 hours.

(3) The application must—

(a) be sworn and state the grounds on which it is sought; and

(b) include the information required under the responsibilities code.

179N Review of missing person warrant

(1) This section applies if a missing person warrant is issued in relation to a place.

(2) The occupier of the place may apply to the Supreme Court judge or magistrate that issued the missing person warrant for an order revoking the warrant if the application for the warrant was made in the absence of the occupier and the occupier—

(a) did not know about the application; or

(b) had a genuine reason for not being present during the hearing of the application.

(3) The judge or magistrate may revoke or refuse to revoke the warrant.

(4) The making of an application under subsection (2), or an application under the *Judicial Review Act 1991* for review of the decision to issue the missing person warrant, does not stay the effect of the warrant.

179O Copy of missing person warrant to be given to occupier

(1) If a police officer exercises powers under a missing person warrant at a place that is occupied, the police officer must give the occupier a copy of both of the following as soon as it is reasonably practicable to do so—

(a) the missing person warrant;

(b) a statement, in the approved form, summarising the occupier's rights and obligations under the missing person warrant.

(2) If the occupier is not present, the police officer must leave the copy of the missing person warrant and the statement in a conspicuous place.

Division 4 Powers at missing person scenes

179P Powers at missing person scene

(1) The responsible officer for a missing person scene, or a police officer acting under the direction of the responsible officer, may do any of the following in relation to the scene—

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Not authorised—indicative only

(a) enter the scene;

(b) if reasonably necessary, enter another place to gain access to the scene;

(c) perform any necessary investigation, including, for example, a search and inspection of the scene and anything in it for the missing person or to obtain information about the person's disappearance;

(d) open anything at the scene that is locked;

(e) take electricity for use at the scene;

(f) remove or cause to be removed an obstruction from the scene;

(g) photograph the scene and anything in it;

(h) seize all or part of a thing that may provide information about the missing person's disappearance.

(2) However, if it is necessary to do anything at the missing person scene that may cause structural damage to a building, the thing must not be done unless a Supreme Court judge issues a missing person warrant before the thing is done and the warrant authorises the doing of the thing.

(3) An authorised assistant for the missing person scene may also do a thing mentioned in subsection (1).

(4) However, the authorised assistant may do either of the following things only if asked to do so by the responsible officer—

(a) enter the missing person scene;

(b) if reasonably necessary, enter another place to gain access to the missing person scene.

179Q Powers of direction etc. at missing person scene

The responsible officer for a missing person scene, or a police officer acting under the direction of the responsible officer, may do any of the following—

(a) direct a person to leave the scene or remove a vehicle or animal from the scene;

(b) remove or cause to be removed from the scene—

(i) a person who fails to comply with a direction to leave the scene; or

(ii) a vehicle or animal a person fails to remove from the scene;

(c) direct a person not to enter the scene;

(d) prevent a person from entering the scene;

(e) prevent a person from removing a thing from or otherwise interfering with the scene or anything in it and, for that purpose, detain and search the person;

(f) direct the occupier of the place that is the missing person scene, or a person apparently in charge of the place, to maintain a continuous supply of electricity at the place.

179R Exercising missing person powers to be electronically recorded

(1) This section applies if a police officer exercises a missing person power at a place.

(2) If practicable, the act of exercising the missing person power must be electronically recorded.

Division 5 General

179S Alternative accommodation to be provided in some cases

(1) This section applies to the occupier of a dwelling if the occupier can not continue to live in the dwelling—

(a) while a missing person scene is established because of a direction given at the scene; or

Not authorised—indicative only

Not authorised—indicative only

(b) because of damage caused to the dwelling in the exercise of missing person powers.

(2) A police officer must inform the occupier of the occupier's right to suitable alternative accommodation for the time the occupier can not live in the dwelling.

(3) The commissioner must arrange suitable alternative accommodation for the occupier for the time the occupier can not live in the dwelling, if requested to do so by the occupier.

(4) The accommodation must, if reasonably practicable, be in the same locality as, and of at least a similar standard to, the dwelling.

(5) This section does not apply to an occupier who is detained in lawful custody.

Part 4 Production notices

180 Production notices

(1) This section applies if a police officer reasonably suspects a cash dealer holds documents that may be—

(a) evidence of the commission of an offence by someone else; or

(b) confiscation related evidence in relation to a confiscation related activity involving someone else; or

(c) SDOCO related evidence.

(2) The police officer may, instead of applying for a search warrant, apply to a justice or a magistrate for the issue of a notice (***production notice***) requiring the cash dealer to produce documents stated in the production notice to a police officer.

(3) The application must—

(a) be sworn and state the grounds on which the production notice is sought; and

(b) include information required under the responsibilities code about any production notices issued within the previous year in relation to—

(i) for an application relating to SDOCO related evidence—the person convicted of the qualifying offence to which the application relates; or

(ii) for another application—the person suspected of being involved in the commission of the offence or suspected offence or confiscation related activity to which the application relates.

(4) Subsection (3)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the police officer otherwise actually knows.

(5) The justice or magistrate (the ***issuer***) may refuse to consider the application until the police officer gives the issuer all the information the issuer requires about the application in the way the issuer requires.

Example—

The issuer may require additional information supporting the application to be given by statutory declaration.

181 Issue of production notice

(1) The justice or the magistrate may issue a production notice only if satisfied there are reasonable grounds for suspecting—

(a) documents the cash dealer holds may be—

(i) evidence of the commission of an offence; or

(ii) confiscation related evidence; and

(b) the cash dealer is not a party to the offence.

(2) The justice or the magistrate may, in the production notice, require the documents to be produced to a police officer within a stated time and at a stated place.

Not authorised—indicative only

Not authorised—indicative only

182 Copy of production notice to be given to cash dealer

A police officer must give a copy of a production notice to the cash dealer named in the notice as soon as reasonably practicable after it is issued.

183 Procedural requirements—production notice

(1) A cash dealer given a production notice must comply with the notice.

(2) The cash dealer is not subject to any liability for complying with, or producing something in the honest belief that the dealer was complying with, a production notice.

(3) It is not an offence to fail to comply with a production notice.

184 Power under production notice

(1) A police officer has the following powers in relation to a document produced under a production notice—

(a) power to inspect the document;

(b) power to take extracts from the document;

(c) power to make copies of the document;

(d) power to seize the document if the officer reasonably suspects it is evidence of the commission of an offence or confiscation related evidence.

(2) Subsection (1) applies subject to section 185.

185 If cash dealer claims documents contain privileged communications

(1) If, under a production notice, a cash dealer produces a document the cash dealer claims contains privileged communications between the cash dealer and someone else, the police officer receiving the document—

(a) must as soon as reasonably practicable apply to a magistrate for an order for access to the document (***access order***); and

(b) may retain the document, but must not inspect it until the application is decided.

(2) Before making the application, the police officer must ask for whom and on what ground the claim is made and record the answers given.

(3) Also, the police officer must—

(a) place the document in a container or envelope; and

(b) seal the container or envelope; and

(c) sign the seal on the container or envelope; and

(d) ask the person producing the document for the cash dealer to sign the seal; and

(e) tell the person producing the document for the cash dealer the document will be retained and an application will be made for an order for access to the document.

186 Making of access order

(1) A magistrate, or a justice authorised in writing by the magistrate, may make an access order for a document a cash dealer claims contains privileged communications between the cash dealer and someone else only if reasonably satisfied that in the particular circumstances the police officer should be allowed access to the document.

(2) If the magistrate or justice refuses to make the access order, the magistrate or justice may order that the document be returned to the cash dealer as soon as reasonably practicable.

187 Provisions about access order

(1) An access order may state that a police officer may, in relation to documents to which it relates—

(a) exercise the powers in section 184; or

Not authorised—indicative only

Not authorised—indicative only

(b) copy the document and return the original document to the cash dealer.

(2) An access order that authorises copying of a document and its return to a cash dealer may order that the document be again produced to a court hearing a proceeding for an offence for which the document is to be used as evidence, if a police officer asks.

(3) If an access order authorises the copying of a document that is in electronic form, the order authorises the police officer to produce a hard-copy of the information contained in the document.

Part 5 Production orders

188 Application of pt 5

(1) This part applies to the following within the meaning of the Confiscation Act—

(a) a confiscation offence;

(b) a serious crime related activity.

(2) For this part, the question whether a person has been charged with or found guilty of an interstate confiscation offence is to be decided in accordance with the law of the State in which the person is charged or found guilty.

189 Production order applications

(1) This section applies if a police officer reasonably suspects a person possesses a document that may be a property tracking document relating to—

(a) a confiscation offence of which a person has been found guilty; or

(b) a confiscation offence a police officer reasonably suspects a person has committed; or

(c) a serious crime related activity a police officer reasonably suspects a person has engaged in.

(2) A police officer may apply to a Supreme Court judge for an order (***production order***) requiring a person named in the application to produce the document to a police officer.

(3) The application must—

(a) be sworn and state the grounds on which the production order is sought; and

(b) include information specified in the responsibilities code about any production orders issued within the previous year in relation to the named person.

(4) Subsection (3)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the police officer otherwise actually knows.

(5) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

190 Making of production orders

(1) The Supreme Court judge may make a production order only if satisfied there are reasonable grounds for suspecting the person possesses a document that may be a property tracking document relating to the confiscation offence or serious crime related activity mentioned in the application.

(2) If the application includes information that the police officer reasonably suspects that—

(a) the person who was found guilty of the offence, or who is suspected of having committed the offence, derived a benefit from the commission of the offence; and

Not authorised—indicative only

Not authorised—indicative only

(b) property specified in the information is subject to the effective control of the person;

the judge may treat any document relevant to identifying, locating or quantifying that property as a property tracking document in relation to the offence for this section.

(3) If an application relating to a serious crime related activity includes information that the police officer reasonably suspects—

(a) the person who is suspected of having engaged in the serious crime related activity derived a benefit from the person's illegal activity; and

(b) the property specified in the information is subject to the effective control of the person;

the judge may treat any document relevant to identifying, locating or quantifying that property as a property tracking document in relation to the serious crime related activity for this section.

(4) In deciding whether to treat a document as a property tracking document under subsection (2) or (3), the judge may have regard to the matters mentioned—

(a) for subsection (2), in the Confiscation Act, section 187; or

(b) for subsection (3), in the Confiscation Act, section 82 or 89L.

191 What production order must state

(1) The production order must—

(a) order a stated person—

(i) to produce to a police officer any documents, other than a financial institution's books, of the kind mentioned in section 189(1) that are in the person's possession; or

(ii) to make available to a police officer, for inspection, any documents of that kind that are in the person's possession; and

(b) state when and the place where—

(i) documents that must be produced are to be produced; or

(ii) documents that must be made available for inspection are to be made available; and

(c) state that a police officer may enter the place and exercise the powers under section 192.

(2) Power to enter a place under a production order includes, and is taken always to have included, power to re-enter the place as often as is reasonably necessary for enforcing the order.

(3) In this section—

financial institution's books means accounting records used in the ordinary business of a financial institution, including ledgers, daybooks, cashbooks and account books.

192 Powers under production order

A police officer has the following powers in relation to a document produced or made available under the production order—

(a) power to inspect the document;

(b) power to take extracts from the document;

(c) power to make copies of the document;

(d) power to seize the document if the officer reasonably suspects it is evidence of the commission of an offence or confiscation related evidence.

193 Variation of production order

(1) If a Supreme Court judge makes a production order requiring a person to produce a document to a police officer, the person

Not authorised—indicative only

Not authorised—indicative only

may apply to a Supreme Court judge for a variation of the order.

(2) If the judge is satisfied the document is essential to the business activities of the person, the judge may vary the production order so it requires the person to make the document available to a police officer.

194 Offence to contravene production order

(1) A person must not contravene a production order, unless the person has a reasonable excuse.

(2) A person must not produce or make available a document under a production order that the person knows is false or misleading in a material particular without—

(a) indicating to the police officer to whom the document is produced or made available how the document is false or misleading; and

(b) giving correct information to the police officer, if the person has, or can reasonably obtain, the correct information.

(3) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

195 Effect of compliance with production order

(1) A person is not excused from producing a document or making a document available when required to do so by a production order on the ground that—

(a) producing or making the document available might tend to incriminate the person or make the person liable to a penalty; or

(b) producing or making the document available would be in breach of an obligation, whether imposed by any law

or otherwise, of the person not to disclose the existence or contents of the document.

(2) Subsection (3) applies if a person produces a document or makes a document available under a production order.

(3) The following are not admissible against the person in any criminal proceeding, other than a proceeding for an offence against section 194 in relation to producing the document or making the document available—

(a) the fact that the person produced the document;

(b) the fact that the person made the document available;

(c) any information, document or thing directly or indirectly obtained because the document was produced or made available.

Part 6 Power to seize evidence and abandoned and illegally placed property

196 Power to seize evidence generally

(1) This section applies if a police officer lawfully enters a place, or is at a public place, and finds at the place a thing the officer reasonably suspects is evidence of the commission of an offence.

(2) The police officer may seize the thing, whether or not as evidence under a warrant and, if the police officer is acting under a warrant, whether or not the offence is one in relation to which the warrant is issued.

(3) Also, the police officer may photograph the thing seized or the place from which the thing was seized.

(4) The police officer may stay on the place and re-enter it for the time reasonably necessary to remove the thing from the place.

Not authorised—indicative only

Not authorised—indicative only

197 Power to remove property unlawfully on a place

(1) This section applies if a police officer lawfully enters a place or is at a public place and finds on the place a thing the police officer reasonably suspects is on the place in contravention of an Act.

(2) The police officer may seize the thing if the person in charge of the thing can not immediately be found.

(3) Also, the police officer may seize the thing if the person in charge of the thing can be found and the police officer reasonably suspects the person is unwilling or unable to move the thing immediately.

(4) The police officer may take the thing to a place where the presence of the thing does not contravene the relevant Act or another Act.

(5) This section does not apply to a vehicle or an animal.

Part 7 Accessing account information

197A Definitions for pt 7

In this part—

account—

(a) means a facility or arrangement through which a financial institution accepts deposits or allows withdrawals; and

(b) includes a facility or arrangement with a financial institution for a fixed term deposit or safety deposit box.

financial institution includes—

(a) a corporation that is (or that, if it had been incorporated in Australia, would be) a financial corporation within the meaning of the Commonwealth Constitution, section 51(xx); and

(b) another corporation that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

senior police officer means a police officer of at least the rank of inspector.

197B Giving notice to financial institution

(1) This section applies if a senior police officer—

(a) reasonably suspects an offence has been committed, is being committed, or is about to be committed; and

(b) reasonably believes the advice sought in a notice under this section is required for—

(i) investigating the offence; or

(ii) commencing proceedings against a person for the offence; or

(iii) taking steps reasonably necessary to prevent the commission of the offence.

(2) A senior police officer may give a written notice to a financial institution stating a name and requiring the institution to advise the police officer—

(a) whether a person of the stated name is authorised, or was authorised at any time, to operate an account held with the financial institution; and

(b) if so, the name in which the account is or was held and the account number.

(3) Also, a senior police officer may give a written notice to a financial institution stating a number and requiring the institution to advise the police officer—

(a) whether an account with the stated number is held, or was held at any time, with the financial institution; and

(b) if so, the name in which the account is or was held and the name of any person who is or was authorised to operate the account.

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Not authorised—indicative only

(4) A notice under subsection (2) or (3) must also state each of the following—

(a) the name and contact details of the senior police officer giving the notice;

(b) that the police officer has the reasonable suspicion and belief required to give the notice under subsection (1);

(c) that the financial institution must comply with the notice within a stated reasonable period;

(d) how and to whom the advice must be given;

(e) a description of the offence under section 197D.

(5) The notice may state any other details that may help the financial institution identify an account.

(6) The same notice may be given—

(a) about more than 1 name or account number; and

(b) to more than 1 financial institution.

(7) When giving a notice under this section, the senior police officer giving the notice must make a written record of the reasons the officer has the reasonable suspicion and belief required to give the notice under subsection (1).

197C Protection from suits etc. in relation to action taken

A person is not liable to any action, suit or proceeding in relation to action taken by the person—

(a) as required by a notice given under this part; or

(b) in the mistaken belief that the action was required by the notice.

197D Financial institution to comply with notice

(1) A financial institution must comply with a notice given to it under this part.

Maximum penalty—100 penalty units.

(2) However, a financial institution must comply with the notice only to the extent that records needed to comply with the notice are held by, or are under the control of, the institution.

(3) It is a defence to a prosecution for an offence against subsection (1) for the financial institution to prove it—

(a) could not reasonably comply with the notice within the period stated in the notice; and

(b) took reasonable steps to comply with the notice; and

(c) gave the advice sought in the notice as soon as practicable after the period for compliance stated in the notice.

Part 8 Miscellaneous

197E Accessing information stored electronically on smartcard transport authorities

(1) A police officer may, without the consent of the holder of a smartcard transport authority, access information stored electronically on the document for exercising a power—

(a) under a prescribed transport Act; or

(b) in relation to the Criminal Code, section 328A.

Note—

The Criminal Code, section 328A creates offences for the dangerous operation of a vehicle.

(2) In this section—

access, in relation to information stored electronically on a smartcard transport authority, means view or take a copy of the information.

prescribed transport Act means the following Acts—

(a) the *Tow Truck Act 1973*;

(b) the *Transport Operations (Marine Safety) Act 1994*;

Not authorised—indicative only

Not authorised—indicative only

(c) the *Transport Operations (Passenger Transport) Act 1994*;

(d) the *Transport Operations (Road Use Management) Act 1995*.

smartcard transport authority means the following authorities—

(a) a smartcard driver's certificate or smartcard assistant's certificate as defined in the *Tow Truck Act 1973*, schedule 2;

(b) a smartcard marine licence indicator as defined in the *Transport Operations (Marine Safety) Act 1994*, schedule 1;

(c) a smartcard driver authorisation as defined in the *Transport Operations (Passenger Transport) Act 1994*, schedule 3;

(d) a smartcard authority as defined in the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

Chapter 8 Monitoring and suspension orders

Part 1 Definition

198 Meaning of *financial institution* for ch 8

In this chapter—

financial institution includes—

(a) a corporation that is (or that, if it had been incorporated in Australia, would be) a financial corporation within

the meaning of the Commonwealth Constitution, section 51(xx); and

(d) another entity that permits persons to deposit money with it for use by, or at the direction of, the persons for gaming or betting.

Part 2 Monitoring orders

199 Monitoring order applications

(1) A police officer may apply to a Supreme Court judge for an order (***monitoring order***) directing a financial institution to give information to a police officer about a named person.

(2) The application—

(a) may be made without notice to any party; and

(b) must—

(i) be sworn and state the grounds on which the order is sought; and

(ii) include information required under the responsibilities code about any monitoring orders issued within the previous year in relation to an account held with the financial institution by the named person.

(3) Subsection (2)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the police officer otherwise actually knows.

(4) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

Not authorised—indicative only

Not authorised—indicative only

200 Making of monitoring order

The Supreme Court judge may make the monitoring order only if satisfied there are reasonable grounds for suspecting that the person named in the application—

(a) has committed, or is about to commit, a confiscation offence; or

(b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or

(d) has been, or is about to be, involved in a serious crime related activity; or

(e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

201 What monitoring order must state

(1) The monitoring order must order a financial institution to give information obtained by the institution about transactions conducted through an account held by the named person with the institution and state—

(a) the name or names in which the account is believed to be held; and

(b) the type of information the institution is required to give; and

(c) the period, of not more than 3 months from the date of its making, the order is in force; and

(d) that the order applies to transactions conducted during the period stated in the order; and

(e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.

(2) In this section—

transaction conducted through an account includes—

(a) the making of a fixed term deposit; and

(b) in relation to a fixed term deposit—the transfer of the amount deposited, or any part of it, at the end of the term.

202 When period stated in monitoring order starts

A monitoring order has effect from the start of the day notice of the order is given to the financial institution.

203 Offence to contravene monitoring order

A financial institution that has been given notice of a monitoring order must not knowingly—

(a) contravene the order; or

(b) provide false or misleading information in purported compliance with the order.

Maximum penalty—1,000 penalty units.

204 Existence and operation of monitoring order not to be disclosed

(1) A financial institution that is or has been subject to a monitoring order must not disclose the existence or the operation of the order to any person other than—

(a) a police officer; or

(b) an officer or agent of the institution (***an institution officer***), for ensuring the order is complied with; or

(c) a lawyer, for obtaining legal advice or representation in relation to the order.

(2) A person to whom the existence or operation of a monitoring order has been disclosed, whether under subsection (1) or

Not authorised—indicative only

Not authorised—indicative only

under the provision as originally made or remade or otherwise, must not—

(a) while the person is a police officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

(i) if the person is a police officer—performing the person's duties; or

(ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or

(b) when the person is no longer a police officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a police officer disclosing the existence or operation of a monitoring order—

(a) for, or in relation to, a legal proceeding; or

(b) in a proceeding before a court.

(4) A police officer can not be required to disclose to any court the existence or operation of a monitoring order.

(5) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

(6) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the monitoring order.

(7) In this section—

officer, of a financial institution, means—

(a) a secretary, executive officer or employee of the financial institution; or

(b) anyone who, under the Confiscation Act, is a director of the financial institution.

Part 3 Suspension orders

205 Suspension order application

(1) A police officer may apply to a Supreme Court judge for an order (***suspension order***) directing a financial institution to give information to a police officer about a named person.

(2) The application—

(a) may be made without notice to any person; and

(b) must—

(i) be sworn and state the grounds on which the order is sought; and

(ii) include information required under the responsibilities code about any suspension orders issued within the previous year in relation to an account held with the financial institution by the named person.

(3) Subsection (2)(b)(ii) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the police officer otherwise actually knows.

(4) The judge may refuse to consider the application until the police officer gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

Not authorised—indicative only

Not authorised—indicative only

206 Making of suspension order

The Supreme Court judge may make the suspension order only if satisfied there are reasonable grounds for suspecting that the person named in the application—

(a) has committed, or is about to commit, a confiscation offence; or

(b) was involved in the commission, or is about to be involved in the commission, of a confiscation offence; or

(c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a confiscation offence; or

(d) has been, or is about to be, involved in a serious crime related activity; or

(e) has acquired directly or indirectly, or is about to acquire directly or indirectly, serious crime derived property.

207 What suspension order must state

(1) The suspension order must order a financial institution—

(a) to notify a police officer immediately of any transaction that has been initiated in connection with an account held with the institution by a person named in the order; and

(b) to notify a police officer immediately if there are reasonable grounds for suspecting that a transaction is about to be initiated in connection with the account; and

(c) to refrain from completing or effecting the transaction for 48 hours, unless a named police officer gives the financial institution written consent to the transaction being completed immediately.

(2) In addition, the suspension order must state—

(a) the name or names in which the account is believed to be held; and

(b) the type of information the institution is required to give; and

(c) the period, of not more than 3 months from the date of its making, the order is in force; and

(d) that the order applies to transactions conducted during the period stated in the order; and

(e) that the information is to be given to any police officer or to a stated police officer and the way in which the information is to be given.

208 When period stated in suspension order starts

A suspension order has effect from the time notice of the order is given to the financial institution.

209 Contravention of suspension order

A financial institution that has been given notice of a suspension order must not knowingly—

(a) contravene the order; or

(b) provide false or misleading information in purported compliance with the order.

Maximum penalty—1,000 penalty units.

210 Existence and operation of suspension order not to be disclosed

(1) A financial institution that is or has been subject to a suspension order must not disclose the existence or the operation of the order to any person other than—

(a) a police officer; or

(b) an officer or agent of the institution (an ***institution officer***), for ensuring the order is complied with; or

(c) a lawyer, for obtaining legal advice or representation in relation to the order.

Not authorised—indicative only

Not authorised—indicative only

(2) A person to whom the existence or operation of a suspension order has been disclosed, whether under subsection (1) or under the provision as originally made or remade or otherwise, must not—

(a) while the person is a police officer, institution officer or lawyer, disclose the existence or operation of the order other than to another person to whom it may be disclosed under subsection (1) but only for—

(i) if the person is a police officer—performing the person's duties; or

(ii) if the person is an institution officer—ensuring the order is complied with or obtaining legal advice or representation in relation to the order; or

(iii) if the person is a lawyer—giving legal advice or making representations in relation to the order; or

(b) when the person is no longer a police officer, institution officer or lawyer, make a record of, or disclose, the existence or the operation of the order in any circumstances.

(3) Subsection (2) does not prevent a police officer disclosing the existence or operation of a suspension order—

(a) for, or in relation to, a legal proceeding; or

(b) in a proceeding before a court.

(4) A police officer can not be required to disclose to any court the existence or operation of a suspension order.

(5) A person who contravenes subsection (1) or (2) commits a crime.

Maximum penalty—350 penalty units or 7 years imprisonment.

(6) A reference in this section to disclosing the existence or operation of a suspension order to a person includes a reference to disclosing information to the person from which the person could reasonably be expected to infer the existence or operation of the suspension order.

(7) In this section—

officer, of a financial institution, means—

(a) a secretary, executive officer or employee of the financial institution; or

(b) anyone who, under the Confiscation Act, is a director of the financial institution.

Chapter 9 Covert searches

211 Meaning of *terrorist act* and *terrorism*

(1) An action is a ***terrorist act*** if—

(a) it does any of the following—

(i) causes serious harm that is physical harm to a person;

(ii) causes serious damage to property;

(iii) causes a person's death;

(iv) endangers the life of someone other than the person taking the action;

(v) creates a serious risk to the health or safety of the public or a section of the public;

(vi) seriously interferes with, seriously disrupts, or destroys an electronic system; and

(b) it is done with the intention of advancing a political, religious or ideological cause; and

(c) it is done with the intention of—

(i) coercing, or influencing by intimidation, the government of the Commonwealth, a State or a foreign country, or of part of a State or a foreign country; or

Not authorised—indicative only

Not authorised—indicative only

(ii) intimidating the public or a section of the public.

(2) A threat of action is a ***terrorist act*** if—

(a) the threatened action is likely to do anything mentioned in subsection (1)(a)(i) to (vi); and

(b) the threat is made with the intentions mentioned in subsection (1)(b) and (c).

(3) However, an action or threat of action is not a ***terrorist act*** if the action or threatened action—

(a) is advocacy, protest, dissent or industrial action; and

(b) is not intended—

(i) to cause serious harm that is physical harm to a person; or

(ii) to cause a person's death; or

(iii) to endanger the life of a person, other than the person taking the action; or

(iv) to create a serious risk to the health or safety of the public or a section of the public.

(4) ***Terrorism*** is—

(a) criminal activity that involves a terrorist act; or

(b) something that is—

(i) preparatory to the commission of criminal activity that involves a terrorist act; or

(ii) undertaken to avoid detection of, or prosecution for, criminal activity that involves a terrorist act.

(5) A reference in this section to a person or property is a reference to a person or property wherever situated, within or outside the State (including within or outside Australia).

(6) In this section—

electronic system includes any of the following electronic systems—

(a) an information system;

(b) a telecommunications system;

(c) a financial system;

(d) a system used for the delivery of essential government services;

(e) a system used for, or by, an essential public utility;

(f) a system used for, or by, a transport system.

physical harm includes unconsciousness, pain, disfigurement, infection with a disease and physical contact with a person that the person might reasonably object to in the circumstances (whether or not the person was aware of it at the time).

public includes the public of another State or of a country other than Australia.

serious harm means harm, including the cumulative effect of any harm, that—

(a) endangers, or is likely to endanger, a person's life; or

(b) is, or is likely to be, significant and longstanding.

threat includes a threat made by conduct, whether express or implied and whether conditional or unconditional.

212 Covert search warrant applications

(1) A police officer of at least the rank of inspector may apply to a Supreme Court judge for a warrant (***covert search warrant***) to enter and search a place for evidence of a designated offence, organised crime or terrorism.

(2) The application must—

(a) be sworn and state the grounds on which the warrant is sought; and

(b) include information required under the responsibilities code about any warrants issued within the previous year in relation to the place or person suspected of being involved in the designated offence, organised crime or terrorism to which the application relates.

Not authorised—indicative only

Not authorised—indicative only

(3) Subsection (2)(b) applies only to—

(a) information kept in a register that the police officer may inspect; and

(b) information the police officer otherwise actually knows.

(4) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(5) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

Example—

The judge may require additional information supporting the application to be given by statutory declaration.

213 Who may be present at consideration of application

(1) The judge must hear an application for a covert search warrant in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge permits to be present;

(d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge must hear the application—

(a) in the absence of the person who is the subject of the application (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

214 Consideration of application

Before deciding the application the judge must, in particular, and being mindful of the highly intrusive nature of a covert search warrant, consider the following—

(a) the nature and seriousness of the suspected offence or terrorism;

(b) the extent to which issuing the warrant would help prevent, detect or provide evidence of, the offence or terrorism;

(c) the benefits derived from any previous covert search warrants, search warrants or surveillance device warrants in relation to the relevant person or place;

(d) the extent to which police officers investigating the matter have used or can use conventional ways of investigation;

(e) how much the use of conventional ways of investigation would be likely to help in the investigation of the matter;

(f) how much the use of conventional ways of investigation would prejudice the investigation of the matter;

(g) any submissions made by a monitor.

215 Issue of covert search warrant

(1) After considering the application, the judge may issue the warrant for a period of not more than 30 days if satisfied there are reasonable grounds for believing evidence of a designated offence, organised crime or terrorism—

(a) is at the place; or

(b) is likely to be taken to the place within the next 72 hours.

(2) The judge may impose any conditions on the warrant that the judge considers are necessary in the public interest.

216 What covert search warrant must state

A covert search warrant must state the following—

(a) that a police officer may exercise covert search powers under the warrant;

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(b) the designated offence or organised crime related offence for which the warrant was issued or details of the terrorism for which the warrant was issued;

(c) any evidence or samples of evidence that may be seized under the warrant;

(d) that the warrant may be executed at any time of the day or night;

(e) that, if practicable, the search must be videotaped;

(f) the day and time the warrant starts and when the warrant ends;

(g) a report in relation to the warrant must be made under section 220 and to whom the report must be made.

217 Duration and extension of covert search warrant

(1) A covert search warrant is in force until the earlier of the following—

(a) the day stated in the warrant;

(b) when the initial search is complete.

(2) However, the warrant may be extended from time to time on application.

(3) The provisions of this division for an application for a warrant apply to an application for an extension, with necessary changes.

(4) Despite the ending of the warrant under subsection (1), the police officer may continue to exercise powers under the warrant, but only to the extent necessary to return a thing seized under the warrant and taken to a place for a purpose mentioned in section 219(2)(a) or (b).

Not authorised—indicative only

218 Restriction about records and access to covert search warrant applications

(1) Despite the *Recording of Evidence Act 1962*, a transcript of an application for a covert search warrant and any order made on it must not be made.

(2) A person must not publish a report of a proceeding on an application for a covert search warrant or an extension of a covert search warrant.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) A person is not entitled to search information in the custody of the Supreme Court in relation to an application for a covert search warrant, unless a Supreme Court judge otherwise orders in the interests of justice.

219 Powers under covert search warrant

(1) A police officer to whom a covert search warrant is directed may lawfully exercise the following powers under the warrant (***covert search powers***)—

(a) power to enter the place stated in the warrant (the ***relevant place***), covertly or through subterfuge, as often as is reasonably necessary for the purposes of the warrant and stay on it for the time reasonably necessary;

(b) power to pass over, through, along or under another place to enter the relevant place;

(c) power to search the relevant place for anything sought under the warrant;

(d) power to open anything in the relevant place that is locked;

(e) power to seize a thing or part of a thing found on the relevant place that the police officer reasonably believes is evidence of the commission of a designated offence or an offence relating to organised crime stated in the warrant or terrorism;

Not authorised—indicative only

(f) power to photograph anything the police officer reasonably believes may provide evidence of the commission of a designated offence or an offence relating to organised crime stated in the warrant or terrorism;

(g) power to inspect or test anything found on the place.

(2) Also, a police officer has the following powers under a covert search warrant if authorised under the warrant—

(a) power to take a thing, or part of a thing, seized under the warrant, as a sample, to a place with appropriate facilities for testing the thing for evidence of the commission of the designated offence or organised crime or of terrorism to which the warrant relates;

(b) power to do any of the following in relation to a vehicle a police officer enters under the warrant if the police officer reasonably suspects the vehicle has evidence of the commission of the designated offence or organised crime or of terrorism to which the warrant relates in or on it—

(i) seize the vehicle;

(ii) take the vehicle to a place with appropriate facilities for searching the vehicle;

(iii) remove walls, ceiling linings, panels or fittings of the vehicle for the purpose of searching the vehicle;

(iv) search the vehicle for evidence of the designated offence or organised crime or of terrorism to which the warrant relates.

220 Report on covert search

(1) A police officer to whom a covert search warrant is issued, or who is primarily responsible for executing a covert search warrant, must make a report as required under this section.

(2) The report must be made to the Supreme Court judge who issued the warrant or to the public interest monitor as stated in the warrant.

(3) The report must be made within 7 days after the warrant is executed.

(4) If a report is given to the public interest monitor, the monitor may refer the report to a Supreme Court judge for the purpose of an order being made under subsection (6).

(5) If—

(a) the report is made to a Supreme Court judge; or

(b) the public interest monitor refers the report to a Supreme Court judge;

the police officer must, if practicable, also take before the judge anything seized under the warrant and any photograph taken during the search.

(6) On receiving a report, the judge may order that any thing seized under the warrant and any photograph taken during the search—

(a) be held by a police officer until any proceeding in which the thing may be evidence ends; or

(b) be dealt with in the way the judge orders.

Chapter 10 Controlled activities

221 Object of ch 10

The object of this chapter is to ensure the effective investigation of controlled activity offences by—

(a) ensuring anything that may be approved or authorised under this chapter is approved or authorised only in appropriate circumstances; and

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Not authorised—indicative only

(b) providing appropriate protection from civil and criminal liability for persons acting under this chapter; and

(c) clarifying the status of evidence obtained by persons who engage in controlled activities under this chapter.

221A Definitions for chapter

In this chapter—

ancillary conduct, for an authorised controlled activity, means conduct that—

(a) is aiding or enabling a police officer to engage in the controlled activity; or

(b) is conspiring with a police officer for the police officer to engage in the controlled activity.

authorised controlled activity means a controlled activity authorised under section 224.

civilian participant means an adult who is not a police officer.

conduct includes any act or omission.

controlled activity offence means—

(a) a seven year imprisonment offence; or

(b) an indictable offence mentioned in schedule 2; or

(c) an indictable or simple offence mentioned in schedule 5.

222 Relationship to other laws and matters

(1) This chapter is not intended to affect any other law of this State that authorises, controls or monitors the conduct of activities—

(a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for an offence; and

(b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.

(2) Also, this chapter is not intended to affect the investigation of minor matters or investigative activities that, by their nature, can not be planned but involve the participation of police officers in activities that may be unlawful.

(3) Subject to subsections (1) and (2), a controlled activity may be approved only under this chapter.

223 Lawfulness of particular actions

To remove doubt, it is declared—

(a) that it is lawful for a police officer of at least the rank of inspector, acting in accordance with policies or procedures established by the commissioner, to authorise another police officer to engage in a stated controlled activity for the police service; and

(b) that it is lawful for a person acting under an authority given under section 224 to engage in a controlled activity in accordance with the authority and policies or procedures established by the commissioner; and

(c) that it is lawful for a police officer of at least the rank of superintendent, acting in accordance with policies or procedures established by the commissioner, to authorise a civilian participant to engage in ancillary conduct for an authorised controlled activity, for the police service; and

(d) that it is lawful for a civilian participant acting under an authority given under section 224A to engage in ancillary conduct for an authorised controlled activity.

224 Authorised controlled activities

(1) This section applies if a police officer considers it is reasonably necessary for a police officer to engage in conduct that—

Not authorised—indicative only

Not authorised—indicative only

(a) is directed to obtaining evidence of the commission of a controlled activity offence against a person; and

(b) involves the following (a ***controlled activity***)—

(i) the police officer communicating with the person in any way, whether on 1 or more occasions;

(ii) deliberately concealing the true purpose of the communication between the police officer and the person;

(iii) the police officer engaging in conduct for which, apart from section 225, the police officer would be criminally responsible.

(2) A police officer of at least the rank of inspector (a ***senior police officer***) may, in accordance with any policy or procedure of the police service, authorise another police officer to engage in a stated controlled activity.

(3) The authority must be written and state—

(a) the controlled activity the police officer is authorised to engage in; and

(b) the period, of not more than 7 days, for which the authority is in force.

(4) However, the senior police officer may authorise a police officer to engage in a controlled activity only if, having regard to the nature or extent of the relevant controlled activity offence, authorising a controlled activity is appropriate in the particular circumstances.

(5) A police officer authorised to engage in the controlled activity must comply with any relevant policy or procedure of the police service.

224A Authorised ancillary conduct for a controlled activity

(1) This section applies if a police officer considers it is reasonably necessary for a civilian participant to engage in ancillary conduct for an authorised controlled activity.

(2) A police officer of at least the rank of superintendent (a ***senior police officer***) may, in accordance with any policy or procedure of the police service, authorise the civilian participant to engage in ancillary conduct for the authorised controlled activity.

(3) However, the senior police officer may give the authorisation under subsection (2) only if, having regard to the nature and extent of the authorised controlled activity, authorising the ancillary conduct is appropriate in the particular circumstances.

(4) The authority must be written and state—

(a) the authorised controlled activity; and

(b) details of the ancillary conduct the civilian participant is authorised to engage in; and

(c) the period, of not more than 7 days, for which the authority is in force.

225 Protection from liability—police officers

(1) This section applies to the following—

(a) a police officer who authorised—

(i) a controlled activity under section 224; or

(ii) a civilian participant to engage in ancillary conduct for an authorised controlled activity under section 224A;

(b) a police officer who is or was authorised under this chapter to engage in a controlled activity.

(2) A police officer does not incur civil liability for an act done, or omission made, in the honest belief that it was done or omitted to be done under this chapter.

(3) If subsection (2) prevents a civil liability attaching to the police officer, the liability attaches instead to the State.

(4) Also, a police officer does not incur criminal liability for an act done, or omission made—

Not authorised—indicative only

Not authorised—indicative only

(a) under an authority given for a controlled activity; and

(b) in accordance with the policy or procedure about controlled activities applying to the particular controlled activity.

(5) In addition, a police officer does not incur criminal liability for an act done, or omission made, that, because of a controlled activity, was reasonably necessary for protecting the safety of any person.

(6) However, subsection (5) does not relieve a police officer from criminal liability for an act done or omission made if the act or omission results in—

(a) injury to, or the death of, a person; or

(b) serious damage to property; or

(c) a serious loss of property.

(7) This section does not limit the *Police Service Administration Act 1990*, section 10.5.

225A Protection from liability—civilian participant in authorised ancillary activity

(1) This section applies to a civilian participant who is or was authorised under this chapter to engage in ancillary conduct for an authorised controlled activity.

(2) The civilian participant does not incur civil liability or criminal liability for an act done, or omission made, in the honest belief that it was done or omitted to be done—

(a) under an authority given for ancillary conduct for a controlled activity under section 244A; and

(b) if a police officer gives a lawful instruction to the participant—in accordance with the instruction.

(3) If subsection (2) prevents a civil liability attaching to a civilian participant, the liability attaches instead to the State.

226 Admissibility of evidence obtained through controlled activities or ancillary conduct

It is declared that evidence gathered because of a controlled activity or ancillary conduct is not inadmissible only because it was obtained by a person while engaging in an unlawful act if the unlawful act was authorised under this chapter.

227 Evidentiary provision

In a proceeding, a certificate of the commissioner that on a stated day a stated person approved the conduct of a stated controlled activity is evidence of the things it states.

Chapter 11 Controlled operations

Part 1 Preliminary

228 Purposes of ch 11

The main purposes of this chapter are—

(a) to provide for the authorisation, conduct and monitoring of controlled operations, including operations conducted in this and 1 or more other jurisdictions, for the purpose of obtaining evidence that may lead to the prosecution of persons for particular offences and that involve or may involve conduct for which participants in the operation would, apart from this chapter, be criminally responsible; and

(b) to facilitate the recognition of things done in relation to controlled operations authorised under laws of other jurisdictions corresponding to this chapter; and

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Not authorised—indicative only

(c) to ensure, as far as practicable, only appropriately trained persons may act as participants in authorised operations; and

(d) to ensure a person who may act as a participant in an authorised operation engages in otherwise unlawful activities only as part of the authorised operation; and

(e) to provide appropriate protection from civil and criminal liability for persons acting under this chapter; and

(f) to clarify the status of evidence obtained by participants in authorised operations.

229 Definitions for ch 11

In this chapter—

authorised operation means a controlled operation for which an authority is in force.

authority means an authority in force under part 3, and includes any variation of an authority.

civilian participant in an authorised operation means a participant in the operation who is not a law enforcement officer.

committee means the controlled operations committee established under section 232.

conduct includes any act or omission.

controlled conduct means conduct for which a person would, apart from section 258 or 265, be criminally responsible.

controlled operation means an operation that—

(a) is conducted, or intended to be conducted, for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and

(b) involves, or may involve, controlled conduct.

corresponding authorised operation means an operation in the nature of a controlled operation that is authorised by or under the provisions of a corresponding law.

corresponding authority means an authority authorising a controlled operation, within the meaning of a corresponding law, that is in force under the corresponding law.

corresponding participant means a person who is authorised by a corresponding authority to participate in a corresponding authorised operation.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

formal application see section 239(2)(a).

formal authority see section 245(1)(a).

formal variation application see section 248(3)(a).

formal variation of authority see section 253(1)(a).

illicit goods means goods the possession of which is a contravention of the law of this jurisdiction.

inspection entity, for a law enforcement agency, means—

(a) for the police service—the independent member of the committee; or

(b) for the CCC—the parliamentary commissioner.

law enforcement participant in an authorised operation—

(a) generally—means a participant in the operation who is a law enforcement officer; and

(b) for an authorised operation being conducted for the CCC—includes a participant in the operation who is a law enforcement officer of a declared agency engaged by the CCC for the operation.

participant in an authorised operation means a person who is authorised under this chapter to engage in controlled conduct for the purposes of the operation.

principal law enforcement officer for an authorised operation means the law enforcement officer who is responsible for the conduct of the operation.

relevant offence means—

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Not authorised—indicative only

(a) a seven year imprisonment offence; or

(b) an indictable offence included in schedule 2.

report entity, for a law enforcement agency, means—

(a) for the police service—the independent member of the committee; or

(b) for the CCC—the parliamentary commissioner.

suspect means a person reasonably suspected of having committed or being likely to have committed, or of committing or being likely to be committing, a relevant offence.

urgent application see section 239(2)(b).

urgent authority see section 245(1)(b).

urgent variation application see section 248(3)(b).

urgent variation of authority see section 253(1)(b).

230 Relationship to other laws and matters

(1) This chapter is not intended to affect any other law of this jurisdiction that authorises, controls or monitors the conduct of operations entirely within this jurisdiction—

(a) that are for the purpose of obtaining evidence that may lead to the prosecution of a person for a relevant offence; and

(b) that involve, or may involve, conduct for which participants in the operation would otherwise be criminally responsible.

(2) Also, this chapter does not affect the *Crime and Corruption Act 2001*, chapter 3, part 6A.

(3) Also, this chapter is not intended to affect the investigation of minor matters or investigative activities in Queensland that, by their nature, can not be planned but involve the participation of law enforcement officers in activities that may be unlawful.

(4) Subject to subsections (1) to (3), a controlled operation may be approved only under this chapter.

(5) A function conferred in relation to the activities of the CCC under this chapter is only conferred for the purpose of a function conferred on the CCC under the *Crime and Corruption Act 2001* relating to major crime as defined under that Act.

(6) In deciding whether evidence should be admitted or excluded in any proceeding, the fact that the evidence was obtained as a result of a person engaging in criminal activity is to be disregarded if—

(a) the person was a participant or corresponding participant acting in the course of an authorised operation or corresponding authorised operation; and

(b) the criminal activity was—

(i) controlled conduct as defined under this chapter or controlled conduct as defined under a corresponding law; or

(ii) conduct for which the person is not criminally responsible because of section 258(2) or a corresponding provision of a corresponding law.

(7) In this section—

function includes power.

231 When a controlled operation is conducted in this jurisdiction

For this chapter, a controlled operation in relation to a relevant offence is taken to be conducted in this jurisdiction, whether or not it is also conducted in another jurisdiction, if a participant in the operation is a law enforcement officer of this jurisdiction.

Note—

This provision is intended to cover the situation where an officer of this jurisdiction is conducting an operation in another jurisdiction for the purposes of investigating an offence of this jurisdiction, for example, a

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Not authorised—indicative only

Queensland officer is investigating a conspiracy to import drugs into Queensland from New South Wales, and the operation is to be conducted entirely in New South Wales.

Part 2 Controlled operations committee

Division 1 Establishment

232 Establishment of controlled operations committee

(1) The controlled operations committee is established.

(2) The committee must include—

(a) an independent member; and

(b) the commissioner or the commissioner's nominee; and

(c) the CCC chairperson or the chairperson's nominee.

(3) The committee may also include anyone else the commissioner considers has appropriate knowledge or experience relevant to the performance of the committee's functions.

233 Independent member

(1) The Minister may appoint a retired Supreme Court or District Court judge to be the independent member of the committee.

(2) Before appointing the independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

234 Acting independent member

(1) The Minister may appoint a retired Supreme Court or District Court judge to act as the independent member—

(a) during any vacancy in the office; or

(b) during any period, or all periods, when the independent member is absent from duty or from the State or, for another reason, can not perform the duties of the office.

(2) Before appointing the acting independent member, the Minister must consult with the Premier and the Attorney-General about the proposed appointment.

Division 2 Functions, business and recommendations

235 Committee functions

The committee has the following functions—

(a) to consider, and make recommendations about, applications referred to the committee by a chief executive officer for—

(i) an authority to conduct a controlled operation; or

(ii) variation of an authority for a controlled operation;

(b) any other function conferred on it under this or another Act.

236 Committee business

(1) The committee may conduct its business only if the independent member is present.

(2) The committee may otherwise conduct its business, including its meetings, in the way it considers appropriate.

(3) The independent member is the chairperson of the committee.

(4) The chairperson must record the committee recommendations in the way the chairperson considers appropriate.

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Not authorised—indicative only

237 Committee recommendations

(1) After considering an application and any other relevant material referred to it by a chief executive officer, the committee may recommend that the officer grant or refuse to grant authority for a particular controlled operation.

(2) However, the committee may recommend the grant of authority for a controlled operation only if satisfied, having regard to the nature and seriousness of the offence being or to be investigated, it is appropriate for persons to engage in controlled conduct for the purposes of gathering evidence that may lead to the conviction of a person for the offence.

Division 3 Protection

238 Protection for committee members

(1) A member of the committee does not incur civil liability for an act done, or omission made, under this chapter.

(2) If subsection (1) prevents a civil liability attaching to a member of the committee, the liability attaches instead to the State.

(3) Also, a member of the committee does not incur criminal liability for an act done, or omission made in accordance with an authority given for a controlled operation under this chapter because of a recommendation made by the committee.

Part 3 Authorisation of controlled operations

Division 1 Procedure for authorising controlled operations

239 Application for authority to conduct controlled operation

(1) A law enforcement officer of a law enforcement agency may apply to the chief executive officer of the agency for authority to conduct a controlled operation on behalf of the agency.

(2) An application for an authority may be made—

(a) by way of a written document signed by the applicant (a ***formal application***); or

(b) if the applicant reasonably believes that the delay caused by making a formal application may affect the success of the operation—orally in person or under section 800 (an ***urgent application***).

(3) Nothing in this part prevents an application for an authority being made for a controlled operation that has been the subject of a previous application, but in that case the subsequent application must be a formal application.

(4) In an application, whether formal or urgent, the applicant must—

(a) provide sufficient information to enable the chief executive officer to decide whether or not to grant the application; and

(b) state—

(i) whether or not the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority; and

Not authorised—indicative only

Not authorised—indicative only

(ii) if the proposed operation, or any other controlled operation in relation to the same criminal activity, has been the subject of an earlier application for an authority or variation of an authority, whether or not the authority was given or variation granted; and

(iii) if the authority was given, the type of controlled operation authorised.

(5) In particular, the information mentioned in subsection (4)(a) must include the following for the proposed operation—

(a) an identifying name or number;

(b) a description of the criminal activity in relation to which it is proposed to conduct the operation;

(c) the name of each person who it is intended will act as a participant in the operation;

(d) a precise description of the controlled conduct a civilian participant will be required to engage in for the operation;

(e) a general description of the controlled conduct a law enforcement participant will be required to engage in for the operation.

(6) The chief executive officer may require the applicant to give additional information about the proposed controlled operation the chief executive officer considers appropriate for consideration of the application.

(7) As soon as practicable after making an urgent application, the applicant must make a record in writing of the application and give a copy of it to the chief executive officer.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

240 Application must be referred to committee

(1) The chief executive officer must refer the application to the committee without deciding the application.

(2) However, if the chief executive officer considers the application does not have enough merit to justify referring it to the committee, the chief executive officer may refuse to refer the application to the committee.

(3) This section is subject to sections 241 and 242.

241 Particular CCC controlled operations

(1) This section applies to an application made to the CCC chairperson for authority to conduct a controlled operation if a person to be investigated by the CCC under the proposed controlled operation is or may be a police officer.

(2) The chairperson may grant the authority without referring the application to the committee but, before granting the authority, the chairperson must consult with the independent member and obtain the independent member's agreement to the proposed operation.

(3) However, the chairperson may grant an authority on an urgent application made to the chairperson without complying with subsection (2), but must consult with the independent member about the controlled operation as soon as possible after granting the authority.

(4) Sections 243 and 244(2) do not apply to an application under this section.

242 Procedure in urgent circumstances other than if s 241 applies

(1) This section applies to an urgent application for authority to conduct a controlled operation made to a chief executive officer.

(2) However, this section does not apply if section 241 applies.

Not authorised—indicative only

Not authorised—indicative only

(3) The chief executive officer may grant the authority without referring the application to the committee, but must refer the application to the committee as soon as practicable after granting the authority.

(4) Sections 243 and 244(2) do not apply to an application under this section.

(5) The committee may consider the application as if the application had not been granted.

(6) The chief executive officer must consider the committee's recommendations on the application but is not bound by the recommendations.

243 Deciding application

After considering an application for authority to conduct a controlled operation, any additional information given under section 239(6), and any recommendations of the committee, the chief executive officer—

(a) may authorise the operation by granting the authority, with or without conditions; or

(b) may refuse the application.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

244 Matters to be taken into account

(1) An authority to conduct a controlled operation may not be granted unless the chief executive officer is satisfied on reasonable grounds—

(a) that a relevant offence has been, is being, or is likely to be committed; and

(b) that the nature and extent of the suspected criminal activity justifies the conduct of a controlled operation—

(i) in this jurisdiction; or

(ii) in this jurisdiction and a participating jurisdiction, if the controlled operation will be or is likely to be conducted in those jurisdictions; and

(c) that any unlawful conduct involved in conducting the operation will be limited to the maximum extent consistent with conducting an effective controlled operation; and

(d) that the operation will be conducted in a way that will minimise the risk of more illicit goods being under the control of persons, other than law enforcement officers, at the end of the operation than are reasonably necessary to enable the officers to achieve the purpose of the controlled operation; and

(e) that the proposed controlled conduct will be capable of being accounted for in a way that will enable the reporting requirements of part 5 to be complied with; and

(f) that the operation will not be conducted in a way that makes it likely for a person to be induced to commit an offence against a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and

(g) that any conduct involved in the operation will not—

(i) seriously endanger the health or safety of any person; or

(ii) cause the death of, or serious injury to, any person; or

(iii) involve the commission of a sexual offence against any person; or

(iv) result in serious loss of or serious damage to property, other than illicit goods; and

(h) that any role given to a civilian participant in the operation is not one that could be adequately performed by a law enforcement officer; and

Not authorised—indicative only

Not authorised—indicative only

(i) that any proposed participant in the operation has received appropriate training for the purpose.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

(2) Also, the chief executive officer must not grant authority for a controlled operation unless the committee has recommended that the authority be granted.

245 Form of authority

(1) An authority to conduct a controlled operation may be granted—

(a) by way of a written document, signed by the chief executive officer (a ***formal authority***); or

(b) if the chief executive officer is satisfied that the delay caused by granting a formal authority may affect the success of the operation—orally in person or under section 801 (an ***urgent authority***).

(2) This part does not stop an authority being granted for a controlled operation that has been the subject of a previous authority, but in that case the subsequent authority must be a formal authority.

(3) An authority, whether formal or urgent, must—

(a) state an identifying name or number for the operation; and

(b) state the name and rank or position of the person granting the authority; and

(c) state the name of the principal law enforcement officer for the operation and, if the principal law enforcement officer is not the applicant for the authority, the name of the applicant; and

(d) state whether the application was a formal application or an urgent application; and

(e) identify each person who may engage in controlled conduct for the purposes of the operation; and

(f) state the participating jurisdiction in which the controlled conduct is, or is likely to be, engaged in; and

(g) identify the nature of the criminal activity, including the suspected relevant offences, in relation to which the controlled conduct is to be engaged in; and

(h) identify—

(i) in relation to the law enforcement participants, the nature of the controlled conduct that those participants may engage in; and

(ii) in relation to the civilian participants, the particular controlled conduct, if any, that each of the participants may engage in; and

(i) identify, to the extent known, any suspect; and

(j) state the period of validity of the authority, of not more than 6 months for a formal authority or 7 days for an urgent authority; and

(k) state any conditions to which the conduct of the operation is subject; and

(l) state the date and time when the authority is granted; and

(m) identify, to the extent known—

(i) the nature and quantity of any illicit goods that will be involved in the operation; and

(ii) the route through which those goods will pass in the course of the operation.

(4) A person is sufficiently identified for subsection (3)(e) if the person is identified—

(a) by an assumed name under which the person is operating; or

(b) by a code name or code number;

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Not authorised—indicative only

if the assumed name, code name or code number can be matched to the person's identity.

(5) The chief executive officer must ensure that written notes are kept of the particulars mentioned in subsection (3) for each urgent authority and issue a written authority to the applicant as soon as practicable.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

246 Duration of authority

Unless it is sooner cancelled, an authority has effect for the period of validity stated in it under section 245(3)(j).

Division 2 Variation and cancellation of authorities

247 Variation of authority

(1) The chief executive officer may vary an authority granted by the chief executive officer—

(a) at any time on the chief executive officer's own initiative; or

(b) on application under section 248.

(2) However, a variation can not be made that has the effect of extending the period of validity of an urgent authority.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

248 Application for variation of authority

(1) The principal law enforcement officer for an authorised operation, or any other law enforcement officer on behalf of

the principal law enforcement officer, may apply to the chief executive officer for a variation of authority for any 1 or more of the following purposes—

(a) to extend the period of validity of the authority, other than as provided by section 247(2);

(b) to authorise additional or alternative persons to engage in controlled conduct for the purposes of the operation;

(c) to authorise participants in the operation to engage in additional or alternative controlled conduct;

(d) to identify additional suspects, to the extent known.

(2) More than 1 application for a variation may be made in relation to the same authority, but no single variation may extend the period of validity of an authority for more than 6 months at a time.

(3) An application for a variation of an authority may be made—

(a) by way of a written document signed by the applicant (a ***formal variation application***); or

(b) if the applicant reasonably believes that the delay caused by making a formal application for variation may affect the success of the operation—orally in person or under section 800 (an ***urgent variation application***).

(4) In an application, whether formal or urgent, the applicant must state—

(a) sufficient information to enable the chief executive officer to decide whether or not to grant the application; and

(b) whether or not the proposed variation, or any other variation in relation to the same authorised operation, has been the subject of an earlier application for a variation; and

(c) if the proposed variation, or any other variation in relation to the same authorised operation, has been the subject of an earlier application for a variation—

(i) whether or not the variation was granted; and

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Not authorised—indicative only

(ii) if the variation was granted, the type of variation granted.

(5) The chief executive officer may require the applicant to give additional information about the proposed variation the chief executive officer considers appropriate for consideration of the application.

249 Variation must be referred to committee

(1) The chief executive officer must refer the proposed variation to the committee without deciding it, whether the chief executive officer is acting under section 247(1)(a) or (b).

(2) However, if—

(a) the chief executive officer is acting under section 247(1)(b); and

(b) the chief executive officer considers the application does not have enough merit to justify referring it to the committee;

the chief executive officer may refuse to refer the application to the committee.

(3) This section is subject to sections 250 and 251.

250 Particular CCC controlled operations

(1) This section applies if—

(a) an application for the variation of an authority for a controlled operation is made to the CCC chairperson under section 248; and

(b) the chairperson had granted the authority because the operation related to a person who was or who might be a police officer.

(2) The chairperson may vary the authority without referring the application to the committee but, before varying the authority, the chairperson must consult with the independent member

and obtain the independent member's agreement to the proposed variation.

(3) However, the chairperson may vary an authority on an application made to the chairperson in urgent circumstances without complying with subsection (2), but must consult with the independent member about the variation as soon as possible after granting it.

251 Procedure in urgent circumstances other than if s 250 applies

(1) This section applies to an application for the variation of an authority for a controlled operation made to a chief executive officer in urgent circumstances.

(2) However, this section does not apply if section 250 applies.

(3) The chief executive officer may grant the application without referring it to the committee, but must refer the application to the committee as soon as practicable after granting it.

(4) The committee may consider the application as if the application had not been granted.

(5) Section 252(1) and (3) do not apply to the grant of a variation of an authority under this section.

(6) The chief executive officer must consider the committee's recommendations on the application but is not bound by the recommendations.

(7) A variation under subsection (3) may only take effect for a maximum period of 7 days decided by the chief executive officer.

252 Deciding the application to vary the authority

(1) After considering an application for a variation of authority, any additional information given under section 248(5), and any recommendations of the committee, the chief executive officer—

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Not authorised—indicative only

(a) may vary the authority in accordance with the application, with or without conditions; or

(b) may refuse the application.

(2) Section 244(1) applies to an application for a variation of authority under this division in the same way as it applies to an application for authority under section 239.

(3) Without limiting subsection (2), a variation of an authority may not be granted—

(a) unless the chief executive officer is satisfied on reasonable grounds that the variation will not authorise a significant change to the nature of the authorised operation concerned; and

(b) unless the committee has recommended the application be granted.

253 Way to vary authority

(1) An authority may be varied, on application or otherwise, only—

(a) by way of a written document signed by the chief executive officer (a ***formal variation of authority***); or

(b) if the person granting the variation is satisfied that the delay caused by granting a formal variation of authority may affect the success of the operation—orally in person or under section 801 (an ***urgent variation of authority***).

(2) The chief executive officer—

(a) must ensure that written notes are kept of—

(i) the date and time when the authority was varied; and

(ii) the identity of the law enforcement officer to whom the variation of authority was granted; and

(b) must, as soon as practicable, prepare and give to the applicant a written document that complies with section 254.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

254 Form of variation of authority

A variation of authority, whether formal or urgent, must state—

(a) an identifying name or number for the operation; and

(b) the name and rank or position of the person granting the variation of authority; and

(c) the date and time when the authority was varied; and

(d) the provision of this chapter under which the variation was made; and

(e) the period for which the variation has effect; and

(f) if the variation is made under section 248—

(i) the name of the applicant; and

(ii) whether the application was a formal variation application or an urgent variation application; and

(g) a description of the variation having regard to the purposes mentioned in section 248(1) for which the application was made.

255 Cancellation of authority

(1) The chief executive officer may, by notice in writing given to the principal law enforcement officer for an authorised operation, cancel the authority at any time and for any reason.

(2) Without limiting subsection (1), the chief executive officer may cancel an authority for an authorised operation at any

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Not authorised—indicative only

time at the request of the principal law enforcement officer for the operation.

(3) Cancellation of an authority for a controlled operation takes effect at the time the notice is given or at the later time stated in the notice.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

Division 3 Effect of authority

256 Effect of authority

(1) While it has effect, an authority for a controlled operation—

(a) authorises each law enforcement participant to engage in the controlled conduct stated in the authority in relation to the law enforcement participants; and

(b) authorises each civilian participant, if any, to engage in the particular controlled conduct, if any, stated in the authority in relation to that participant; and

(c) authorises each participant to engage in that conduct in this jurisdiction or any participating jurisdiction, subject to the corresponding law of the participating jurisdiction.

(2) The authority to engage in controlled conduct given to a participant can not be delegated to any other person.

257 Defect in authority

An application for authority or variation of authority, and any authority or variation of authority granted on the basis of that type of application, is not invalidated by any defect, other than a defect that affects the application, authority or variation in a material particular.

Part 4 Conduct of controlled operations

Division 1 Controlled conduct engaged in for controlled operations

258 Protection from criminal responsibility for controlled conduct during authorised operations

(1) Despite any other Act or law of this jurisdiction, a participant who engages in conduct, whether in this jurisdiction or elsewhere, in an authorised operation in the course of, and for the purposes of, the operation, is not, if engaging in that conduct is an offence, criminally responsible for the offence, if—

(a) the conduct is authorised by, and is engaged in, in accordance with, the authority for the operation; and

(b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and

(c) the conduct does not involve the participant engaging in any conduct that is likely to—

(i) cause the death of, or serious injury to, any person; or

(ii) involve the commission of a sexual offence against any person; and

(d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer.

(2) Also, a law enforcement officer is not criminally responsible for conduct that, because of an authorised operation, was reasonably necessary to—

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(a) protect the safety of any person; or

(b) protect the identity of a participant; or

(c) take advantage of an opportunity to gather evidence about a relevant offence not mentioned in the authority.

(3) However, subsection (2) does not relieve a law enforcement officer from criminal responsibility for conduct if the conduct results in—

(a) injury to, or the death of, a person; or

(b) serious damage to property; or

(c) a serious loss of property; or

(d) a person being encouraged or induced by the officer to engage in criminal activity of a kind the person could not reasonably be expected to have engaged in if not encouraged or induced by the officer to engage in it.

259 Indemnification of participants against civil liability

(1) This section applies to a law enforcement agency if a controlled operation has been authorised by the chief executive officer of the agency under section 241, 242 or 243.

(2) The law enforcement agency must indemnify a participant in the authorised operation against any civil liability, including reasonable costs, the participant incurs because of conduct the participant engages in if—

(a) the participant engages in the conduct in the course of, and for the purposes of, the operation in accordance with the authority for the operation; and

(b) the conduct does not involve the participant intentionally inducing a person to commit an offence under a law of any jurisdiction or the Commonwealth that the person would not otherwise have intended to commit; and

(c) the conduct does not involve the participant engaging in any conduct that is likely to—

(i) cause the death of, or serious injury to, any person; or

(ii) involve the commission of a sexual offence against any person; and

(d) if the participant is a civilian participant—the participant acts in accordance with the instructions of a law enforcement officer; and

(e) the requirements, if any, stated under a regulation have been met.

260 Effect of ss 258–259 on other laws relating to criminal investigation

Sections 258 and 259 do not apply to a person's conduct that is, or could have been, authorised under this Act, apart from this chapter or another law of this jurisdiction, about the following—

(a) arrest or detention of individuals;

(b) searches of individuals;

(c) entry onto, or searches or inspection of, premises;

(d) searches, inspections or seizures of other property;

(e) forensic procedures;

(f) electronic surveillance devices;

(g) identification procedures;

(h) the acquisition or use of assumed identities;

(i) any other matter about powers of criminal investigation.

261 Effect of being unaware of variation or cancellation of authority

(1) If an authority for a controlled operation is varied in a way that limits its scope, this part continues to apply to a participant in the operation as if the authority had not been varied in that way, for as long as the participant—

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(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority for a controlled operation is cancelled, this part continues to apply to a participant in the operation as if the authority had not been cancelled, for as long as the participant—

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—

(a) the person is aware of a substantial risk that the variation or cancellation has happened; and

(b) having regard to the circumstances known to the person, it is unjustifiable to continue to engage in conduct that was, but may no longer be, authorised by the authority because of the variation or cancellation.

262 Protection from criminal responsibility for particular ancillary conduct

(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (***ancillary conduct***), for which a person may be criminally responsible because it involves conduct engaged in by another person that is controlled conduct for which the other person would, apart from section 258, be criminally responsible (the ***related controlled conduct***).

Note—

The Criminal Code, section 7(1)(b) and (c) makes provision for a person who aids or enables the commission of an offence, and the Criminal Code, chapter 56, makes provision for conspiracy.

(2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence, whether or not the person is a participant in a controlled operation, is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct the person believed the

related controlled conduct was being engaged in, or would be engaged in, by a participant in an authorised operation.

Division 2 Compensation and notification of third parties

263 Compensation for property loss or serious damage

(1) If a person suffers loss of or serious damage to property as a direct result of an authorised operation conducted by the police service or the CCC, the State is liable to pay to the person compensation as agreed between the State and the person or, in default of agreement, as decided by civil proceedings for a debt of the amount claimed.

(2) However, if, apart from subsection (1), section 804 would apply in relation to the loss or damage, the person must apply for compensation, and the compensation is to be decided, under section 804 and not under this section.

(3) Subsection (1) does not apply if—

(a) the person suffered the loss or damage in the course of, or as a direct result of, engaging in any criminal activity, other than criminal activity that is controlled conduct; or

(b) the person was a law enforcement officer at the time of suffering the loss or damage.

264 Notification requirements

(1) If any loss of or serious damage to property happens in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the loss or damage to the chief executive officer of the law enforcement agency as soon as practicable.

(2) The chief executive officer must take all reasonable steps to notify the owner of the property of the loss or damage.

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Not authorised—indicative only

(3) The chief executive officer is not required to notify the owner of property under this section until the chief executive officer is satisfied that notification would not—

(a) compromise or hinder the authorised operation; or

(b) compromise the identity of a participant in the authorised operation; or

(c) endanger the life or safety of any person; or

(d) prejudice any legal proceeding; or

(e) otherwise be contrary to the public interest.

(4) Subsection (1) does not apply to property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation.

(5) If any personal injury happens in the course of or as a direct result of an authorised operation, the principal law enforcement officer for the operation must report the injury to the chief executive of the law enforcement agency as soon as possible.

Note—

The chief executive officer may delegate powers under this section—see part 6, division 1.

Division 3 Recognition of corresponding authorities

265 Recognition of corresponding authorities

The following provisions apply, with any necessary changes, to a corresponding authority under a corresponding law, and to a corresponding authorised operation under that law, as if the corresponding authority were an authority given under section 243 for a controlled operation—

(a) section 256 (Effect of authority);

(b) section 257 (Defect in authority);

(c) section 258(1) (Protection from criminal responsibility for controlled conduct during authorised operations);

(d) section 259 (Indemnification of participants against civil liability);

(e) section 260 (Effect of ss 258–259 on other laws relating to criminal investigation);

(f) section 261 (Effect of being unaware of variation or cancellation of authority);

(g) section 262 (Protection from criminal responsibility for particular ancillary conduct).

Part 5 Compliance and monitoring

Division 1 Information restrictions

266 Unauthorised disclosure of information

(1) A person commits an offence if—

(a) the person intentionally, knowingly or recklessly discloses any information; and

(b) the person knows that, or is reckless as to whether, the information relates to an authorised operation or a corresponding authorised operation; and

(c) the person knows that, or is reckless as to whether, the disclosure is not made—

(i) with the approval of the chief executive officer of the relevant law enforcement agency; or

(ii) in connection with the administration or execution of this chapter or a corresponding law; or

(iii) for the purposes of any legal proceeding arising out of or otherwise related to this chapter or a corresponding law or of any report of the proceeding; or

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(iv) under any requirement imposed by law; or

(v) under another law.

Maximum penalty—2 years imprisonment.

(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—

(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an authorised operation or a corresponding authorised operation; or

(b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person; or

(ii) prejudices or will prejudice the effective conduct of an authorised operation or a corresponding authorised operation.

Maximum penalty—10 years imprisonment.

(3) This section does not affect section 803 or the *Crime and Corruption Act 2001*, section 213(4).

(4) In this section—

relevant law enforcement agency, for a controlled operation, means the law enforcement agency whose officer was granted an authority to conduct the operation.

Division 2 Reporting and record keeping

267 Principal law enforcement officer's reports

(1) Within 2 months after the end of an authorised operation, the principal law enforcement officer for the operation must give a report under this section to the chief executive officer of the law enforcement agency.

(2) The report must include the following details—

(a) the date and time when the operation began and its duration;

(b) whether the operation was conducted in this jurisdiction or in this jurisdiction and a participating jurisdiction;

(c) the nature of the controlled conduct engaged in for the purposes of the operation;

(d) details of the outcome of the operation;

(e) if the operation involved illicit goods, a statement, to the extent known, of—

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operation;

(f) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the operation;

(g) details of any opportunity taken to gather evidence to which section 258(2)(c) applies.

268 Chief executive officers' reports

(1) As soon as practicable after 31 March and 30 September in each year, the chief executive officer of each law enforcement agency must give a report to the report entity for the agency stating the details required by subsection (2) for authorised operations conducted on behalf of the agency during the preceding 6 months.

(2) The report must include the following details—

(a) the number of formal authorities that have been granted or varied by the chief executive officer, and the number of formal applications for the granting or variation of authorities that have been refused by the chief executive officer, during the period of the report;

(b) the number of urgent authorities or urgent variations of authorities that have been granted by the chief executive

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officer, and the number of urgent applications for authorities or urgent variations of authorities that have been refused by the chief executive officer, during the period of the report;

(c) the nature of the criminal activities against which the authorised operations were directed;

(d) the nature of the controlled conduct engaged in for the purposes of the authorised operations;

(e) if any of the authorised operations involved illicit goods, a statement, to the extent known, of—

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operations;

(f) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the authorised operations;

(g) details of any opportunity taken to gather evidence to which section 258(2)(c) applies;

(h) the number of authorities cancelled by the chief executive officer or that have expired during the period to which the report relates.

(3) The details mentioned in subsection (2) must be classified into controlled operations conducted in this jurisdiction or conducted in this jurisdiction and a participating jurisdiction.

(4) The report entity may require the chief executive officer to give additional information about any authorised operation to which a report relates.

(5) Subsection (2)(d) or (e) does not require particulars of an authorised operation to be included in a report for a period of 6 months if the operation had not ended during that period.

(6) However, the particulars must instead be included in the report for the period of 6 months in which the operation ends.

269 Annual report by report entity

(1) The report entity for a law enforcement agency must, as soon as practicable after 30 June in each year, prepare a report of the work and activities of the law enforcement agency under this chapter for the preceding 12 months.

(2) The report entity must give a copy of the report to the chief executive officer of the agency and—

(a) if the agency is the police service—the Minister; or

(b) if the agency is the CCC—the parliamentary committee chairperson.

(3) The report—

(a) must include comments on the comprehensiveness and adequacy of the reports that were given to the report entity by the chief executive officer of the law enforcement agency under section 268; and

(b) must not disclose any information that identifies any suspect or a participant in an operation or that is likely to lead to the person or participant being identified.

(4) The chief executive officer must advise the Minister or parliamentary committee chairperson of any information in the report that, in the chief executive officer's opinion, should be excluded from the report before the report is tabled in the Legislative Assembly because the information, if made public, could reasonably be expected to—

(a) endanger a person's safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

(5) The Minister or parliamentary committee chairperson must exclude information from the report if satisfied on the advice of the chief executive officer of any of the grounds mentioned in subsection (4).

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(6) The Minister or chairperson must table the report in the Legislative Assembly within 14 sitting days after receiving the report.

(7) This section does not require particulars of an authorised operation to be included in a report for a year if the operation had not ended as at 30 June in that year.

(8) However, the particulars must instead be included in the report for the year in which the operation ends.

270 Keeping documents connected with authorised operations

The chief executive officer of a law enforcement agency must cause to be kept—

(a) each formal application made by a law enforcement officer of the agency; and

(b) each formal authority granted to a law enforcement officer of the agency; and

(c) all written notes made under section 245(5); and

(d) each formal variation application made by a law enforcement officer of the agency; and

(e) each formal variation of authority granted to a law enforcement officer of the agency; and

(f) each notice cancelling an authority granted to a law enforcement officer of the agency; and

(g) all written notes made under section 253(2)(a); and

(h) each report of a principal law enforcement officer of the agency under section 264 or 267; and

(i) each recommendation made by the committee in relation to an application for an authority or a variation of an authority.

271 General register

(1) The chief executive officer of a law enforcement agency must cause a general register to be kept.

(2) The register must be or form part of the register of covert acts kept under chapter 21, part 2.

Division 3 Inspections

272 Inspection of records

(1) The inspection entity for a law enforcement agency must, from time to time and at least once every 12 months, inspect the records of the agency to find out the extent of compliance by the agency and law enforcement officers of the agency with this chapter and chapter 21, part 2, to the extent it applies to activities under this chapter.

(2) For an inspection under this section, the inspection entity—

(a) after notifying the chief executive officer of the agency, may enter at any reasonable time premises occupied by the agency; and

(b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and

(c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

(3) The chief executive officer must ensure that members of staff of the agency give the inspection entity any help the inspection entity reasonably requires to enable the inspection entity to perform functions under this section.

(4) This section does not limit the parliamentary commissioner's powers under the *Crime and Corruption Act 2001*, chapter 6, part 4, division 4 in relation to the functions of the CCC.

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Not authorised—indicative only

Part 6 General

Division 1 Delegation

273 Delegation generally

Other than as provided by this division, and despite any other Act or law to the contrary, the powers of a chief executive officer under this chapter may not be delegated to any other person.

274 Delegation—commissioner

The commissioner may delegate any of the commissioner's powers under this chapter as chief executive officer relating to the authorisation of controlled operations, including the variation and cancellation of authorities for controlled operations and notifications under section 264(2), to—

(a) a deputy commissioner of the police service; or

(b) an assistant commissioner of the police service; or

(c) the detective chief superintendent responsible for Statewide crime operations.

275 Delegation—CCC chairperson

(1) The CCC chairperson may delegate any of the chairperson's powers under this chapter as chief executive officer relating to the authorisation of controlled operations, including the variation and cancellation of authorities for controlled operations and notifications under section 264(2), to a CCC senior executive officer.

(2) However, subsection (1) does not authorise the CCC chairperson to exercise a power of delegation in relation to a controlled operation under which a person under investigation is or may be a police officer or was or may have been, at any time relevant to the investigation, a police officer.

276 Delegations—ACC

Editor's note—

This section will be inserted when section 36 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005* (2005 Act No. 45) commences. Section 36 inserts this section as section 186A. It will be immediately renumbered as section 276 as provided for by renumbered section 810(2) (previously section 459A(2)).

Division 2 Evidentiary provisions

277 Evidence of authorities

(1) A document purporting to be an authority granted under section 243—

(a) is admissible in any legal proceedings; and

(b) is evidence in any proceedings, other than criminal or disciplinary proceedings against a law enforcement officer, that the person granting the authority was satisfied of the facts the person was required to be satisfied of to grant the authority.

(2) A document purporting to be an authority within the meaning of a corresponding law granted under a provision of the corresponding law that corresponds to section 243—

(a) is admissible in any legal proceedings in this jurisdiction; and

(b) is evidence in any proceedings, other than criminal or disciplinary proceedings against a law enforcement officer, that the person who granted the authority was satisfied of the facts the person was required to be satisfied of under the corresponding law to grant the authority.

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Chapter 12 Assumed identities

Part 1 Preliminary

278 Purpose of ch 12

The main purpose of this chapter is to facilitate, for law enforcement purposes, investigations and intelligence gathering in relation to criminal activity, including investigations extending beyond Queensland.

279 How purpose is achieved

The purpose is to be achieved primarily by—

(a) providing for the lawful acquisition and use of an assumed identity; and

(b) facilitating the recognition of things done in relation to an assumed identity under a corresponding law.

280 Definitions for ch 12

In this chapter—

acquire, an assumed identity, means acquire evidence, or take steps to acquire evidence, of the identity.

agency means—

(a) an issuing agency; or

(b) a law enforcement agency.

authorised civilian means a person, other than a law enforcement officer, who is authorised under an authority to acquire or use an assumed identity.

authorised officer means a law enforcement officer who is authorised under an authority to acquire or use an assumed identity.

authorised person means—

(a) an authorised civilian; or

(b) an authorised officer.

authority means an authority granted under section 283 to acquire or use an assumed identity, including the authority as varied under section 286.

birth certificate approval see—

(a) section 288; or

(b) section 289.

chief executive officer means—

(a) for a law enforcement agency under a corresponding law—the chief executive officer, however described, of the law enforcement agency; or

(b) for an intelligence agency—the chief executive officer, however described, of the intelligence agency.

conduct includes any act or omission.

corresponding authority means—

(a) an authority under a corresponding law to acquire or use an assumed identity in this jurisdiction; or

(b) an authority under a corresponding law to request the production of evidence of an assumed identity in this jurisdiction.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

doing a thing, includes failing to do the thing.

evidence, of identity, means a document or other thing, including, for example, a driver licence, birth certificate, credit card or identity card, that evidences or indicates, or can be used to evidence or indicate, a person's identity or any aspect of a person's identity.

government issuing agency, in relation to an authority, means an entity that—

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(a) is named in the authority; and

(b) issues evidence of identity as part of performing any function of the government of this jurisdiction.

intelligence agency see the *Crimes Act 1914* (Cwlth), section 15K.

intelligence officer see the *Crimes Act 1914* (Cwlth), section 15K.

issuing agency means—

(a) a government issuing agency; or

(b) a non-government issuing agency.

non-government issuing agency, in relation to an authority, means an entity, other than a government issuing agency, that—

(a) is named in the authority; and

(b) issues evidence of identity.

officer, of an agency, includes a person employed or engaged in the agency.

supervisor, of an authorised civilian, means the law enforcement officer, appointed under section 283(3), who supervises or is to supervise the acquisition or use of an assumed identity by the authorised civilian.

use an assumed identity, includes representing, whether expressly or impliedly, or by saying or doing something, the identity to be real when it is not.

281 Relationship to other laws and matters

(1) A function conferred in relation to the activities of the CCC under this chapter is only conferred for the purpose of a function conferred on the CCC under the *Crime and Corruption Act 2001* relating to major crime as defined under that Act.

(2) The Public Records Act does not apply to activities or records under parts 2 to 7.

Part 2 Authorities for assumed identities

282 Application for authority to acquire or use assumed identity

(1) A law enforcement officer of a law enforcement agency may apply to the chief executive officer of the agency for an authority for the law enforcement officer or another person to do either or both of the following—

(a) acquire an assumed identity;

(b) use an assumed identity.

(2) A separate application must be made for each assumed identity to be acquired or used.

(3) An application—

(a) must be in writing in the form decided by the chief executive officer; and

(b) must contain all of the following information—

(i) the applicant's name;

(ii) if a person other than the applicant is to be authorised to acquire or use an assumed identity—that person's name;

(iii) if the person mentioned in subparagraph (ii) is not a law enforcement officer—the name and rank or position of the law enforcement officer proposed to be appointed as supervisor, and an explanation of why it is necessary for a person who is not a law enforcement officer to acquire or use the assumed identity;

(iv) details of the proposed assumed identity;

(v) reasons for the need to acquire or use an assumed identity;

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Not authorised—indicative only

(vi) details, to the extent known, of the investigation or intelligence gathering exercise in which the assumed identity will be used;

(vii) details of any issuing agencies and the types of evidence to be issued by them.

(4) The chief executive officer may require the applicant to give additional information about the application the chief executive officer considers appropriate for consideration of the application.

283 Deciding application

(1) After considering an application for an authority to acquire or use an assumed identity, and any additional information given under section 282(4), the chief executive officer—

(a) may grant an authority to acquire or use the assumed identity, with or without conditions; or

(b) may refuse the application.

(2) The chief executive officer must not grant an authority to acquire or use an assumed identity unless the chief executive officer is satisfied on reasonable grounds of all of the following—

(a) the assumed identity is necessary for 1 or more of the following purposes—

(i) an investigation or intelligence gathering in relation to criminal activity;

(ii) the training of persons for the purpose mentioned in subparagraph (i);

(iii) an administrative function in support of a purpose mentioned in subparagraph (i) or (ii);

(b) the risk of abuse of the assumed identity by the authorised person under the authority is minimal;

(c) if the application is for authorisation of an assumed identity for a person who is not a law enforcement

officer—it would be impossible or impracticable in the circumstances for a law enforcement officer to acquire or use the assumed identity for the purpose sought.

(3) If an authority is granted for an authorised civilian, the chief executive officer must appoint a law enforcement officer of the law enforcement agency to supervise the acquisition or use of the assumed identity by the authorised civilian.

(4) The law enforcement officer appointed as supervisor under subsection (3) must be—

(a) for the police service—of or above the rank of sergeant; or

(b) for the CCC—an authorised commission officer.

(5) An authority may also authorise 1 or more of the following—

(a) an application to the independent member for a birth certificate approval;

(b) an application under a corresponding law for an order for an entry in a register similar to the register of births, deaths or marriages kept under the *Births, Deaths and Marriages Registration Act 2003*;

(c) a request under section 294 or 307.

(6) A separate authority is required for each assumed identity.

284 Form of authority

(1) An authority must be—

(a) in writing in the form decided by the chief executive officer; and

(b) signed by the person granting it.

(2) An authority must state all of the following—

(a) the name of the person granting the authority;

(b) the date of the authority;

(c) details of the assumed identity under the authority;

Not authorised—indicative only

Not authorised—indicative only

(d) details of the evidence of the assumed identity that may be acquired under the authority;

(e) the conditions, if any, to which the authority is subject;

(f) why the authority is granted;

(g) if the authority relates to an authorised officer—the name of the officer;

(h) if the authority relates to an authorised civilian—

(i) the name of the authorised civilian; and

(ii) the name of the civilian's supervisor under the authority.

(3) The authority also must state the following—

(a) whether it authorises—

(i) an application to the independent member for a birth certificate approval; or

(ii) an application under a corresponding law for an order for an entry in a register similar to the register of births, deaths or marriages kept under the *Births, Deaths and Marriages Registration Act 2003*;

(b) each issuing agency to which a request may be made under section 294 or 307;

(c) the assumed identity may be used in this jurisdiction and a participating jurisdiction.

285 Period of authority

An authority for an authorised officer or authorised civilian remains in force until—

(a) the end of any term stated in the authority; or

(b) the authority is cancelled under section 286.

286 Variation or cancellation of authority

(1) The chief executive officer—

(a) may vary or cancel the authority at any time; and

(b) must cancel the authority if satisfied, on a review under section 287 or otherwise, that use of the assumed identity under the authority is no longer necessary.

(2) The chief executive officer must give written notice of the variation or cancellation to—

(a) the authorised person to whom the authority relates; and

(b) if the authorised person is an authorised civilian—the authorised person's supervisor.

(3) The notice must state the reasons for the variation or cancellation.

(4) The variation or cancellation has effect on—

(a) the day the notice is given to the authorised person; or

(b) if a later day is stated in the notice—the later day.

287 Review of authority

(1) The chief executive officer must, at least once a year, review each authority granted by the chief executive officer and in force under this chapter.

(2) The purpose of a review is to decide whether use of the assumed identity under the authority is still necessary.

(3) If the chief executive officer is satisfied on a review that use of the assumed identity is no longer necessary, the chief executive officer must cancel the authority under section 286.

(4) If the chief executive officer is satisfied on a review that use of the assumed identity is still necessary, the chief executive officer must record the chief executive officer's opinion, and the reasons for it, in writing.

Not authorised—indicative only

Not authorised—indicative only

Part 3 Evidence of assumed identities

Division 1 Creation of birth certificates for assumed identities

288 Approval for creation of birth certificate for assumed identity

(1) The chief executive officer of a law enforcement agency may apply to the independent member for authority to create a birth certificate (a ***birth certificate approval***) for an assumed identity for an authorised person.

(2) The application must be written and include enough information to enable the independent member to properly consider whether the birth certificate approval should be granted.

(3) The independent member may grant the birth certificate approval only if satisfied granting the approval is justified having regard to the nature of the activities undertaken or to be undertaken by the authorised person under the authority for the assumed identity.

(4) A birth certificate approval granted under this section must be written, signed by the independent member, and state that a named law enforcement officer is authorised under this section to create a birth certificate for the purpose of concealing the identity of an authorised person.

289 Order authorising creation of birth certificate for assumed identity under corresponding authority

(1) The chief executive officer of a law enforcement agency under a corresponding law may apply to the Supreme Court for an order (a ***birth certificate approval***) authorising a named law enforcement officer of the agency to create a birth certificate for an assumed identity under a corresponding authority.

(2) Also, the chief executive officer of an intelligence agency may apply to the Supreme Court for an order (also a ***birth certificate approval***) authorising a named intelligence officer of the agency to create a birth certificate for an assumed identity under a corresponding authority.

(3) The Supreme Court may make the order only if satisfied the order is justified having regard to the nature of the activities undertaken or to be undertaken by the law enforcement officer, intelligence officer or other person under the corresponding authority.

(4) The Supreme Court must hear the application in the absence of anyone other than the following—

(a) the applicant;

(b) someone the court permits to be present;

(c) a lawyer representing anyone mentioned in paragraph (a) or (b).

(5) The order has effect for the time stated in the order of not more than 28 days.

290 Giving effect to birth certificate approval

(1) On the production to the registrar-general, for inspection, of a birth certificate approval—

(a) the law enforcement officer or intelligence officer named in the approval may create a birth certificate as authorised under the approval; and

(b) the registrar-general must give the officer any help the officer reasonably requires for the purpose.

(2) The law enforcement officer or intelligence officer must, if practicable, give the registrar-general at least 3 days notice of the day the officer intends to create the birth certificate under the birth certificate approval.

Not authorised—indicative only

Not authorised—indicative only

291 Destruction of birth certificate created under s 290

(1) This section applies in relation to a birth certificate created under a birth certificate approval (a ***created birth certificate***).

(2) As soon as practicable after the authority or corresponding authority for an assumed identity to which the created birth certificate relates is cancelled, the chief executive officer of the law enforcement agency or intelligence agency for which the certificate was created—

(a) must cause the created birth certificate to be destroyed; and

(b) must notify the registrar-general that the created birth certificate is no longer being used and has been destroyed.

292 Cancelling authority affecting entry in participating jurisdiction's register of births, deaths or marriages

(1) This section applies if—

(a) a chief executive officer cancels an authority for an assumed identity; and

(b) there is an entry in relation to that identity in a register of births, deaths or marriages in a participating jurisdiction because of an order under a corresponding law of the jurisdiction.

(2) The chief executive officer must apply for an order under the corresponding law to cancel the entry within 28 days after the day the authority is cancelled.

293 Restriction about records and access to application for authority to create birth certificate

(1) This section applies to—

(a) a proceeding on an application under section 289 for a birth certificate approval in relation to the acquisition or use of an assumed identity under a corresponding authority; and

(b) an order given in the proceeding.

(2) Despite the *Recording of Evidence Act 1962*, a transcript of the proceeding must not be made.

(3) A person must not publish a report of the proceeding.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(4) A person is not entitled to search information in the custody of a court in relation to the proceeding, unless a Supreme Court judge otherwise orders in the interests of justice.

Division 2 Other provisions about evidence of assumed identities

294 Request for evidence of assumed identity

(1) This section applies if an authority authorises a request under this section.

(2) The chief executive officer who grants the authority may ask the chief executive officer of an issuing agency stated in the authority to—

(a) produce evidence of an assumed identity in accordance with the authority; and

(b) give evidence of the assumed identity to the authorised person named in the authority.

(3) The request must state a reasonable period for compliance with the request.

(4) A request can not be made under this section for the creation of a birth certificate or a certified copy of a marriage certificate.

(5) In this section—

evidence means evidence similar to that ordinarily produced or given by the issuing agency.

Not authorised—indicative only

Not authorised—indicative only

295 Government issuing agency to comply with request

The chief executive officer of a government issuing agency who receives a request under section 294 must comply with the request within the reasonable period stated in the request.

296 Non-government issuing agency may comply with request

The chief executive officer of a non-government issuing agency who receives a request under section 294 may comply with the request.

297 Cancelling evidence of assumed identity

(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity under this part must cancel the evidence if directed in writing to do so by the chief executive officer who requested the evidence.

(2) In this section—

cancel includes delete or alter an entry in a record of information.

Division 3 Protections and indemnities

298 Protection from criminal responsibility—officer of issuing agency

(1) A person who does something under division 1 or 2 that, apart from this section, would be an offence, is not criminally responsible for the offence, if the thing is done to give effect to a birth certificate approval.

(2) Also, the chief executive officer, or an officer, of an issuing agency who does something that, apart from this section, would be an offence, is not criminally responsible for the offence if the thing is done to comply with a request under section 294 or a direction under section 297.

299 Indemnity for issuing agency and officers in relation to creation of birth certificates

(1) This section applies if a birth certificate approval is produced to the registrar-general under section 290.

(2) The law enforcement agency or intelligence agency to which the birth certificate approval relates must indemnify the registrar-general, or an officer of the registrar-general, for any civil liability incurred by the registrar-general or officer, including reasonable costs, if—

(a) the liability is incurred because of something done by the registrar-general or officer to comply with section 290; and

(b) the requirements, if any, prescribed under a regulation have been met.

300 Indemnity for issuing agency and officers in relation to other evidence of assumed identities

(1) This section applies if the chief executive officer of a law enforcement agency makes a request under section 294 or gives a direction under section 297 to the chief executive officer of an issuing agency.

(2) The law enforcement agency must indemnify the issuing agency, or an officer of the agency, for any civil liability incurred by the agency or officer, including reasonable costs, if—

(a) the liability is incurred because of something done by the agency or officer to comply with the request or direction in the course of duty; and

(b) the requirements, if any, prescribed under a regulation have been met.

Not authorised—indicative only

Not authorised—indicative only

301 Protection from criminal responsibility for particular ancillary conduct

(1) This section applies to conduct, for example aiding or enabling the commission of an offence or conspiring to commit an offence (***ancillary conduct***), for which a person may be criminally responsible because it involves conduct engaged in by another person for which the other person would, apart from section 298, be criminally responsible (the ***related conduct***).

Note—

The Criminal Code, section 7(1)(b) and (c) makes provision for a person who aids or enables the commission of an offence, and the Criminal Code, chapter 56, makes provision for conspiracy.

(2) Despite any other Act or law of this jurisdiction, a person who engages in ancillary conduct that is an offence, whether or not the person is an authorised person or an officer of an issuing agency, is not criminally responsible for the offence if at the time the person engaged in the ancillary conduct the person believed the related conduct was being engaged in, or would be engaged in, by an authorised person or an issuing officer of an agency.

Part 4 Effect of authorities

302 Assumed identity may be acquired and used

(1) An authorised officer may acquire or use an assumed identity if the acquisition or use is—

(a) in accordance with an authority; and

(b) in the course of duty.

(2) An authorised civilian may acquire or use an assumed identity if the acquisition or use is in accordance with—

(a) an authority; and

(b) the directions of the authorised civilian's supervisor.

(3) An authority also authorises—

(a) the making (by the person to whom the authority applies) of any false or misleading representation about the person for the purposes of, or in connection with, the acquisition or use of the assumed identity by the person; and

(b) the use by the person of the assumed identity to obtain evidence of the identity.

303 Protection from criminal responsibility—authorised person

If an authorised person does something, whether in this jurisdiction or elsewhere, that, apart from this section, would be an offence, the authorised person is not criminally responsible for the offence if—

(a) the thing is done in the course of acquiring or using an assumed identity under an authority; and

(b) the thing is done—

(i) for an authorised officer—in the course of duty; or

(ii) for an authorised civilian—in accordance with the directions of the authorised civilian's supervisor; and

(c) doing the thing would not be an offence if the assumed identity were the authorised person's real identity.

304 Indemnity for authorised person

(1) This section applies if the chief executive officer of a law enforcement agency grants an authority.

(2) The law enforcement agency must indemnify the authorised person under the authority against any civil liability, including reasonable costs, incurred by the person, because of something done by the person, whether in this jurisdiction or elsewhere, if—

(a) the thing is done in the course of acquiring or using an assumed identity under the authority; and

Not authorised—indicative only

Not authorised—indicative only

(b) the thing is done—

(i) for an authorised officer—in the course of duty; or

(ii) for an authorised civilian—in accordance with the directions of the authorised civilian's supervisor; and

(c) the requirements, if any, prescribed under a regulation have been met.

(3) This section does not limit the *Police Service Administration Act 1990*, section 10.5.

305 Particular qualifications

(1) Sections 303 and 304 do not apply to anything done by an authorised person if—

(a) a particular qualification is needed to do the thing; and

(b) the person does not have the qualification.

(2) Subsection (1) applies whether or not the authorised person has acquired, as evidence of an assumed identity, a document that indicates that the person has the qualification.

306 Effect of being unaware of variation or cancellation of authority

(1) If an authority to acquire or use an assumed identity has been varied in a way that limits its scope, this part continues to apply to the authorised person to whom the authority relates as if it had not been varied in that way, for as long as the person—

(a) is unaware of the variation; and

(b) is not reckless about the existence of the variation.

(2) If an authority to acquire or use an assumed identity has been cancelled, this part continues to apply to the authorised person to whom the authority related as if it had not been cancelled, for as long as the person—

(a) is unaware of the cancellation; and

(b) is not reckless about the existence of the cancellation.

(3) For this section, a person is reckless about the existence of the variation or cancellation of an authority if—

(a) the person is aware of a substantial risk that the variation or cancellation has happened; and

(b) having regard to the circumstances known to the person, it is unjustifiable to continue to use the assumed name in a way that was, but may no longer be, authorised by the authority because of the variation or cancellation.

Part 5 Recognition of assumed identities

307 Request to participating jurisdiction for evidence of assumed identity

(1) This section applies if an authority authorises a request under this section.

(2) The chief executive officer who grants the authority may ask the chief executive officer of an issuing agency of a participating jurisdiction stated in the authority—

(a) to produce evidence of an assumed identity in accordance with the authority; and

(b) to give evidence of the assumed identity to the authorised person named in the authority.

308 Request from participating jurisdiction for evidence of assumed identity

(1) This section applies if—

(a) a corresponding authority authorises a request for—

(i) the production of evidence of an assumed identity in this jurisdiction; and

Not authorised—indicative only

Not authorised—indicative only

(ii) the giving of evidence of the assumed identity to the authorised person named in the authority; and

(b) the request is made to the chief executive officer of an issuing agency in this jurisdiction; and

(c) the request states a reasonable period for compliance with the request.

(2) The chief executive officer of a government issuing agency who receives the request must comply with the request within the reasonable period stated in the request.

(3) The chief executive officer of a non-government issuing agency who receives the request may comply with the request.

309 Direction from participating jurisdiction to cancel evidence of assumed identity

(1) The chief executive officer of an issuing agency who produces evidence of an assumed identity because of a request mentioned in section 308 must cancel the evidence if directed in writing to do so by the chief executive officer who made the request.

(2) In this section—

cancel includes delete or alter an entry in a record of information.

310 Indemnity for issuing agency and officer

(1) This section applies if the chief executive officer of a law enforcement agency makes a request to the chief executive officer of an issuing agency of a participating jurisdiction under section 307.

(2) The law enforcement agency must indemnify the issuing agency and any officer of the issuing agency for any civil liability incurred by the agency or officer, including reasonable costs, if—

(a) the liability is incurred because of something done, whether in this jurisdiction or elsewhere, by the agency

or officer to comply with the request in the course of duty; and

(b) the requirements, if any, prescribed under a regulation have been met.

311 Application of ch 12 to corresponding authority

The following provisions apply, with necessary changes, to anything done in this jurisdiction in relation to a corresponding authority as if it were an authority granted under section 283—

(a) section 298 (Protection from criminal responsibility—officer of issuing agency);

(b) section 302 (Assumed identity may be acquired and used);

(c) section 303 (Protection from criminal liability—authorised person);

(d) section 305 (Particular qualifications);

(e) section 306 (Effect of being unaware of variation or cancellation of authority);

(f) section 312 (Misuse of assumed identity);

(g) section 313 (Disclosing information about assumed identity).

Part 6 Compliance and monitoring

Division 1 Misuse of assumed identity and information

312 Misuse of assumed identity

(1) An authorised officer commits an offence if—

Not authorised—indicative only

Not authorised—indicative only

(a) the officer intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the officer's authority; and

(b) the officer knows that, or is reckless as to whether, the acquisition or use is not—

(i) in accordance with the officer's authority; or

(ii) in the course of duty.

Maximum penalty—2 years imprisonment.

(2) An authorised civilian commits an offence if—

(a) the person intentionally, knowingly or recklessly acquires evidence of, or uses, an assumed identity covered by the person's authority; and

(b) the person knows that, or is reckless as to whether, the acquisition or use is not in accordance with—

(i) the person's authority; or

(ii) the directions of the person's supervisor under the authority.

Maximum penalty—2 years imprisonment.

313 Disclosing information about assumed identity

(1) A person commits an offence if—

(a) the person intentionally, knowingly or recklessly discloses any information; and

(b) the person knows that, or is reckless as to whether, the information reveals, or is likely to reveal, that an assumed identity acquired or used by another person is not the other person's real identity; and

(c) the person knows that, or is reckless as to whether, the disclosure is not made—

(i) in connection with the administration or execution of this chapter or a corresponding law; or

(ii) for the purposes of any legal proceeding arising out of or otherwise related to this chapter or a corresponding law or of any report of the proceedings; or

(iii) in accordance with any requirement imposed by law.

Maximum penalty—2 years imprisonment.

(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—

(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation or intelligence gathering in relation to criminal activity; or

(b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person; or

(ii) prejudices or will prejudice the effective conduct of an investigation or intelligence gathering in relation to criminal activity.

Maximum penalty—10 years imprisonment.

(3) This section does not affect section 803 or the *Crime and Corruption Act 2001*, section 213(4).

Division 2 Reporting and record keeping

314 Report about authorities for assumed identities etc.

(1) As soon as practicable after the end of each financial year, the chief executive officer of a law enforcement agency must give to the agency's report entity a written report containing the following information in relation to the agency for the financial year—

(a) the number of authorities granted;

Not authorised—indicative only

Not authorised—indicative only

(b) a general description of the activities undertaken by authorised persons when using assumed identities under this chapter;

(c) the number of applications for an authority that were refused;

(d) a statement about whether or not any fraud or other unlawful activity was identified by an audit under section 316;

(e) any other information relating to authorities, assumed identities or the administration of this chapter that the report entity considers appropriate.

(2) The report must not contain information that, if made public, could reasonably be expected to—

(a) endanger a person's safety; or

(b) prejudice an investigation or prosecution; or

(c) compromise any law enforcement agency's operational activities or methodologies.

(3) The report entity must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(4) In this section—

report entity, for a law enforcement agency, means—

(a) for the police service—the Minister; or

(b) for the CCC—the parliamentary committee chairperson.

315 Record keeping

(1) The chief executive officer of a law enforcement agency must keep appropriate records about the agency's operations under this chapter.

(2) The records must contain all of the following information about each authority granted under this chapter in relation to the agency—

(a) the date on which the authority was granted and the name of the person who granted it;

(b) if the authority was varied or cancelled under this chapter—the date it was varied or cancelled, and the name of the person who varied or cancelled it;

(c) the name of the authorised person under the authority;

(d) details of the assumed identity to which the authority relates;

(e) details of any request made to an issuing agency under section 294 in relation to the authority;

(f) the general nature of the duties undertaken by the authorised person under the assumed identity;

(g) general details of relevant financial transactions entered into using the assumed identity;

(h) details of reviews of the authority under section 287.

316 Audit of records

(1) The chief executive officer of a law enforcement agency must have the records kept under section 315 for each authority granted in relation to the agency audited—

(a) at least once every 6 months while the authority is in force; and

(b) at least once in the 6 months after the cancellation or expiry of the authority.

(2) The parliamentary commissioner must audit the records kept by the CCC.

(3) The chief executive officer of a law enforcement agency, other than the CCC, must appoint a person to audit the records kept by the agency.

(4) The person appointed under subsection (3)—

(a) may, but need not, be an officer of the law enforcement agency; and

Not authorised—indicative only

Not authorised—indicative only

(b) must not be a person—

(i) who granted, varied or cancelled any of the authorities to which the records under section 315 relate; or

(ii) who is or was an authorised person under any of the authorities to which the records relate.

(5) A person who conducts an audit under this section for a law enforcement agency must give the chief executive officer of the agency a written report of the results of the audit.

Part 7 Delegation

317 Delegation generally

Other than as provided by this part, and despite any other Act or law to the contrary, the powers of a chief executive officer under this chapter may not be delegated to any other person.

318 Delegation—commissioner

(1) The commissioner may delegate any of the commissioner's powers under this chapter relating to the following to a person for the time being performing functions in the police service as a senior officer—

(a) the granting, variation and cancellation of authorities;

(b) conducting reviews under section 287;

(c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;

(d) making applications under section 292;

(e) making requests under section 294 or 307.

(2) Also, the commissioner may delegate to a police officer of or above the rank of inspector the commissioner's power under

section 288 to apply to the independent member for authority to create a birth certificate for an assumed identity.

(3) No more than 4 delegations may be in force under this section at any time.

(4) In this section—

senior officer means—

(a) a deputy commissioner of the police service; or

(b) an assistant commissioner of the police service; or

(c) a superintendent of the police service who is responsible for covert operations.

319 Delegation—CCC chairperson

(1) The CCC chairperson may delegate any of the chairperson's powers under this chapter relating to the following to a CCC senior executive officer—

(a) the granting, variation and cancellation of authorities;

(b) conducting reviews under section 287;

(c) authorising the making of an application to the independent member for a birth certificate approval for an assumed identity;

(d) making applications under section 292;

(e) making requests under section 294 or 307.

(2) Also, the CCC chairperson may delegate to an authorised commission officer the chairperson's power under section 288 to apply to the independent member for authority to create a birth certificate for an assumed identity.

(3) No more than 4 delegations may be in force under this section at any time.

Not authorised—indicative only

Not authorised—indicative only

320 Delegation—ACC

Editor's note—

This section will be inserted when section 42 of the *Cross-Border Law Enforcement Legislation Amendment Act 2005* (2005 Act No. 45) commences. Section 42 inserts this section as section 197ZFA. It will be immediately renumbered as section 320 as provided for by renumbered section 810(2) (previously section 459A(2)).

Chapter 13 Surveillance devices

Part 1 Preliminary

321 Purposes of ch 13

The main purposes of this chapter are—

(a) to establish procedures for law enforcement officers to obtain warrants or emergency authorisations for the installation, use, maintenance and retrieval of surveillance devices in criminal investigations, including criminal investigations extending beyond this jurisdiction; and

(b) to enable senior officers of the police service to authorise the installation, use, maintenance and retrieval of tracking devices in this jurisdiction in circumstances in which taking a person into custody may pose a serious risk to the safety of the person or another person; and

(c) to enable warrants to be obtained for the retrieval of surveillance devices installed under a tracking device authorisation or the *Public Safety Preservation Act 1986*; and

(d) to recognise warrants and emergency authorisations issued in other jurisdictions; and

(e) to restrict the use, communication and publication of information obtained through the use of surveillance devices or otherwise connected with surveillance device operations; and

(f) to impose requirements for the secure storage and destruction of records, and the making of reports to judges, magistrates and Parliament, in connection with surveillance device operations.

322 Definitions for ch 13

In this chapter—

computer means any electronic device for storing or processing information.

corresponding emergency authorisation means an authorisation in the nature of an emergency authorisation given under the provisions of a corresponding law whether or not the emergency authorisation is of a kind that may be issued under this chapter.

corresponding warrant means a warrant in the nature of a surveillance device warrant or retrieval warrant issued under the provisions of a corresponding law in relation to a relevant offence under a corresponding law.

data surveillance device means any device or program capable of being used to record or monitor the input of information into or the output of information from a computer, but does not include an optical surveillance device.

device includes instrument, apparatus and equipment.

disciplinary proceeding means a proceeding of a disciplinary nature under a law of any jurisdiction or of the Commonwealth.

enhancement equipment, in relation to a surveillance device, means equipment capable of enhancing a signal, image or other information obtained by the use of the surveillance device.

Not authorised—indicative only

Not authorised—indicative only

inspection entity, for a law enforcement agency other than the ACC, means—

(a) for the police service—the public interest monitor; or

(b) for the CCC—the parliamentary commissioner.

Note—

For inspection requirements for the ACC, see the *Surveillance Devices Act 2004* (Cwlth), section 55.

install includes attach.

maintain, in relation to a surveillance device, includes—

(a) adjust, relocate, repair or service the device; and

(b) replace a faulty device.

optical surveillance device means any device capable of being used to record visually or observe an activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment.

place does not include a vehicle.

premises—

(a) includes a place; and

(b) for parts 2, 3 and 5—includes premises or a place outside this jurisdiction; and

(c) does not include a vehicle.

protected information, for part 5, division 1, see section 351.

public officer means a person employed by, or holding an office established by or under a law of, this jurisdiction or a person employed by a public authority of this jurisdiction, and includes a law enforcement officer.

record includes—

(a) an audio, visual or audiovisual record; and

(b) a record in digital form; and

(c) a documentary record prepared from a record mentioned in paragraph (a) or (b).

relevant offence means—

(a) generally, see section 323; or

(b) for part 5, division 1, see section 351.

relevant proceeding, for part 5, division 1, see section 351.

remote application for a warrant, means an application under section 800 in relation to a warrant.

report of a conversation or activity, includes a report of the substance, meaning or purport of the conversation or activity.

senior officer means—

(a) for the police service—a police officer of at least the rank of inspector; or

(b) for the CCC—an authorised commission officer; or

(c) for the ACC—a member of staff of the ACC who is an SES employee within the meaning of the *Public Service Act 1999* (Cwlth).

surveillance device means—

(a) a data surveillance device, a listening device, an optical surveillance device or a tracking device; or

(b) a device that is a combination of any 2 or more of the devices mentioned in paragraph (a).

three year imprisonment offence means an indictable offence for which the maximum penalty is at least 3 years imprisonment.

tracking device means any electronic device capable of being used to find or monitor the geographical location of a person, vehicle or object.

use of a surveillance device includes use of the device to record a conversation or other activity.

warrant means surveillance device warrant or retrieval warrant.

Not authorised—indicative only

Not authorised—indicative only

323 Meaning of *relevant offence*

(1) A ***relevant offence*** is an offence against a law of this jurisdiction that is—

(a) a seven year imprisonment offence; or

(b) an indictable offence included in schedule 2.

(2) However, to the extent any provision of this Act applies to matters mentioned in subsection (3), a ***relevant offence*** is an offence against a law of this jurisdiction that is—

(a) a three year imprisonment offence; or

(b) an indictable offence included in schedule 2.

(3) For subsection (2), the matters are—

(a) an application for a surveillance device warrant—

(i) that authorises the use of a tracking device only; and

(ii) does not authorise covert entry to a building by a person installing it; and

(b) a surveillance device warrant mentioned in paragraph (a).

324 When an investigation is conducted in this jurisdiction

For this chapter, an investigation into a relevant offence is taken to be conducted in this jurisdiction, whether or not it is also conducted in another jurisdiction, if a law enforcement officer participates in the investigation.

Note—

This provision is intended to cover the situation where an officer of this jurisdiction is conducting or participating in an investigation entirely in another jurisdiction for an offence of this jurisdiction, for example, a Queensland officer is investigating a conspiracy to import drugs into Queensland from New South Wales, and all the evidence of the offence is in New South Wales.

324A References to installation of surveillance device

In this chapter, a reference to the installation of a surveillance device includes a reference to doing anything to or in relation to a device to enable it to be used as a surveillance device.

Examples of things that may be done to or in relation to a device—

- installing hardware or software on the device
- connecting the device to another device using a wireless connection

325 Relationship to other laws and matters

(1) This chapter is not intended to affect any other law of this jurisdiction that prohibits or regulates the use of surveillance devices entirely within this jurisdiction.

(2) To remove doubt, it is declared that it is intended that a warrant may be issued, or an emergency authorisation given, in this jurisdiction under this chapter for the installation, use, maintenance or retrieval of a surveillance device and any related enhancement equipment in this jurisdiction or a participating jurisdiction or both.

(3) However, a tracking device authorisation may authorise the installation, use, maintenance or retrieval of a tracking device and related enhancement equipment in this jurisdiction only.

(4) A function conferred under this chapter in relation to the activities of the CCC is only conferred for the purpose of a function conferred on the CCC under the *Crime and Corruption Act 2001* relating to major crime as defined under that Act.

(5) A function or power conferred under this chapter in relation to the activities of the ACC is only conferred for the purpose of the function or power conferred on the ACC under the *Australian Crime Commission (Queensland) Act 2003* relating to suspected serious and organised crime as defined under that Act.

(6) Also, nothing in this chapter authorises the doing of anything for which a warrant would be required under the

Not authorised—indicative only

Not authorised—indicative only

Telecommunications (Interception and Access) Act 1979 (Cwlth).

(7) This chapter does not stop a law enforcement officer from using an optical surveillance device in a place where the presence of the police officer is not an offence.

Examples—

1 The police officer may use an optical surveillance device to record activities in a public place or, with the occupier's consent, install the device in a private place.

2 A police officer who is lawfully at a place may use binoculars or a telescope to monitor activities at a place the police officer is not lawfully entitled to enter.

(8) The Public Records Act does not apply to activities and records under this chapter.

(9) In this section—

function includes power.

Part 2 Warrants

Division 1 Introduction

326 Types of warrant

(1) The following types of warrant may be issued under this part—

(a) surveillance device warrants;

(b) retrieval warrants.

(2) A warrant issued by a Supreme Court judge may be issued in relation to 1 or more kinds of surveillance device.

327 Who may issue warrants

(1) A Supreme Court judge may issue any warrant under this part.

(2) A magistrate may issue—

(a) a surveillance device warrant—

(i) that authorises the use of a tracking device only; and

(ii) that does not authorise covert entry to a building by a person installing it; and

(b) a retrieval warrant in relation to a tracking device authorised under a warrant mentioned in paragraph (a), if a magistrate issued the original warrant.

Division 2 Surveillance device warrants

328 Application for surveillance device warrant

(1) A senior officer of a law enforcement agency may apply for the issue of a surveillance device warrant if the officer reasonably believes that—

(a) a relevant offence has been, is being, is about to be or is likely to be committed; and

(b) the use of a surveillance device in the course of an investigation is or will be necessary for the purpose of enabling evidence or information to be obtained of the commission of the relevant offence or the identity or location of the offender.

(2) The application may be made to—

(a) a Supreme Court judge in any case; or

(b) a magistrate for a surveillance device warrant that authorises the use of a tracking device only.

(3) The application must be sworn and state—

(a) the name of the applicant; and

(b) the nature and duration of the warrant sought, including the kind of surveillance device sought to be authorised; and

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Not authorised—indicative only

(c) the grounds on which the warrant is sought; and

(d) information required under a regulation, whether under this Act or the *Crime and Corruption Act 2001*, about any warrants issued within the previous year under either Act, or both Acts, in relation to the person stated in the application or wherever it is sought to use the surveillance device.

(4) The application must also fully disclose all matters of which the applicant is aware, both favourable and adverse to the issuing of the warrant.

(5) Without limiting this section, the application may seek the use of a surveillance device in a public place or in a place described by reference to a class of place.

(6) Subsection (3)(d) only applies to—

(a) information kept in a register that the applicant may inspect; and

(b) information the applicant otherwise actually knows.

(7) Subsections (5) and (6) do not apply to an application made under this Act for the ACC, but in that case the application must be supported by an affidavit as if it had been made under the *Surveillance Devices Act 2004* (Cwlth), section 14.

(8) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(9) The judge or magistrate may refuse to consider the application until the applicant gives the judge or magistrate all the information the judge or magistrate requires about the application in the way the judge or magistrate requires.

Note—

An application made under this section by a lawyer appearing for the applicant is not a remote application.

329 Who may be present at consideration of application

(1) The judge or magistrate must hear an application for a surveillance device warrant in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge or magistrate permits to be present;

(d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge or magistrate must hear the application—

(a) in the absence of the person proposed to be placed under surveillance (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

330 Deciding application

(1) A Supreme Court judge or a magistrate may issue a surveillance device warrant if satisfied—

(a) there are reasonable grounds for the belief founding the application for the warrant; and

(b) for a remote application—that it would have been impracticable for the application to have been made in person.

(2) In deciding whether a surveillance device warrant should be issued, the judge or magistrate, being mindful of the highly intrusive nature of a surveillance device warrant, must have regard to—

(a) the nature and gravity of the relevant offence for which the warrant is sought; and

(b) the extent to which the privacy of any person is likely to be affected; and

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Not authorised—indicative only

(c) the existence of alternative ways of obtaining the evidence or information sought to be obtained and the extent to which those ways may help or prejudice the investigation; and

(d) the evidentiary or intelligence value of any information sought to be obtained; and

(e) any previous warrant of a similar kind sought or issued under this Act, the *Crime and Corruption Act 2001* or a corresponding law, if known, in connection with the same offence; and

(f) any submissions made by a monitor.

(3) The judge or magistrate may issue a warrant for the use of a surveillance device in the office of a practising lawyer only if the application for the warrant relates to the lawyer's involvement in a relevant offence.

(4) A magistrate may issue a warrant for the use of a tracking device only if the warrant does not authorise covert entry to a building by a person installing the device.

331 What must a surveillance device warrant contain

(1) A surveillance device warrant must—

(a) state that the judge or magistrate is satisfied of the matters mentioned in section 330(1) and has had regard to the matters mentioned in section 330(2); and

(b) state—

(i) the applicant's name; and

(ii) the relevant offence in relation to which the warrant is issued; and

(iii) the date and time the warrant is issued; and

(iv) the kind of surveillance device authorised to be used; and

(v) if the warrant authorises the use of a surveillance device on premises—the premises where the use of the surveillance device is authorised; and

(vi) if the warrant authorises the use of an optical surveillance device in a dwelling, other than a device that is portable or already in the dwelling—the parts of the dwelling in which the device may be installed; and

(vii) if the warrant authorises the use of a surveillance device in or on a vehicle, object or class of vehicle or object—the vehicle, object or class of vehicle or object in or on which the use of the surveillance device is authorised; and

(viii) if the warrant authorises the use of a surveillance device in relation to the conversations, activities or geographical location of a person—the name of the person, if known; and

(ix) the period, of not more than 90 days, during which the warrant is in force, and the day and time the warrant starts and when the warrant ends; and

(x) the name of the law enforcement officer primarily responsible for executing the warrant; and

(xi) any conditions subject to which premises may be entered, or a surveillance device may be used, under the warrant; and

(xii) the time within which a report in relation to the warrant must be made under section 357 and to whom the report must be made.

(2) For a warrant mentioned in subsection (1)(b)(viii), if the identity of the person is unknown, the warrant must state that fact.

(3) A warrant must be signed by the person issuing it and include their name.

Not authorised—indicative only

Not authorised—indicative only

Note—

See section 801(1) for records the issuer must keep for surveillance device warrants issued on a remote application.

332 What a surveillance device warrant authorises

(1) A surveillance device warrant may authorise, as stated in the warrant, any 1 or more of the following—

(a) the use of a surveillance device on stated premises;

(b) the use of a surveillance device in or on a stated vehicle, object or class of vehicle or object;

(c) the use of a surveillance device in relation to the private conversations, activities or geographical location of a stated person or a person whose identity is unknown.

(2) A surveillance device warrant authorises—

(a) for a warrant of a kind mentioned in subsection (1)(a)—

(i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant on the stated premises; and

(ii) the entry onto the stated premises, or other premises adjoining or providing access to the stated premises, for any of the purposes mentioned in subparagraph (i) or subsection (4); and

(b) for a warrant of a kind mentioned in subsection (1)(b)—

(i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant in or on the stated vehicle or object, or a vehicle or object of the stated class; and

(ii) the entry onto any premises where the stated vehicle or object, or a vehicle or object of the stated class, is reasonably believed to be or is likely to be, or other premises adjoining or providing access to those premises, for any of the purposes mentioned in subparagraph (i) or subsection (4); and

(iii) the entry into the stated vehicle, a vehicle of the stated class, or a vehicle in which the stated object or an object of the stated class is reasonably believed to be or is likely to be, for any of the purposes mentioned in subparagraph (i) or subsection (4); and

(c) for a warrant of a kind mentioned in subsection (1)(c)—

(i) the installation, use and maintenance of a surveillance device of the kind stated in the warrant, on premises, or in or on a vehicle, where the person is reasonably believed to be or is likely to be; and

(ii) the entry onto the premises, or into the vehicle, mentioned in subparagraph (i), or onto other premises adjoining or providing access to those premises or that vehicle, for any of the purposes mentioned in subparagraph (i) or subsection (4).

(3) However, a surveillance device warrant of a kind mentioned in subsection (1)(a) does not authorise covert entry to a building on premises adjoining or providing access to the stated premises, unless the warrant specifically authorises the covert entry.

(4) A surveillance device warrant also authorises—

(a) the preparatory action reasonably necessary to facilitate the installation of the surveillance device, including, for example—

(i) inspecting and photographing the internal layout of premises; and

(ii) finding out whether or not there is a device on premises that could be used as a surveillance device and the location of the device; and

(iii) finding a way to connect to, or transmit from, a device on premises that could be used as a surveillance device; and

(b) the retrieval of the surveillance device; and

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Not authorised—indicative only

(c) the installation, use, maintenance and retrieval of any enhancement equipment in relation to the surveillance device; and

(d) the temporary removal of a vehicle or object from premises for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment and the return of the vehicle or object to the premises; and

(e) the breaking open of any thing for the purpose of the installation, maintenance or retrieval of the surveillance device or enhancement equipment; and

(f) the connection of the surveillance device or enhancement equipment to an electricity supply system and the use of electricity from that system to operate the device or equipment; and

(g) the connection of the surveillance device or enhancement equipment to an object or system that may be used to transmit information in any form and the use of that object or system in relation to the operation of the device or equipment.

(5) A surveillance device warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the installation, use, maintenance or retrieval of a surveillance device or enhancement equipment under the warrant.

(6) A law enforcement officer may use a surveillance device under a warrant only if the officer is acting in the performance of the officer's duty.

(7) Subsections (2) and (4) apply to a warrant subject to any conditions stated in the warrant.

332A Surveillance device warrant authorises use of existing device

(1) This section applies to a surveillance device warrant of a kind mentioned in section 332(1)(a), (b) or (c) that authorises the

use of a stated kind of surveillance device on premises, or in or on a vehicle, object or class of vehicle or object.

(2) The surveillance device warrant also authorises the use of a device (an ***existing device***) that is on the premises, or in or on the vehicle or object, or a vehicle or object of the class, as a surveillance device of the stated kind.

Example of an existing device—

a security camera

(3) This section applies whether or not it is necessary to do anything to or in relation to the existing device to enable it to be used as a surveillance device.

333 Extension and variation of surveillance device warrant

(1) A senior officer of a law enforcement agency to whom a surveillance device warrant has been issued may apply, at any time before the expiry of the warrant—

(a) for an extension of the warrant for a period of not more than 90 days from the day on which it would otherwise expire; or

(b) for a variation of any of the other terms of the warrant.

(2) The application must be made to—

(a) a Supreme Court judge, if the warrant was issued by a Supreme Court judge; or

(b) a magistrate, if the warrant was issued by a magistrate.

(3) Section 328 applies, with any necessary changes, to an application under this section as if it were an application for the warrant.

(4) The judge or magistrate may grant an application, subject to any conditions the judge or magistrate considers appropriate, if satisfied that the matters mentioned in section 330(1) still exist, having regard to the matters mentioned in section 330(2).

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Not authorised—indicative only

(5) If the judge or magistrate grants the application, the judge or magistrate must write the new expiry date or the other varied term on the original warrant.

(6) An application may be made under this section more than once.

334 Revocation of surveillance device warrant

(1) A surveillance device warrant may be revoked at any time before the expiry of the period of validity stated in it by—

(a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or

(b) a magistrate, if a magistrate issued the warrant.

(2) Also, a judge or magistrate may revoke a surveillance device warrant after receiving a report under section 357 about the warrant.

(3) A judge or magistrate who revokes a warrant must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

335 Discontinuance of use of surveillance device under warrant

(1) This section applies if a surveillance device warrant is issued to a senior officer of a law enforcement agency.

(2) If the senior officer to whom the warrant is issued, or the law enforcement officer who is primarily responsible for executing the warrant, believes that use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the officer must inform the chief executive officer of the law enforcement agency immediately.

(3) If the chief executive officer of the law enforcement agency is satisfied, whether because of subsection (2) or otherwise, that the use of a surveillance device under the warrant is no longer necessary for the purpose of enabling evidence to be obtained of the commission of the relevant offence or the identity or location of the offender, the chief executive officer—

(a) must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued as soon as practicable; and

(b) must give written notice of that fact to the public interest monitor.

(4) If notice is given under subsection (3)(b) for a surveillance device warrant, the warrant stops having effect other than to the extent it authorises the removal of a surveillance device and any enhancement equipment.

(5) Also, if the chief executive officer is notified that the warrant has been revoked by a judge or magistrate under section 334(1), the chief executive officer must take the steps necessary to ensure that use of the surveillance device authorised by the warrant is discontinued immediately.

Division 3 Retrieval warrants

336 Application for retrieval warrant

(1) A law enforcement officer may apply for the issue of a retrieval warrant in relation to a surveillance device or enhancement equipment—

(a) that was lawfully installed on premises, or in or on a vehicle or object, under—

(i) a surveillance device warrant; or

(ii) a tracking device authorisation; or

(iii) a surveillance device authorisation under the *Public Safety Preservation Act 1986*; and

Not authorised—indicative only

Not authorised—indicative only

(b) that the law enforcement officer reasonably believes is still on those premises or in or on that vehicle or object, or on other premises or in or on another vehicle or object.

(2) The application may be made to—

(a) a Supreme Court judge in any case; or

(b) a magistrate for an application for a retrieval warrant—

(i) that authorises the retrieval of a tracking device only; and

(ii) that does not authorise covert entry to a building by a person retrieving it.

(3) The application must be sworn and state the grounds on which the warrant is sought.

(4) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(5) The judge or magistrate may refuse to consider the application until the applicant gives the judge all the information the judge or magistrate requires about the application in the way the judge or magistrate requires.

337 Who may be present at consideration of application

(1) The judge or magistrate must hear an application for a retrieval warrant in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge or magistrate permits to be present;

(d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge or magistrate must hear the application—

(a) in the absence of the person placed under surveillance (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

338 Deciding application

(1) A Supreme Court judge or a magistrate may issue a retrieval warrant if the judge or magistrate is satisfied—

(a) that there are reasonable grounds for the belief founding the application for the warrant; and

(b) for a remote application—that it would have been impracticable for the application to have been made in person.

(2) In deciding whether a retrieval warrant should be issued, the judge or magistrate must have regard to—

(a) the extent to which the privacy of any person is likely to be affected; and

(b) the public interest in retrieving the device sought to be retrieved; and

(c) any submissions made by a monitor.

339 What must a retrieval warrant contain

(1) A retrieval warrant must—

(a) state that the judge or magistrate is satisfied of the matters mentioned in section 338(1) and has had regard to the matters mentioned in section 338(2); and

(b) state—

(i) the name of the applicant; and

(ii) the date and time the warrant is issued; and

(iii) the kind of surveillance device authorised to be retrieved; and

Not authorised—indicative only

Not authorised—indicative only

(iv) the premises, vehicle or object from which the surveillance device is to be retrieved; and

(v) the period, of not more than 90 days, during which the warrant is in force, including the date and time the warrant starts and when the warrant ends; and

(vi) the name of the law enforcement officer primarily responsible for executing the warrant; and

(vii) any conditions on which premises may be entered under the warrant; and

(viii) the time within which a report in relation to the warrant must be made under section 357 and to whom the report must be made.

(2) A warrant must be signed by the person issuing it and include their name.

Note—

See section 801(1) for records the issuer must keep for retrieval warrants issued on a remote application.

340 What a retrieval warrant authorises

(1) A retrieval warrant, subject to any conditions stated in it, authorises—

(a) the retrieval of the surveillance device stated in the warrant and any enhancement equipment in relation to the device or, if the warrant relates to the retrieval of enhancement equipment only, the enhancement equipment; and

(b) the entry onto premises where the surveillance device is reasonably believed to be, or other premises adjoining or providing access to those premises, for the purpose of retrieving the device and equipment; and

(c) the breaking open of any thing for the purpose of the retrieval of the device and equipment; and

(d) if the device or equipment is installed on or in a vehicle or object, the temporary removal of the vehicle or object

from any place where it is situated for the purpose of the retrieval of the device and equipment and the return of the vehicle or object to that place.

(2) Also, the warrant authorises the use of the surveillance device and any related enhancement equipment solely for the purpose of the retrieval of the device and any enhancement equipment.

(3) However, if the warrant authorises the use of the surveillance device in another jurisdiction, subsection (2) applies subject to the corresponding law of the jurisdiction.

(4) A retrieval warrant may authorise the doing of anything reasonably necessary to conceal the fact that anything has been done in relation to the retrieval of a surveillance device or enhancement equipment under the warrant.

341 Revocation of retrieval warrant

(1) A retrieval warrant may be revoked at any time before the expiry of the period of validity stated in it by—

(a) a Supreme Court judge, if a Supreme Court judge issued the warrant; or

(b) a magistrate, if a magistrate issued the warrant.

(2) A judge or magistrate may revoke a retrieval warrant after receiving a report under section 357 about the warrant.

(3) A judge or magistrate who revokes a warrant must cause notice of the revocation to be given to the chief executive officer of the law enforcement agency of which the law enforcement officer to whom the warrant was issued is a member.

342 Discontinuance of retrieval warrant

(1) If the law enforcement officer to whom a retrieval warrant has been issued, or who is primarily responsible for executing a retrieval warrant, believes that the grounds for issue of the warrant no longer exist, the law enforcement officer must

Not authorised—indicative only

Not authorised—indicative only

inform the chief executive officer of the law enforcement agency immediately.

(2) If the chief executive officer of a law enforcement agency is satisfied, whether because of subsection (1) or otherwise, that the grounds for issue of a retrieval warrant to a law enforcement officer of the agency no longer exist, the chief executive officer must give written notice of that fact to the public interest monitor.

(3) If notice is given under subsection (2) for a retrieval warrant, the warrant stops having effect.

Part 3 Emergency authorisations

343 Emergency authorisation—risk of serious personal violence or substantial property damage

(1) A law enforcement officer of a law enforcement agency may apply to a senior officer of the agency for an emergency authorisation for the use of a surveillance device if the law enforcement officer reasonably believes that—

(a) an imminent threat of serious violence to a person or substantial damage to property exists; and

(b) the use of a surveillance device is immediately necessary for the purpose of dealing with the threat; and

(c) the circumstances are of a degree of seriousness and the matter is of a degree of urgency that the use of a surveillance device is warranted; and

(d) it is not practicable in the circumstances to apply for a surveillance device warrant.

(2) An application may be made orally or in writing.

Note—

Applications may also be made under section 800.

(3) A senior officer may give an emergency authorisation for the use of a surveillance device on an application under

subsection (1) if satisfied that there are reasonable grounds for the belief founding the application.

(4) An emergency authorisation given under this section may authorise the law enforcement officer to whom it is given to do anything that a surveillance device warrant may authorise them to do.

343A Emergency authorisation authorises use of existing device

(1) This section applies to an emergency authorisation that authorises the use of a stated kind of surveillance device on premises, or in or on a vehicle, object or class of vehicle or object.

(2) The emergency authorisation also authorises the use of a device (an ***existing device***) that is on the premises, or in or on the vehicle or object, or a vehicle or object of the class, as a surveillance device of that kind.

Example of an existing device—

a security camera

(3) This section applies—

(a) whether or not it is necessary to do anything to or in relation to the existing device to enable it to be used as a surveillance device; and

(b) subject to any conditions of the emergency authorisation.

344 Application for approval after use of surveillance device under emergency authorisation

(1) Within 2 business days after giving an emergency authorisation, a senior officer must apply to a Supreme Court judge for approval of the exercise of powers under the emergency authorisation.

(2) An application must be sworn and state—

(a) the name of the applicant; and

Not authorised—indicative only

Not authorised—indicative only

(b) the kind of surveillance device sought to be approved and, if a warrant is sought, the nature and duration of the warrant; and

(c) the grounds on which the approval, and warrant, if any, is sought.

(3) The applicant must advise the public interest monitor of the application under arrangements decided by the monitor.

(4) The judge may refuse to consider the application until the applicant gives the judge all the information the judge requires about the application in the way the judge requires.

345 Who may be present at consideration of application

(1) The judge must hear the application for approval of the exercise of powers under the emergency authorisation in the absence of anyone other than the following—

(a) the applicant;

(b) a monitor;

(c) someone the judge permits to be present;

(d) a lawyer representing anyone mentioned in paragraphs (a) to (c).

(2) Also, the judge must hear the application—

(a) in the absence of the person placed under or proposed to be placed under surveillance (the ***relevant person***) or anyone likely to inform the relevant person of the application; and

(b) without the relevant person having been informed of the application.

346 Consideration of application

Before deciding an application for approval of the exercise of powers under an emergency authorisation given under section 343, the judge must, in particular, and being mindful

of the highly intrusive nature of using a surveillance device, consider the following—

(a) the nature of the risk of serious violence to a person or substantial damage to property;

(b) the extent to which issuing a surveillance device warrant would have helped reduce or avoid the risk;

(c) the extent to which law enforcement officers could have used alternative methods of investigation to help reduce or avoid the risk;

(d) how much the use of alternative methods of investigation could have helped reduce or avoid the risk;

(e) how much the use of alternative methods of investigation would have prejudiced the safety of the person or property because of delay or for another reason;

(f) whether or not it was practicable in the circumstances to apply for a surveillance device warrant;

(g) any submissions made by a monitor.

347 Judge may approve emergency use of powers

(1) After considering an application for approval of an emergency authorisation given under section 343, the judge may approve the application if satisfied that there were reasonable grounds to believe that—

(a) there was a risk of serious violence to a person or substantial damage to property; and

(b) using a surveillance device may have helped reduce the risk; and

(c) it was not practicable in the circumstances to apply for a surveillance device warrant.

(2) If the judge approves an application under this section, the judge may issue a surveillance device warrant for the continued use of the surveillance device as if the application

Not authorised—indicative only

Not authorised—indicative only

were an application for a surveillance device warrant under part 2, division 2.

(3) If the judge does not approve an application under this section, the judge may—

(a) order that the use of the surveillance device cease; and

(b) authorise, on conditions the judge considers appropriate, the retrieval of the surveillance device.

(4) In any case, the judge may order that any information obtained from or relating to the exercise of powers under the emergency authorisation or any record of that information be dealt with in the way stated in the order.

348 Admissibility of evidence

If the exercise of powers under an emergency authorisation is approved under section 347, evidence obtained because of the exercise of those powers is not inadmissible in any proceeding only because the evidence was obtained before the approval.

Part 3A Tracking device authorisations

348A Power to give tracking device authorisation

(1) A senior officer of the police service may authorise a police officer to use a tracking device for a stated period (the ***authorisation period***) to find or monitor the geographical location of a person if—

(a) the person is to be taken into custody; and

(b) the senior officer is satisfied on reasonable grounds that—

(i) taking the person into custody may pose a serious risk to the safety of the person or another person; and

(ii) the use of a tracking device will help in taking the person into custody at a time or location that minimises the risk.

(2) An authorisation given under subsection (1) is a ***tracking device authorisation***.

(3) The authorisation period for a tracking device authorisation must not be longer than 48 hours after the authorisation is given.

(4) Section 332(1) to (5) applies to a tracking device authorisation as if a reference in the subsections to a surveillance device warrant were a reference to a tracking device authorisation.

(5) However—

(a) section 332(2) and (4) applies to a tracking device authorisation subject to any conditions of the authorisation; and

(b) a tracking device authorisation must not authorise entry into a dwelling—

(i) to install a tracking device or enhancement equipment in the dwelling; or

(ii) to retrieve a tracking device or enhancement equipment from the dwelling.

(6) A tracking device authorisation authorises the use of the tracking device stated in the authorisation and any enhancement equipment for the purpose of retrieving the device and equipment.

348B Tracking device authorisation authorises use of existing device

(1) This section applies to a tracking device authorisation that authorises the use of a tracking device on premises, or in or on a vehicle, object or class of vehicle or object.

(2) The tracking device authorisation also authorises the use of a device (an ***existing device***) that is on the premises, or in or on

Not authorised—indicative only

Not authorised—indicative only

the vehicle or object, or a vehicle or object of the class, as a tracking device.

(3) This section applies—

(a) whether or not it is necessary to do anything to or in relation to the existing device to enable it to be used as a tracking device; and

(b) subject to any conditions of the tracking device authorisation.

348C Record of tracking device authorisation

As soon as reasonably practicable after a tracking device authorisation is given, the senior officer of the police service who gave the authorisation must make a written record stating—

(a) the date and time the authorisation was given; and

(b) the grounds for giving the authorisation.

348D When tracking device authorisation ends

(1) A tracking device authorisation ends when the first of the following happens—

(a) the person to whom the authorisation relates is taken into custody;

(b) the authorisation period for the authorisation ends or, if the authorisation period is extended under section 348E, the period as extended ends.

(2) If a tracking device authorisation ends under subsection (1), the authorisation stops having effect other than to the extent it authorises—

(a) the retrieval of the tracking device and any enhancement equipment; and

(b) the use of the tracking device and any enhancement equipment for the purpose of retrieving the device and equipment.

(3) However, after a tracking device authorisation ends, a police officer may exercise a power mentioned in subsection (2) only if a senior officer of the police service approves the exercise.

(4) This section does not stop a police officer from retrieving a tracking device and any enhancement equipment from premises if the presence of the police officer on the premises is not an offence.

348E Extension of tracking device authorisation

(1) Before a tracking device authorisation ends, a senior officer of the police service may extend the authorisation period for the authorisation, if the officer is satisfied on reasonable grounds of the matters mentioned in section 348A(1)(b).

(2) The authorisation period may be extended more than once, but must not be extended by more than 48 hours each time.

(3) As soon as reasonably practicable after extending the authorisation period, the senior officer of the police service must make a written record stating—

(a) the date and time the extension was given; and

(b) the length of the extension; and

(c) the grounds for the extension.

Part 4 Recognition of corresponding warrants and authorisations

349 Corresponding warrants

(1) A corresponding warrant may be executed in this jurisdiction in accordance with its terms as if it were a surveillance device warrant or retrieval warrant, as the case requires, issued under part 2.

(2) To remove any doubt it is declared that subsection (1) applies even though the warrant—

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Not authorised—indicative only

(a) could not have been issued on an application made under this chapter; or

(b) if issued in this jurisdiction, would have been issued subject to stated conditions applying only in this jurisdiction.

(3) Also, subsection (1) applies even though the powers a law enforcement officer may exercise in the participating jurisdiction differ from powers a law enforcement officer may exercise under a warrant issued under this chapter.

350 Corresponding emergency authorisations

(1) A corresponding emergency authorisation authorises the use of a surveillance device in accordance with its terms in this jurisdiction, as if it were an emergency authorisation given under part 3.

(2) Subsection (1) does not apply at any time after a judge orders, under a provision of a corresponding law that corresponds to section 347(3), that the use of a surveillance device under the corresponding emergency authorisation cease.

(3) To remove doubt it is declared that subsection (1) applies even though the corresponding emergency authorisation could not have been issued in this jurisdiction.

Part 5 Compliance and monitoring

Division 1 Restrictions on use, communication and publication of information

351 Definitions for div 1

In this division—

protected information means—

(a) any information obtained from the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or

(b) any information relating to—

(i) an application for, issue of, variation of, existence of or expiry or revocation of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation; or

(ii) an application for approval of powers exercised under an emergency authorisation; or

(iii) an application under a corresponding law for approval of powers exercised under a corresponding emergency authorisation.

relevant offence means an offence against a law of this jurisdiction that is—

(a) a three year imprisonment offence; or

(b) an offence included in schedule 3.

relevant proceeding means any of the following—

(a) the prosecution of a relevant offence;

(b) a bail application, or a review of a decision to grant or refuse bail, in relation to a relevant offence;

(c) a proceeding with a view to the committal of a person for trial for a relevant offence;

(d) an application for the exercise of a power in relation to a relevant offence—

(i) to a court or judicial officer; or

(ii) by a law enforcement officer to anyone under this chapter;

(e) a proceeding for the confiscation, forfeiture or restraint of property or for the imposition of a pecuniary penalty in connection with a relevant offence;

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Not authorised—indicative only

(f) a proceeding under the Confiscation Act or a corresponding law as defined under that Act for—

(i) the confiscation, forfeiture or restraint of property or for a pecuniary penalty order, an unexplained wealth order or a proceeds assessment order in connection with a serious crime related activity as defined under that Act; or

(ii) a serious drug offender confiscation order; or

(iii) a special forfeiture order;

(g) a proceeding for the protection of a child or a person with an impairment of the mind;

(h) a proceeding about the validity of a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation;

(i) a disciplinary proceeding against a public officer;

(j) a coronial inquest or inquiry if, in the opinion of the coroner, the event that is the subject of the inquest or inquiry may have resulted from the commission of a relevant offence;

(k) a proceeding under the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth), section 13, in relation to a criminal matter that concerns an offence against the laws of the foreign country that made the request resulting in the proceeding for which the maximum penalty is at least 3 years imprisonment or imprisonment for life;

(l) a proceeding for the taking of evidence under the *Extradition Act 1988* (Cwlth), section 43, in so far as the proceeding relates to a relevant offence;

(m) a proceeding for the extradition of a person from another jurisdiction to this jurisdiction, in so far as the proceeding relates to a relevant offence;

(n) a proceeding under the *International War Crimes Tribunals Act 1995* (Cwlth), part 4, division 1;

(o) a proceeding of the International Criminal Court.

352 Prohibition on communication or publication of protected information

(1) A person commits an offence if—

(a) the person intentionally, knowingly or recklessly uses, communicates or publishes any protected information; and

(b) the person knows that, or is reckless as to whether, the information is protected information; and

(c) the person knows that, or is reckless as to whether, the use, communication or publication of the information is not permitted by this division.

Maximum penalty—2 years imprisonment.

(2) A person commits a crime if the person commits an offence against subsection (1) in circumstances in which the person—

(a) intends to endanger the health or safety of any person or prejudice the effective conduct of an investigation into a relevant offence; or

(b) knows that, or is reckless as to whether, the disclosure of the information—

(i) endangers or will endanger the health or safety of any person; or

(ii) prejudices or will prejudice the effective conduct of an investigation into a relevant offence.

Maximum penalty—10 years imprisonment.

(3) Subsections (1) and (2) do not apply to—

(a) the use, communication or publication of any information that—

(i) has been disclosed in proceedings in open court; or

(ii) has entered the public domain; or

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Not authorised—indicative only

(b) the use or communication of protected information by a person who reasonably believes that the use or communication is necessary to help prevent or reduce the risk of serious violence to a person or substantial damage to property; or

(c) the communication to the Director-General, as defined under the *Australian Security Intelligence Organisation Act 1979* (Cwlth), of protected information that relates or appears to relate to activities prejudicial to security as defined under that Act; or

(d) the use or communication of information mentioned in paragraph (c) by an officer of the Australian Security Intelligence Organisation under the *Australian Security Intelligence Organisation Act 1979* (Cwlth) in the performance of the officer's official functions; or

(e) the use or communication of information to a foreign country or an appropriate authority of a foreign country under the *Mutual Assistance in Criminal Matters Act 1987* (Cwlth); or

(f) the communication of information with the approval of the chief executive officer of the law enforcement agency communicating the information; or

(g) the communication by the monitor to the Commonwealth Ombudsman of information the monitor is satisfied is necessary to enable the Commonwealth Ombudsman to perform functions under the *Surveillance Devices Act 2004* (Cwlth) in relation to the ACC; or

(h) the use or communication of information otherwise authorised under this division.

353 Permitted use of protected information

(1) Protected information may be used, communicated or published if it is necessary to do so for any of the following purposes—

(a) the investigation of a relevant offence or a relevant offence as defined under a corresponding law;

(b) the making of a decision whether or not to bring—

(i) a relevant proceeding in relation to a relevant offence; or

(ii) a relevant proceeding as defined under a corresponding law in relation to a relevant offence as defined under that law;

(c) a relevant proceeding in relation to a relevant offence, or a relevant proceeding as defined under a corresponding law in relation to a relevant offence as defined under that law;

(d) an investigation of a complaint against, or the conduct of, a public officer as defined under this chapter or a public officer as defined under a corresponding law;

(e) the making of a decision in relation to the appointment, reappointment, term of appointment, termination or retirement of a person mentioned in paragraph (d);

(f) the keeping of records and the making of reports by a law enforcement agency under division 2 or a law enforcement agency, as defined under a corresponding law, under provisions of the corresponding law that correspond to division 2;

(g) an inspection by an inspection entity under section 362 or an inspection under a provision of a corresponding law that corresponds to section 362;

(h) an investigation under the law of this jurisdiction or a participating jurisdiction or of the Commonwealth about the privacy of personal information;

(i) the making of a decision whether or not to apply for a relevant order;

(j) the making of, or deciding, an application for a relevant order;

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(k) the making of a decision whether or not to apply for an extension or further extension of a relevant order;

(l) the making of, or deciding, an application for an extension or further extension of a relevant order;

(m) the making of a decision whether or not to apply for the revocation of a relevant order;

(n) the making of, or deciding, an application for the revocation of a relevant order;

(o) a proceeding about varying or revoking a relevant order;

(p) the investigation or prosecution of an offence under a provision of a corresponding preventative detention law that corresponds to a provision of the *Terrorism (Preventative Detention) Act 2005* mentioned in schedule 3.

(2) Subsection (1)(a) to (c) and (i) to (p) does not authorise the use, communication or publication of protected information in relation to an emergency authorisation or a corresponding emergency authorisation unless the use of powers under that emergency authorisation has been approved under section 347 or the provisions of a corresponding law that correspond to section 347.

(3) However, subsection (2) does not apply to the use or communication of protected information in an application under section 344 or the provisions of a corresponding law that corresponds to section 344 to obtain the approval under section 347 or the provisions of the corresponding law that correspond to section 347.

(4) Also, subsection (2) does not apply to the use or communication of protected information for a purpose mentioned in subsection (1)(i) to (l) relating to—

(a) an initial order under the *Terrorism (Preventative Detention) Act 2005*; or

(b) an order in the nature of an order mentioned in paragraph (a) made under a corresponding preventative detention law.

(5) A reference in subsection (1) to a relevant offence, whether of this jurisdiction or another jurisdiction, is a reference to any relevant offence of the relevant jurisdiction, whether or not the offence in relation to which the relevant warrant or emergency authorisation was issued or given.

(6) In this section—

corresponding preventative detention law means a corresponding law, as defined under the *Terrorism (Preventative Detention) Act 2005*, schedule.

relevant order means—

(a) a preventative detention order under the *Terrorism (Preventative Detention) Act 2005*; or

(b) a prohibited contact order under the *Terrorism (Preventative Detention) Act 2005*; or

(c) an order in the nature of an order mentioned in paragraph (a) or (b) made under—

(i) a corresponding preventative detention law; or

(ii) the Criminal Code of the Commonwealth, division 104.

354 Dealing with records and reports obtained by use of surveillance devices

(1) This section applies to a record or report obtained by use of a surveillance device by a law enforcement officer of a law enforcement agency under—

(a) a warrant; or

(b) an emergency authorisation; or

(c) a corresponding warrant; or

(d) a corresponding emergency authorisation; or

(e) a tracking device authorisation.

(2) The chief executive of the law enforcement agency must—

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Not authorised—indicative only

(a) ensure the record or report is kept in a secure place that is not accessible to people who are not entitled to access or deal with the record or report; and

(b) ensure the record or report is destroyed if satisfied the record or report is not likely to be required in connection with a purpose mentioned in section 352(3) or 353(1).

(3) Subsection (2) does not apply to a record or report that is received into evidence in legal proceedings or disciplinary proceedings.

(4) Subsection (2) does not prevent information or other matter relevant to an offence of which someone has been convicted being preserved for any period or indefinitely if there is any possibility that an issue about the conviction may arise.

355 Protection of surveillance device technologies and methods

(1) Despite the *Recording of Evidence Act 1962*, a transcript of a proceeding under this chapter for an application or order or approval must not be made.

(2) A person must not publish a report of a proceeding under this chapter for an application or order or approval.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3) Subsection (4) applies to a proceeding before a court, a tribunal or a commission of inquiry under the *Commissions of Inquiry Act 1950*.

(4) Without limiting section 803, if the person conducting or presiding over a proceeding is satisfied that publication of any information disclosed in the proceeding could reasonably be expected to reveal details of surveillance device technology or methods of installation, use or retrieval of surveillance devices, the person must make any orders prohibiting or restricting publication of the information that the person considers necessary to ensure that those details are not revealed.

(5) Subsection (4) does not apply to the extent that the person conducting or presiding over the proceeding considers that the interests of justice require otherwise.

356 Protected information in the custody of a court

A person is not entitled to search any protected information in the custody of a court unless a Supreme Court judge otherwise orders in the interests of justice.

Division 2 Reporting and record keeping

357 Report to judge or magistrate

(1) A law enforcement officer to whom a warrant is issued, or who is primarily responsible for executing a warrant issued, under this chapter must make a report as required under this section.

(2) The report must be made to the judge or magistrate who issued the warrant or to the public interest monitor as stated in the warrant.

(3) The report must be made—

(a) within the time stated in the warrant; or

(b) if the warrant is revoked before the end of the time stated in the warrant—as soon as practicable after the warrant is revoked and within the time stated in the warrant.

(4) For a surveillance device warrant, the report must—

(a) state whether the warrant was executed; and

(b) if so—

(i) state the name of each person involved in the execution of the warrant; and

(ii) state the kind of surveillance device used; and

(iii) state the period when the device was used; and

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Not authorised—indicative only

(iv) state the name, if known, of any person whose conversations or activities were overheard, recorded, monitored, listened to or observed by the use of the device; and

(v) state the name, if known, of any person whose geographical location was found by the use of a tracking device; and

(vi) give details of any premises on which the device was installed or any place where the device was used; and

(vii) give details of any vehicle or object in or on which the device was installed or any premises where the vehicle or object was located when the device was installed; and

(viii) give details of the benefit to the investigation of the use of the device and of the general use made or to be made of any evidence or information obtained by the use of the device; and

(ix) give details of the compliance with the conditions, if any, to which the warrant was subject; and

(c) if the warrant was extended or varied, state—

(i) the number of extensions or variations; and

(ii) the reasons for them; and

(d) if written notice was given to the public interest monitor under section 335, state the reasons for the notice.

(5) For a retrieval warrant, the report must—

(a) give details of any premises entered, anything opened and any vehicle or object removed and replaced under the warrant; and

(b) state whether the surveillance device was retrieved under the warrant; and

(c) if the device was not retrieved, state the reason that the device was not retrieved; and

(d) give details of the compliance with the conditions, if any, to which the warrant was subject; and

(e) if written notice was given to the public interest monitor under section 342, state the reasons for the notice.

(6) If a report is given to the public interest monitor, the monitor may refer the report to a judge or magistrate for the purpose of an order being made under subsection (7).

(7) On receiving a report, the judge or magistrate may order that any information obtained from or relating to the execution of the warrant or any record of that information be dealt with in the way stated in the order.

(8) The function imposed on a law enforcement officer by subsection (1) may be performed by the person for the time being occupying or acting in the office or position held by the law enforcement officer.

Note—

Provision for a statutory function to be performed by a person acting in an office is also made by the *Acts Interpretation Act 1954*, section 23(2).

358 Annual reports

(1) The chief executive officer of a law enforcement agency must make a report under subsection (4) that includes the following information for each financial year—

(a) the number of applications for warrants by and the number of warrants issued to law enforcement officers of the agency during that year;

(b) the number of applications for emergency authorisations by and the number of emergency authorisations given to law enforcement officers of the agency during that year;

(c) the number of remote applications for warrants by law enforcement officers of the agency during that year;

(d) the number of applications for warrants or emergency authorisations by law enforcement officers of the agency

Not authorised—indicative only

Not authorised—indicative only

that were refused during that year, and the reasons for refusal, if known;

(e) the number of applications for variations or extensions of warrants by law enforcement officers of the agency during that year, the number of variations or extensions granted or refused and, if refused, the reasons for refusal, if known;

(f) the number of arrests made by law enforcement officers of the agency during that year on the basis, entirely or partly, of information obtained by the use of a surveillance device under a warrant or emergency authorisation;

(g) the number of prosecutions that were started in this jurisdiction during that year in which information obtained by the use of a surveillance device under a warrant or emergency authorisation was given in evidence and the number of those prosecutions in which a person was found guilty;

(h) for the police service—

(i) the number of tracking device authorisations given to police officers during that year; and

(ii) the number of tracking device authorisations for which the authorisation period was extended under section 348E during that year; and

(iii) for each tracking device authorisation given during that year, a statement about whether or not the use of the tracking device helped in minimising the risk mentioned in section 348A(1)(b)(i);

(i) any other information about the use of surveillance devices and the administration of this chapter that the Minister considers appropriate.

(2) The information mentioned in subsection (1)(a) and (b) must be presented in a way that identifies the number of warrants issued and emergency authorisations given for each different kind of surveillance device.

(3) The report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or

(b) indicates a particular investigation has been, is being or is to be conducted.

(4) The report must be given as soon as practicable after the end of each financial year, and within 3 months after the end of the financial year, to—

(a) for the police service—the Minister; or

(b) for the CCC—the parliamentary committee chairperson.

Note—

The *Surveillance Devices Act 2004* (Cwlth) makes provision for reports by the ACC about activities under State law.

(5) The Minister or parliamentary committee chairperson must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister or chairperson receives the report.

Note—

The *Parliament of Queensland Act 2001*, section 59 makes provision for the tabling of reports when the Assembly is not sitting.

359 Keeping documents connected with warrants and authorisations

The chief executive officer of a law enforcement agency must cause the following or a copy of the following to be kept—

(a) each warrant issued to a law enforcement officer of the agency;

(b) each notice given to the chief executive officer under section 334(3) of revocation of a warrant;

(c) each application made by a law enforcement officer of the agency for an emergency authorisation;

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Not authorised—indicative only

(d) each emergency authorisation given to a law enforcement officer of the agency;

(e) each application made by a law enforcement officer of the agency for—

(i) a warrant; or

(ii) variation, extension or revocation of a warrant; or

(iii) approval of the exercise of powers under an emergency authorisation;

(f) each report made under section 357;

(g) each certificate issued by a senior officer of the agency under section 364;

(h) for the police service—each record made under section 348C or 348E(3).

360 Other records to be kept

The chief executive officer of a law enforcement agency must cause the following to be kept—

(a) a statement as to whether each application made by a law enforcement officer of the agency for a warrant, or variation, extension or revocation of a warrant, was granted, refused or withdrawn;

(b) a statement as to whether each application made by a law enforcement officer of the agency for an emergency authorisation, or for approval of powers exercised under an emergency authorisation, was granted, refused or withdrawn;

(c) details of each use by the agency, or by a law enforcement officer of the agency, of information obtained by the use of a surveillance device by a law enforcement officer of the agency;

(d) details of each communication by a law enforcement officer of the agency to a person other than a law enforcement officer of the agency of information

obtained by the use of a surveillance device by a law enforcement officer of the agency;

(e) details of each occasion when, to the knowledge of a law enforcement officer of the agency, information obtained by the use of a surveillance device by a law enforcement officer of the agency was given in evidence in a relevant proceeding as defined in section 351;

(f) details of the destruction of records or reports under section 354(2)(b).

361 Register of warrants and authorisations

(1) The CCC chairperson must keep a register of warrants and emergency authorisations.

(2) The commissioner must keep a register of warrants, emergency authorisations and tracking device authorisations.

(3) A register kept under subsection (1) or (2) must be or form part of the register of covert acts kept under chapter 21, part 2, division 2.

Division 3 Inspections

362 Inspection of records

(1) The inspection entity for a law enforcement agency must, from time to time, inspect the records of the law enforcement agency to decide the extent of compliance with this chapter by the agency and law enforcement officers of the agency.

(2) For the purpose of an inspection, the inspection entity—

(a) after notifying the chief executive officer of the agency, may enter at any reasonable time premises occupied by the agency; and

(b) is entitled to have full and free access at all reasonable times to all records of the agency that are relevant to the inspection; and

Not authorised—indicative only

Not authorised—indicative only

(c) may require a member of staff of the agency to give the inspection entity any information that the inspection entity considers necessary, being information that is in the member's possession, or to which the member has access, and that is relevant to the inspection.

(3) The chief executive officer must ensure that members of staff of the agency give the inspection entity any help the inspection entity reasonably requires to enable the inspection entity to perform functions under this section.

(4) For applying this section to the parliamentary commissioner as inspection entity for the CCC, this section does not limit the parliamentary commissioner's powers under the *Crime and Corruption Act 2001*, chapter 6, part 4, division 4.

363 Report on inspection

(1) The inspection entity of a law enforcement agency must make a written report at 6 monthly intervals on the results of each inspection under section 362.

(2) The report may include comments or observations about the use and effectiveness of surveillance device warrants.

(3) The inspection entity must give the report to—

(a) if the inspection entity is the public interest monitor—the Minister; or

(b) if the inspection entity is the parliamentary commissioner—the parliamentary committee chairperson.

(4) The report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or

(b) indicates a particular investigation has been, is being or is to be conducted.

(5) The Minister or the parliamentary committee chairperson must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after receiving the report.

Note—

The *Parliament of Queensland Act 2001*, section 59 makes provision for the tabling of reports when the Assembly is not sitting.

Division 4 General

364 Evidentiary certificates

(1) A senior officer of a law enforcement agency may issue a written certificate signed by the officer stating any facts the officer or person considers relevant about—

(a) anything done by a law enforcement officer of the agency, or by a person helping or providing technical expertise to him or her, in connection with the execution of a warrant or in accordance with an emergency authorisation; or

(b) anything done by a law enforcement officer of the agency in connection with—

(i) the communication by a person to another person; or

(ii) the making use of; or

(iii) the making of a record of; or

(iv) the custody of a record of;

information obtained by the use of a surveillance device under a warrant, emergency authorisation, corresponding warrant or corresponding emergency authorisation.

(2) A document purporting to be a certificate issued under subsection (1) or under a provision of a corresponding law that corresponds to subsection (1) is admissible in any proceeding as evidence of the matters stated in it.

Not authorised—indicative only

Not authorised—indicative only

(3) Subsection (2) does not apply to a certificate to the extent that the certificate states facts about anything done in accordance with an emergency authorisation or corresponding emergency authorisation unless the use of powers under that authorisation has been approved under section 347 or under a provision of a corresponding law that corresponds to section 347.

Chapter 14 Arrest and custody powers

Part 1 Arrest without warrant

365 Arrest without warrant

(1) It is lawful for a police officer, without warrant, to arrest an adult the police officer reasonably suspects has committed or is committing an offence if it is reasonably necessary for 1 or more of the following reasons—

(a) to prevent the continuation or repetition of an offence or the commission of another offence;

(b) to make inquiries to establish the person's identity;

(c) to ensure the person's appearance before a court;

(d) to obtain or preserve evidence relating to the offence;

(e) to prevent the harassment of, or interference with, a person who may be required to give evidence relating to the offence;

(f) to prevent the fabrication of evidence;

(g) to preserve the safety or welfare of any person, including the person arrested;

(h) to prevent a person fleeing from a police officer or the location of an offence;

(i) because the offence is an offence against section 790 or 791;

(j) because the offence is an offence against the *Domestic and Family Violence Protection Act 2012*, section 177, 178 or 179;

(k) because of the nature and seriousness of the offence;

(l) because the offence is—

(i) an offence against the *Corrective Services Act 2006*, section 135(4); or

(ii) an offence to which the *Corrective Services Act 2006*, section 136 applies.

(2) Also, it is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects has committed or is committing an indictable offence, for questioning the person about the offence, or investigating the offence, under chapter 15.

(3) Subject to the *Youth Justice Act 1992*, section 13, it is lawful for a police officer to arrest a child without warrant if the police officer reasonably suspects the child is committing or has committed an offence.

Note—

Under the youth justice principles in the *Youth Justice Act 1992*, schedule 1, it is a principle of that Act that a child should be detained in custody for an offence, whether on arrest, remand or sentence, only as a last resort and for the least time that is justified in the circumstances.

365A Arrest without warrant upon instruction of another police officer

(1) It is lawful for a police officer (the ***arresting officer***), without warrant, to arrest a person if instructed to do so by another police officer (the ***instructing officer***).

(2) However, subsection (1) does not apply unless—

(a) the instructing officer reasonably suspects the person has committed or is committing an offence; and

Not authorised—indicative only

Not authorised—indicative only

(b) the arrest of the person is reasonably necessary for 1 or more of the reasons mentioned in section 365(1) or the reason mentioned in section 365(2); and

(c) if the person is a child—it is lawful for the instructing officer to arrest the child under section 365(3); and

(d) it is not practicable for the instructing officer to personally arrest the person; and

(e) it is not practicable, because of an emergency situation or other particular circumstances, for the arresting officer to personally form the suspicion mentioned in section 365(1), (2) or (3) and to lawfully arrest the person under section 365(1), (2) or (3).

(3) If a person is arrested under subsection (1), the instructing officer must—

(a) make a record of the instruction and the reasons under subsection (2) for giving the instruction; and

(b) take reasonable steps to give a copy of the record to the arresting officer.

(4) Also, the instructing officer must inform the arresting officer at the earliest reasonable opportunity if the instructing officer stops holding the suspicion mentioned in subsection (2)(a).

(5) A failure to give a copy of the record mentioned in subsection (3)(b) to the arresting officer does not affect the lawfulness of the arrest.

(6) In this section—

emergency situation see the *Public Safety Preservation Act 1986*, schedule.

366 Arrest of escapees etc.

(1) It is lawful for a police officer to arrest, without warrant, a person the police officer reasonably suspects is escaping or has escaped from lawful custody.

(2) Also, it is lawful for a police officer to arrest, without warrant, a prisoner who is unlawfully at large within the meaning of the *Corrective Services Act 2006*, section 112.

(3) Also, a police officer has the same powers as a corrective services officer has under a warrant under the *Corrective Services Act 2006*, section 112.

367 Arrest of person granted bail

(1) This section applies if a person has been granted bail for an offence, whether or not the person was arrested for the offence.

(2) It is lawful for a police officer to arrest the person, without warrant, if the police officer reasonably suspects—

(a) the person has left the precincts of the court that granted bail without entering into an undertaking as required by the court; or

(b) the person has left the precincts of the court without fulfilling any conditions the person must comply with before leaving the precincts of the court.

(3) Also, it is lawful for a police officer to arrest the person, without warrant, if—

(a) the police officer reasonably suspects—

(i) the person is likely to contravene, is contravening, or has contravened—

(A) the condition for the person's appearance; or

(B) another condition of the undertaking on which the person was granted bail; or

Note—

For the matters a police officer must consider before arresting a child under this subparagraph, see the *Youth Justice Act 1992*, section 59A.

(ii) a surety for the person's appearance is dead; or

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(iii) for any reason, the security for the person's appearance is no longer adequate; or

(iv) the person is likely to fail to appear before a court to answer a charge against the person for the offence; or

(b) a surety has given to a police officer written notice stating the surety wishes to be relieved of the obligation of being a surety for the person because the surety believes the person is likely to contravene the condition for the person's appearance; or

(c) the police officer reasonably suspects the person is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been released on bail.

(4) However, before arresting a child under subsection (3), a police officer must consider whether, in all the circumstances, it would be more appropriate for an application to be made under the *Bail Act 1980* for a variation or revocation of the child's bail.

(5) Subsection (4) does not apply in relation to the arrest of a child under subsection (3)(a)(i) or (iv) or (c).

(6) In this section—

precincts of a court, means any land or building, or the part of any land or building, used for the purposes of the court.

undertaking means an undertaking under the *Bail Act 1980*.

368 Arrest of person given notice to appear or summons

(1) This section applies to a person who has been given a notice to appear or a summons for an offence, whether or not the person has been arrested for the offence.

(2) It is lawful for a police officer to arrest a person, without warrant, if the police officer reasonably suspects the person—

(a) is directly or indirectly harassing or interfering with a person who may be required to give evidence relating to the offence for which the person has been given a notice to appear or summons; or

(b) is likely to fail to appear before a court to answer a charge against the person for the offence.

(3) This section does not apply to a child.

Part 2 Arrest under warrant

369 Arrest under warrant

(1) It is lawful for a police officer acting under a warrant issued under any Act or law to arrest the person named in the warrant.

(2) In this section—

arrest includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

370 Arrest warrant application

(1) A police officer may apply to a justice for a warrant to arrest a person for an offence (***arrest warrant***).

(2) The police officer may apply for the warrant whether or not a proceeding has been started against the person by complaint and summons or notice to appear.

(3) The application must be sworn and state the grounds on which the warrant is sought.

(4) If the application—

(a) relates to an offence other than an indictable offence; and

(b) is made because the applicant reasonably believes proceeding or continuing to proceed against the person

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named in the application by complaint and summons or notice to appear would be ineffective;

the application must state the belief and the reasons for the belief.

(5) The justice may refuse to consider the application until the police officer gives the justice all the information the justice requires about the application in the way the justice requires.

Example—

The justice may require additional information supporting the application to be given by statutory declaration.

371 Issue of arrest warrant

The justice may issue an arrest warrant only if satisfied there are reasonable grounds for suspecting—

(a) that the person has committed the offence; and

(b) for an offence other than an indictable offence, proceedings by way of complaint and summons or notice to appear for the offence would be ineffective, including because the person can not currently be located or served with a complaint and summons or notice to appear for the offence.

372 What arrest warrant must state

(1) An arrest warrant must state the following—

(a) the name of the applicant for the warrant and the applicant's rank, registered number and station;

(b) that any police officer may arrest the person named in the warrant;

(c) the offence the person is alleged to have committed.

(2) It is sufficient to describe an offence in the words of the law defining it, or in similar words.

(3) A description of persons or things that would be sufficient in an indictment is sufficient in an arrest warrant.

373 Compliance with limitation of proceedings

(1) This section applies to an arrest warrant issued under section 371(b).

(2) For the *Justices Act 1886*, section 52 or another provision of an Act that imposes a limitation of proceedings for the offence by reference to when a complaint was made for the offence or to when proceedings for the offence are started, a complaint is taken to be made, and the proceedings started, when the warrant is issued.

Part 3 Other provisions about arrest

374 Power of arrest for offences committed outside the State

(1) This section applies to an offence (an ***extradition offence***) that—

(a) is an offence against the law of another State; and

(b) in that other State, is an indictable offence or an offence for which the maximum penalty is at least 2 years imprisonment.

(2) It is lawful for a police officer, without warrant, to arrest a person the police officer reasonably suspects is committing or has committed an extradition offence.

(3) The person may be detained in custody under chapter 15 and questioned in relation to the extradition offence by either of the following, as if the offence had been committed in Queensland—

(a) a police officer;

(b) a member of the police force or police service of the State where the offence happened.

(4) The *Justices Act 1886* and the *Bail Act 1980* apply to a person arrested for an extradition offence as if the offence were committed in Queensland, but only to allow a person to apply, within 7 days, for the extradition of the person to the State

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where the extradition offence is alleged to have been committed.

(5) If a proceeding for the person's extradition is not started within 7 days—

(a) the person, if remanded in custody, must be released from custody; and

(b) any order for bail is discharged.

Part 4 Discontinuing arrest

375 Effect of release under pt 4

If an arrested person is released under this part, any charge of an offence for which the arrested person is released is discontinued.

376 When arrest may be discontinued—general rule

(1) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was arrested.

(2) Subsection (1) does not apply if the person—

(a) is reasonably suspected of another offence, whether or not arising out of the circumstances of the offence for which the person was arrested; or

(b) may be detained for another reason, for example because of a breach of a bail condition; or

(c) is in custody for another offence.

(3) Also, it is the duty of a police officer to release an arrested person who is reasonably suspected of committing the offence for which the person was arrested if, within a reasonable time after the arrest, the police officer considers there is not enough

evidence to bring the person before a court on a charge of the offence.

377 Additional case when arrest of adult may be discontinued

(1) This section applies to an arrested person who is an adult.

(2) It is the duty of a police officer to release the person at the earliest reasonable opportunity if—

(a) the reason for arresting the person no longer exists or is unlikely to happen again if the person is released; and

(b) either—

(i) if the person is arrested for an offence that is an infringement notice offence—it is more appropriate to serve an infringement notice on the person for the offence and the infringement notice has been served on the person; or

(ii) it is more appropriate to take the person before a court by notice to appear or summons and the notice to appear or summons has been served on the person.

(3) Subsection (2) does not apply to an adult who is arrested—

(a) to prevent the person fleeing from a police officer or the location of an offence; or

(b) if, because of the nature or seriousness of an offence for which the person is a suspect, it is inappropriate to release the person.

(4) Also, a police officer must release the person at the earliest reasonable opportunity if—

(a) the police officer reasonably considers it is more appropriate for the arrested person to be dealt with other than by charging the person with an offence; and

(b) the person and any victim of the offence agree to the person being dealt with in that way.

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Examples for subsection (4)—

1 A person arrested for a minor assault involving pushing a person during a heated argument with a neighbour may agree to attend alternative dispute resolution.

2 A person may be released under a scheme developed by the commissioner for cautioning elderly first offenders.

378 Additional case when arrest for being intoxicated in a public place may be discontinued

(1) This section applies if—

(a) a person is arrested for being intoxicated in a public place; and

(b) a police officer is satisfied it is more appropriate for the person to be taken to a place, other than a watch-house, the police officer considers is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of being intoxicated (a ***place of safety***).

Examples of a place of safety—

1 A hospital may be a place of safety for a person who needs medical attention.

2 A place other than a hospital that provides care for persons who are intoxicated may be a place of safety.

3 A vehicle used to transport persons to a place of safety and under the control of someone other than a police officer may be a place of safety.

4 The person's home, or the home of a relative or friend, may be a place of safety if there is no likelihood of domestic violence or associated domestic violence happening at the place because of the person's condition or the person is not subject to a domestic violence order, police protection notice or release conditions preventing the person from entering or remaining at the place.

(2) It is the duty of the police officer, at the earliest reasonable opportunity—

(a) to take the person to the place of safety; and

(b) to release the person at the place of safety.

Example—

The place of safety may be a vehicle under the control of someone other than a police officer that is used to transport persons to another place of safety.

(3) Subsection (2) does not apply if the police officer is satisfied—

(a) a person at the place of safety is unable to provide care for the person; or

(b) the person's behaviour may pose a risk of harm, including, but not limited to, domestic violence or associated domestic violence, to other persons at the place of safety.

(4) Before the police officer releases the person, the police officer must ensure the person apparently in possession or in charge of the relevant place of safety gives a police officer a signed undertaking in the approved form to provide care for the relevant person.

(5) A person taken to a place of safety can not be compelled to stay there.

(6) If the place of safety is not the person's home, the person apparently in possession or in charge of the place of safety may lawfully provide care for the person until the person voluntarily leaves the place.

379 Additional case when arrest for minor drugs offence may be discontinued

(1) This section applies if—

(a) a person is arrested for, or is being questioned by a police officer about, a minor drugs offence; and

(b) the person has not committed another indictable offence in circumstances that are related to the minor drugs offence; and

Examples of commission of an offence related to a minor drug offence—

1 Burglary of a home to obtain money to buy the drugs.

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2 The drugs are obtained as a result of the robbery of another person.

(c) the person has not previously been sentenced to serve a term of imprisonment for an offence against the *Drugs Misuse Act 1986*, section 5, 6, 8 or 9D; and

(d) the person—

(i) has not previously been convicted of an offence involving violence against a person; or

(ii) has been convicted of an offence involving violence against a person for which the rehabilitation period under the *Criminal Law (Rehabilitation of Offenders) Act 1986* has expired; and

(e) during an electronically recorded interview, the person admits having committed the offence; and

(f) the person has not been offered the opportunity to participate in a drug diversion assessment program.

(2) If the person is—

(a) an adult; or

(b) a child who has previously been cautioned under the *Youth Justice Act 1992* for a minor drugs offence;

a police officer must offer the person the opportunity to participate in a drug diversion assessment program.

(3) However, if the person is a child who has not been cautioned previously under the *Youth Justice Act 1992* for a minor drugs offence, a police officer may offer the child the opportunity to participate in a drug diversion assessment program.

(4) A police officer may make the offer at any time before the person appears before a court to answer a charge of the minor drugs offence.

(5) When making the offer, the police officer must give—

(a) the person; and

(b) if a support person is present when the offer is made, the support person;

an oral or written explanation of the consequences of agreeing to participate in a drug diversion assessment program.

(6) If the person agrees, the person must sign an agreement to participate in, and complete, a drug diversion assessment program.

(7) The agreement must include a provision authorising the provider of the drug diversion assessment program to disclose to the commissioner information about—

(a) the person's participation in, and completion of, the program; or

(b) if the person failed to participate in, or complete, the program—the person's failure to participate in, or complete, the program.

(8) The police officer must—

(a) give the person a written requirement to participate in, and complete, a drug diversion assessment program in accordance with the agreement; and

(b) inform the person that failure to comply with the requirement is an offence against section 791.

(9) Also, the police officer must give the chief executive (health), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.

(10) On the signing of the agreement, the drug, and anything that may be, or has been, used for smoking the drug, is forfeited to the State.

(11) It is the duty of a police officer to release an arrested person at the earliest reasonable opportunity if the police officer is satisfied subsections (6) and (8) have been complied with.

379A Additional case when arrest for graffiti offence may be discontinued

(1) This section applies if—

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(a) a child is arrested for, or is being questioned by a police officer about, a graffiti offence; and

(b) during an electronically recorded interview, the child admits having committed the offence; and

(c) the child had attained at least the age of 12 years at the time of the offence.

(2) A police officer may, at any time before the child appears before a court to answer a charge of the graffiti offence, offer the child the opportunity to attend a graffiti removal program.

(3) When making the offer, the police officer must give an oral or written explanation of the consequences of agreeing to attend a graffiti removal program to—

(a) the child; and

(b) if a support person is present when the offer is made—the support person.

(4) If the child agrees, the child must sign an agreement to attend and complete a graffiti removal program.

(5) The agreement must include a provision authorising the provider of the graffiti removal program to disclose to the commissioner and the chief executive (youth justice services) information about—

(a) the child's attendance at, and completion of, the program; or

(b) if the child failed to attend or complete the program—the child's failure to attend or complete the program.

(6) The police officer must—

(a) give the child a written requirement to attend and complete a graffiti removal program in accordance with the agreement; and

(b) inform the child that failure to comply with the requirement is an offence against section 791.

(7) Also, the police officer must give the chief executive (youth justice services), or a person or organisation nominated by that chief executive for this section, a copy of the agreement.

(8) On the signing of the agreement, any thing used in the commission of the graffiti offence is forfeited to the State.

(9) It is the duty of a police officer to release an arrested child at the earliest reasonable opportunity if the police officer is satisfied subsections (4) and (6) have been complied with.

(10) In this section—

chief executive (youth justice services) means the chief executive of the department within which the *Youth Justice Act 1992* is administered.

graffiti removal program means a program for removing graffiti conducted with the approval of the chief executive (youth justice services).

380 Additional case when arrest of child may be discontinued

(1) This section applies to an arrested person who is a child.

(2) It is the duty of a police officer to release the child at the earliest reasonable opportunity if—

(a) the reason for arresting the child no longer exists or is unlikely to happen again if the child is released; and

(b) after considering the following, it is more appropriate to deal with the child in a way provided by subsection (3)—

(i) the circumstances of the alleged offence;

(ii) the child's previous history known to the police officer.

(3) For subsection (2)(b), the police officer may decide it is more appropriate—

(a) to take no action; or

(b) to administer a caution to the child under the *Youth Justice Act 1992*; or

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(c) to refer the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*; or

(d) to take the child before a court by notice to appear or summons.

(4) Subsection (2) does not apply to a child who is arrested if, because of the nature or seriousness of an offence for which the child is a suspect, it is inappropriate to release the child.

(5) Also, subsection (2) does not apply to the arrest of a child by a police officer while the police officer reasonably believes the child is an adult.

(6) In deciding whether the police officer had the reasonable belief, a court may have regard to the child's apparent age and the circumstances of the arrest.

381 Limit on rearrest

(1) A person arrested for an offence and released under this part can not be rearrested for the offence unless, because of new evidence, a police officer forms a reasonable suspicion that the person is responsible for the offence.

(2) Subsection (1) does not prevent a person being rearrested for a graffiti offence.

Part 5 Alternative to arrest

382 Notice to appear may be issued for offence

(1) The object of this section is to provide an alternative way for a police officer to start or continue a proceeding against a person that reduces the need for custody associated with arrest and does not involve the delay associated with issuing a complaint and summons under the *Justices Act 1886*.

Note—

For starting proceedings against children by notices to appear, see the *Youth Justice Act 1992*.

(2) A police officer may issue and serve a notice (***notice to appear***) on a person if the police officer—

(a) reasonably suspects the person has committed or is committing an offence; or

(b) is asked by another police officer who has the suspicion mentioned in paragraph (a) to issue and serve the notice to appear.

(3) A notice to appear must be personally served on a person.

(4) However, a notice to appear for an offence against the Road Use Management Act or the Heavy Vehicle National Law (Queensland) may be served on a person by registered post if it is served as in the way provided for under the *Justices Act 1886*, section 56(1)(a) or (2)(a), (b) or (c).

Note—

The *Justices Act 1886*, section 56(1)(a) or (2)(a), (b) or (c) authorises service on a person at the person's place of business or residence last known to the complainant, or at an address stated on the person's driver licence or a current certificate of registration for the person's motor vehicle.

(5) If a person is alleged to have committed offences as a child and as an adult, a separate notice to appear must be issued for the offences committed as a child.

383 Notice to appear must be served discreetly on a child

A notice to appear must be served on a child—

(a) as discreetly as practicable; and

(b) not at or in the vicinity of the child's place of employment or school, unless there is no other place where service may be reasonably effected.

384 Notice to appear form

(1) A notice to appear must—

(a) state the substance of the offence alleged to have been committed; and

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(b) state the name of the person alleged to have committed the offence; and

(c) clearly state whether the person was, at the time of the alleged offence, an adult or a child; and

(d) require the person to appear before a court of summary jurisdiction in relation to the offence at a stated time and place; and

(e) if a police officer issues the notice to appear at the request of another police officer (the ***requesting police officer***)—state the requesting police officer's particulars that would otherwise have been stated on the notice to appear had the requesting police officer issued and served it; and

(f) be signed by the police officer serving the notice to appear.

(2) The stated place for the person's appearance before the court must be—

(a) for a child—a place where the court sits that a police officer is satisfied is the most convenient for the child to access, unless the time for appearing before the court at that place would not comply with subsection (3)(b)(i); and

(b) a place where the court will be sitting at the stated time.

(3) The stated time for the person's appearance before the court must be a time—

(a) for an adult—at least 14 days or, with the person's written agreement, a stated shorter time, after the notice is served; or

(b) for a child—

(i) as soon as practicable after service of the notice to appear; and

(ii) fixed generally by the clerk of the court for hearing matters under the *Youth Justice Act 1992*.

(4) Subsection (2) is subject to a provision of another Act that requires a proceeding for the offence to be started, heard or determined at a particular place.

385 Filing of notice to appear

(1) As soon as reasonably practicable after service of a notice to appear on a person, and before the time the person is required to appear at a place before a court under the notice, the notice must be lodged with the clerk of the court at the place.

(2) A person must not be ordered to pay filing costs in the proceeding for the offence.

386 General particulars only are required on a notice to appear

(1) The statement in the notice to appear of the substance of the offence alleged to have been committed need only provide general particulars of the offence, for example—

(a) the type of offence; and

(b) when and where it is alleged to have been committed.

(2) If 2 or more matters are properly joined in 1 notice to appear under the *Justices Act 1886*, section 43(1), then, despite section 43(2) and (3) of that Act—

(a) each matter need not be set out in a separate paragraph; and

(b) objection can not be taken to the notice to appear because each matter is not set out in a separate paragraph.

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

(1) Section 386 does not affect the duty of the prosecution to provide proper particulars of an offence in the course of prosecution.

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Not authorised—indicative only

(2) When a person on whom a notice to appear has been served appears before a court in response to the notice, the court must ensure that the person is provided promptly with proper particulars of the offence and granted any adjournment of the proceeding necessary to consider them.

388 Notice to appear equivalent to a complaint and summons

(1) A statement in a notice to appear of the substance of an offence alleged to have been committed is taken to be a complaint under the *Justices Act 1886*.

(2) Also, a requirement in a notice to appear that a person appear before a court in relation to the offence at a stated time and place—

(a) is taken to be a summons issued by a justice under the *Justices Act 1886*; but

(b) is not a requirement to which section 791 applies.

(3) If a prescribed police officer issues and serves a notice to appear on a person under section 394(2)(b), the police officer who arrested the person, and not the prescribed police officer, is taken to have started the proceeding against the person.

(4) Also, if a police officer issues and serves a notice to appear at the request of another police officer, the police officer who made the request is taken to have started the proceeding against the person on whom the notice to appear is served even though that police officer did not serve the notice to appear on the person.

(5) Subject to this part, the *Justices Act 1886* and any other Act applies to a notice to appear in the same way as it applies to a complaint and summons.

(6) In this section—

prescribed police officer means a prescribed police officer under the *Bail Act 1980*, section 7.

Not authorised—indicative only

389 Court may order immediate arrest of person who fails to appear

(1) Subject to section 390, if a person fails to appear before a court as required by a notice to appear served on the person, the court may—

(a) hear and decide the complaint in the absence of the person; or

(b) order that a warrant issue for the arrest of the person to be brought before the court to be dealt with according to law.

(2) A document purporting to be a copy of the notice to appear signed by the police officer who served it, and stating the following is evidence of what it states—

(a) if the notice to appear was served personally—

(i) the date it is served; and

(ii) when and where it was served;

(b) if the notice to appear is served by registered post under section 382(4)—

(i) the notice to appear was posted to the address stated in the notice by registered post; and

(ii) when and where the notice to appear was posted; and

(iii) the registered post identification number for the envelope containing the notice to appear.

(3) Any justice may issue the warrant.

(4) If the person appears voluntarily before a court after the warrant is issued, any justice may revoke the warrant.

(5) Subsection (1)(b) does not prevent a court postponing the enforcement of a warrant for the arrest of a person to allow the person a further opportunity to appear before the court.

(6) An adult who is arrested under a warrant issued under subsection (1)(b) is taken, for section 394, to have been arrested for the offence stated in the notice to appear.

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(7) The bail and custody provisions of the *Youth Justice Act 1992*, part 5 apply to a child arrested on a warrant issued under subsection (1)(b).

390 Court must strike out notice to appear if service insufficient

(1) If a person fails to appear before a court as required by a notice to appear and the court is not satisfied the person was served as required under this Act, the court must strike out the notice to appear.

(2) The striking out of a notice to appear under subsection (1) does not prevent another proceeding being started for the offence for which the notice to appear was purportedly served.

Part 6 Duties after arrest

391 Information to be given to arrested person

(1) A police officer who arrests a person, whether or not under a warrant, must, as soon as is reasonably practicable after the arrest, inform the person that the person is under arrest and of the nature of the offence for which the person is arrested.

(2) A police officer who arrests a person with a warrant must inform the person that the person is under arrest and of the nature of the warrant.

(3) Before the person is released from police custody, a police officer must give the person, in writing—

(a) the name, rank and station of the arresting officer; and

(b) if the person was arrested under section 365A(1)—the name, rank and station of the instructing officer.

Not authorised—indicative only

392 Parent and particular chief executives to be advised of arrest or service of notice to appear

(1) A police officer who arrests a child must promptly advise the persons mentioned in subsection (3) of the arrest and whereabouts of the child.

(2) A police officer who has served a notice to appear on a child must promptly advise the persons mentioned in subsection (3) of the service of the notice to appear.

(3) The persons to be notified are—

(a) a parent of the child, unless no parent of the child can be contacted after making all reasonable inquiries; and

(b) the chief executive (communities) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which the chief executive has responsibility; and

(c) if the chief executive (child safety) has custody or guardianship of the child under the *Child Protection Act 1999*, that chief executive or a person, nominated by that chief executive for the purpose, who holds an office in the department for which the chief executive has responsibility.

(4) If no parent of the child can be contacted after making all reasonable inquiries, a police officer must make a record of the inquiries made.

(5) Subsections (1), (2) and (4) do not apply in relation to a child if a police officer believes on reasonable grounds that the child is an adult.

(6) In deciding whether the police officer had the reasonable grounds, a court may have regard to the child's apparent age and the circumstances of the arrest or service of the notice.

(7) In this section—

***parent*—**

(a) means a parent within the meaning of the *Youth Justice Act 1992*, schedule 4; and

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(b) includes a person who is apparently a parent of a child.

393 Duty of police officer after arrest etc. of person

(1) If a police officer does any of the following, the police officer must, as soon as reasonably practicable, take the person before a court to be dealt with according to law—

(a) arrests a person, without warrant, for an offence;

(b) arrests a person under a warrant for an offence, whether under this or another Act;

(c) arrests a person under section 367 or 368;

(d) receives into custody a person who is arrested or detained by someone other than a police officer.

(2) Subsection (1) does not apply if the person—

(a) is released under part 4; or

(b) is being detained under chapter 15 for an indictable offence; or

(c) is being detained under the Road Use Management Act, section 80; or

(d) is arrested under a warrant that requires the police officer to take the person before another body or to another place; or

(e) is delivered into the custody of a watch-house manager or the officer in charge of a police establishment; or

(f) is arrested under section 365(2) and is later released under section 376 without having been charged with the offence for which the person was arrested; or

(g) is delivered into the custody of a police officer following a detention under the *Transport Operations (Passenger Transport) Act 1994*, chapter 11, part 4A, and is released by the police officer without having been charged with an offence.

Example for subsection (2)(d)—

A warrant under the *Commissions of Inquiry Act 1950* may require that a person be apprehended to enable the person to be brought before a commission of inquiry to give evidence.

(3) Also, subsection (1) does not prevent a police officer—

(a) if the person is a prisoner under the *Corrective Services Act 2006*—taking the person to a prison or to a watch-house until the person can be conveniently taken to a prison; or

(b) if the person escaped from lawful custody while a prisoner of a court—taking the person to a police station or watch-house until the person can be conveniently returned to the custody of the proper officer of the relevant court.

394 Duty of police officer receiving custody of person arrested for offence

(1) This section applies if—

(a) a person who has been arrested for an offence, whether or not under a warrant, is delivered into the custody of the officer in charge of a police station or police establishment or a watch-house manager; and

(b) the person is not being detained under chapter 15; and

(c) it is not practicable to bring the person before a court promptly.

(2) A prescribed police officer at the police station, police establishment or watch-house must, as soon as reasonably practicable—

(a) decide whether or not to grant bail under the *Bail Act 1980*; or

(b) issue and serve a notice to appear on the person; or

(c) for a person arrested for—

(i) being intoxicated in a public place, decide whether to discontinue the arrest under section 378; or

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(ii) a minor drugs offence, decide whether to discontinue the arrest under section 379; or

(ca) for a person arrested for a prescribed public nuisance offence—issue and serve on the person an infringement notice for the prescribed public nuisance offence and any associated offence; or

(d) take the person before a court to be dealt with according to law.

(3) If a person is released under section 378 or 379 before appearing in a court in relation to the offence, any proceeding against the person for the offence is discontinued even though the person may have been charged with having committed the offence.

(4) This section does not apply to a child.

Note—

See also the *Youth Justice Act 1992*, section 50.

(5) In this section—

associated offence, in relation to a prescribed public nuisance offence, means an offence against either or both of the following provisions, unless the offence also involves an offence against the person—

(a) section 790(1), but only to the extent that it relates to obstructing a police officer in the performance of a police officer's duties in relation to a prescribed public nuisance offence;

(b) section 791(2), but only to the extent that it relates to a requirement to state a person's correct name and address in relation to a prescribed public nuisance offence.

prescribed police officer means a prescribed police officer under the *Bail Act 1980*, section 7.

prescribed public nuisance offence means an offence against the *Summary Offences Act 2005*, section 6(1) or 7(1), unless the offence also involves an offence against the person.

395 Duty of officer receiving custody of person arrested under warrant other than for offence

(1) This section applies if—

(a) under section 369, a police officer arrests a person named in a warrant issued under another Act or law; or

(b) someone else authorised under a warrant issued under another Act or law arrests a person named in the warrant;

and the person is delivered into the custody of the officer in charge of a police establishment or a watch-house manager.

Examples for subsection (1)—

1 A person is arrested under a warrant issued for non-payment of an amount of a fine.

2 A person is arrested under a warrant requiring a person to be brought before a commission of inquiry.

3 A correctional officer arrests a person who has escaped from custody.

(2) The officer in charge or watch-house manager must, as soon as reasonably practicable, ensure compliance with the warrant.

(3) In this section—

arrest, a person named in a warrant, includes apprehend, take into custody, detain, and remove to another place for examination or treatment.

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Chapter 15 Powers and responsibilities relating to particular investigations and questioning

Part 1 Preliminary

Division 1 Application of chapter

396 Chapter does not apply to covert operations

This chapter does not apply to functions of a police officer performed in a covert way.

Division 2 Right to remain silent not affected

397 Right to remain silent not affected

Nothing in this chapter affects the right of a person to refuse to answer questions, unless required to answer the questions by or under an Act.

Part 2 Investigations and questioning

Division 1 Application of part

398 Application of pt 2

This part applies only to a person who—

(a) is lawfully arrested for an indictable offence, including if the person is arrested under section 365(2) for

questioning the person about the offence or investigating the offence; or

(b) is in lawful custody for a charge of an offence that has not been decided; or

(c) is in lawful custody under a sentence for a term of imprisonment or, for a child, a detention order.

Examples for paragraph (b)—

1 The person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened.

2 The person is to be released on bail and may be in lawful custody pending the fulfilment of a bail condition.

Division 2 Removal of persons from lawful custody in prison or detention centre

399 Application for removal of person from lawful custody in prison or detention centre

(1) This section applies to a person who is suspected of having committed an indictable offence and is in custody under the *Corrective Services Act 2006* or the *Youth Justice Act 1992*—

(a) for a charge of an offence that has not been decided; or

(b) under a sentence for a term of imprisonment or, for a child, a detention order.

(2) A police officer may apply to a magistrate for an order (***removal order***) for the removal of the person in custody in a prison or detention centre to the custody of a police officer (***police custody***) for—

(a) questioning the person about the offence; or

(b) the investigation of the offence.

(3) The application may include an application for an extension of the detention period even though the detention period has not started.

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(4) The application must be—

(a) made in person; and

(b) sworn and state the grounds on which the order is sought.

(5) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

400 Chief executive must be advised of application for removal order

Before a police officer applies for a removal order relating to a child, the police officer must notify the chief executive (communities), or a person, nominated by that chief executive for the purpose, who holds an office within the department for which the chief executive has responsibility.

401 When magistrate may make removal order

A magistrate may make a removal order only if the magistrate is satisfied the custody is reasonably necessary for—

(a) questioning the person about the offence; or

(b) the investigation of the offence.

402 What removal order must state

A removal order must state the following—

(a) the name of the person the subject of the order (the ***relevant person***) and the prison or detention centre in which the person is in custody;

(b) that the chief executive (corrective services) or, if the relevant person is in custody in a detention centre, the

person in charge of the detention centre must release or make arrangements for the release of the relevant person into the custody of the police officer named in the order;

(c) the name of the police officer who will have control of the relevant person while the person is absent from the prison or detention centre;

(d) the reason for the relevant person's removal;

(e) the place, if known, to which the relevant person is to be removed;

(f) that the relevant person must be returned to the prison or detention centre as soon as reasonably practicable after the detention period ends;

(g) any other conditions the magistrate considers appropriate.

Division 3 Detention for investigation or questioning

403 Initial period of detention for investigation or questioning

(1) A police officer may detain a person for a reasonable time to investigate, or question the person about—

(a) if the person is in custody following an arrest for an indictable offence—the offence for which the person was arrested; or

(b) in any case—any indictable offence the person is suspected of having committed, whether or not the offence for which the person is in custody.

(2) However, the person must not be detained under this part for more than 8 hours, unless the detention period is extended under this division.

(3) If this part applies to the person because of section 398(b) or (c), the person must be returned to the watch-house or other

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place of custody as soon as reasonably practicable after the detention period ends.

(4) In the 8 hours mentioned in subsection (2) (the ***detention period***)—

(a) the person may be questioned for not more than 4 hours; and

(b) the time out may be more than 4 hours.

(5) The detention period starts when the person is—

(a) arrested for the indictable offence; or

(b) taken into police custody under a removal order; or

(c) taken from a watch-house; or

(d) otherwise in the company of a police officer at a watch-house, prison, or detention centre, for the purpose of questioning the person.

404 What is a reasonable time to detain a person for questioning or investigation

(1) The following must be taken into consideration when deciding what is a reasonable time to detain a person under section 403—

(a) whether the person's detention is necessary for the investigation of an indictable offence;

(b) the number of indictable offences under investigation;

(c) the seriousness and complexity of an indictable offence under investigation;

(d) whether the person has indicated a willingness to make a statement or to answer questions;

(e) the person's age, physical capacity and condition, and mental capacity and condition;

(f) for a person arrested—any time spent questioning the person before the arrest;

(g) the need to delay or suspend questioning of the person for time out purposes.

(2) If the person decides not to answer questions or not to continue answering questions, continuing the detention period may not be reasonable unless—

(a) it is necessary to carry out further investigations; or

(b) the person consents, or another authority requires the person, to participate in an investigative procedure.

Examples for subsection (2)(b)—

1 The person consents to taking part in an identification parade.

2 A magistrate orders a medical examination involving the person.

405 Application for extension of detention period

(1) A police officer may apply for an order extending the detention period before the period ends.

(2) The application must be made to—

(a) a magistrate; or

(b) a justice of the peace (magistrates court); or

(c) if there is no magistrate or justice of the peace (magistrates court) available—another justice of the peace other than a justice of the peace (commissioner for declarations).

(3) However, if the total questioning period since the detention began will, if extended, be more than 12 hours, the application must be made to a magistrate.

(4) When making the application, the police officer must give to the magistrate or justice the information about any time out the police officer reasonably anticipates will be necessary.

(5) The person or the person's lawyer may make submissions to the magistrate or justice about the application, but not submissions that unduly delay the consideration of the application.

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(6) If the application is made before the detention period ends, the detention of the person does not end, unless the magistrate or justice refuses to extend the detention period.

406 When detention period may be extended

(1) A magistrate or justice may extend the detention period for a person if satisfied—

(a) the nature and seriousness of the offence require the extension; and

(b) further detention of the person is necessary—

(i) to preserve or obtain evidence of the offence or another indictable offence; or

(ii) to complete the investigation into the offence or another indictable offence; or

(iii) to continue questioning the person about the offence or another indictable offence; and

(c) the investigation is being conducted properly and without unreasonable delay; and

(d) the person, or the person's lawyer, has been given the opportunity to make submissions about the application.

(2) An order extending the detention period may authorise the questioning or further questioning of the person for a reasonable time, of not more than 8 hours, and include the time the justice or magistrate considers should be allowed as time out.

(3) A justice who is not a magistrate does not have power to make an order authorising questioning or further questioning of a person for a period that would extend the questioning period for the person to more than 12 hours.

Example for subsection (3)—

If, in the initial detention period, a person has been questioned for 4 hours and an earlier order under this section extends the questioning period to 9 hours, a justice who is not a magistrate may only extend the questioning period for another 3 hours.

407 What order must state

(1) The magistrate or justice must state in the order—

(a) how much time is to be allowed as time out; and

(b) the time for which the person may be questioned; and

(c) that the person may continue to be detained for the total of the periods decided for paragraphs (a) and (b).

(2) If, under the order, time is allowed for time out, it may be used for any time out purpose, unless the magistrate or justice orders that it be used for a specific time out purpose.

408 Use of time out during extended detention period

(1) This section applies if an order extending a detention period states how much time is to be allowed as time out and the purpose for which time out is to be allowed.

(2) Unless the justice or magistrate who issued the order otherwise orders or the person in custody expressly agrees to use the time for another purpose, the time allowed as time out must be used for a purpose stated in the order.

(3) If reasonably practicable, the agreement must be electronically recorded.

409 Effect of unforeseen delays on detention

(1) If, because of reasonably unforeseen time out, a delay happens in making an application for an extension of the initial period of detention of a person, the detention of the person continues to be lawful, but only for the time reasonably necessary to enable the application to be made and decided.

(2) If, because of reasonably unforeseen time out—

(a) questioning of a person during an extended detention period is suspended or delayed; or

(b) a delay happens in making an application for an extension of an extended detention period;

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the detention of the person beyond the end of the extended detention period continues to be lawful and the time allowed for questioning is not affected.

Example of unforeseen time out—

A police car used to transport a suspect from Burketown to Mount Isa breaks down or can not get through because of impassable roads and the magistrate can not be contacted by phone or radio.

410 Effect of another arrest on questioning period

If a person is detained for questioning under this part more than once in any period of 24 hours and questioned for a total of more than 4 hours in the 24 hours, a police officer must not continue to question the person, unless the detention period is extended under section 406.

Example—

If a person who has been arrested for a stealing offence and questioned for 3 hours is again arrested within a 24 hour period for a break and enter offence, a police officer can only question the person for 1 hour before being required to apply for an extension of the detention period.

411 When does detention period start for offenders arrested outside Queensland

(1) This section applies if, because of the *Service and Execution of Process Act 1992* (Cwlth), a person—

(a) has been arrested in another State for an indictable offence committed in Queensland; or

(b) has appeared before a magistrate in another State for an indictable offence committed in Queensland.

(2) For this part, the detention period for the person starts—

(a) if, under the law of the other State, a Queensland police officer may question the person in the other State—when the Queensland police officer starts to question the person for the offence; or

(b) when the person arrives in Queensland in the company of a Queensland police officer for the purpose of being questioned for the offence.

Division 3A Removal of persons from lawful custody to help police

411A Definitions for division

In this division—

assistance period see section 411F.

criminal activity means conduct that involves the commission of an offence by 1 or more persons.

police assistance removal order see section 411B(2).

relevant person see section 411B(2).

relevant police officer see section 411E(b).

411B Application for police assistance removal order

(1) This section applies in relation to a person, other than a child, who—

(a) having been admitted to a watch-house, is taken to be in the commissioner's custody under the *Corrective Services Act 2006*, section 8; and

(b) before being taken to a corrective services facility, wishes to provide information to help the police service to investigate an offence or gather intelligence in relation to criminal activity on the basis that the person is not a suspect for—

(i) the offence the subject of the investigation; or

(ii) an offence involved in the criminal activity; and

(c) is able to provide the information only by being removed from the watch-house and taken to a place that is not a police establishment.

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(2) A police officer may apply to a magistrate for an order (a ***police assistance removal order***) for the removal of the person in custody (the ***relevant person***) to the custody of a police officer to enable the person to provide information to help the police service investigate an offence or gather intelligence in relation to criminal activity.

(3) Before making an application for a police assistance removal order, a police officer must obtain the approval of a police officer of at least the rank of detective superintendent.

Note—

See also sections 411C and 411D.

(4) The application must be—

(a) made in person; and

(b) sworn and state the grounds on which the order is sought.

(5) The magistrate may refuse to consider the application until the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

411C Consent of relevant person required

(1) Before applying for a police assistance removal order, a police officer must obtain the written consent of the relevant person.

(2) The police officer must inform the relevant person that the relevant person may seek legal advice before deciding whether to give consent to be removed to the custody of a police officer for the purposes of a police assistance removal order.

(3) The relevant person's consent must also, if reasonably practicable, be electronically recorded by the police officer.

(4) However, the relevant person may refuse to consent to the electronic recording of the consent.

411D Making, and effect, of police assistance removal order

(1) A magistrate may make a police assistance removal order only if the magistrate is satisfied the relevant person has consented to be removed into the custody of a police officer for the purposes of an investigation of an offence or intelligence gathering in relation to criminal activity on the basis that the person is not a suspect for—

(a) the offence the subject of the investigation; or

(b) an offence involved in the criminal activity.

(2) If a police assistance removal order is made, the relevant person can not, during the assistance period, be questioned by a police officer about—

(a) an offence the person has been charged with; or

(b) the commission of an offence the person is suspected of being involved in.

411E What police assistance removal order must state

A police assistance removal order must state the following—

(a) the name of the relevant person and the watch-house in which the person is in custody;

(b) the name of the police officer (the ***relevant police officer***) who will have control of the relevant person while the person is absent from the watch-house;

(c) that the watch-house manager must release or make arrangements for the release of the relevant person into the custody of the relevant police officer;

(d) the reason for the relevant person's removal;

(e) the places, if known, to which the relevant person is to be taken during the assistance period;

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(f) that the relevant person must be returned to the watch-house as soon as reasonably practicable after the assistance period ends or the relevant person withdraws consent to help the police service;

(g) any other conditions the magistrate considers appropriate.

411F Assistance period

A police officer may keep a relevant person in custody under a police assistance removal order for no more than 8 hours (the ***assistance period***), unless the assistance period is extended.

411G Application for extension of assistance period

(1) A police officer may apply for an order extending the assistance period before the period ends.

(2) The application must be made to—

(a) a magistrate; or

(b) a justice of the peace (magistrates court); or

(c) if there is no magistrate or justice of the peace (magistrates court) available—another justice of the peace other than a justice of the peace (commissioner for declarations).

411H Further consent of relevant person required

(1) Before applying for an extension of the assistance period under section 411G, a police officer must obtain the further written consent of the relevant person to the extension of the assistance period.

(2) The relevant person may seek legal advice before deciding whether to give consent to the extension of the assistance period.

(3) The relevant person's consent must also, if reasonably practicable, be electronically recorded by the police officer.

(4) However, the relevant person may refuse to consent to the electronic recording of the consent.

411I When assistance period may be extended

(1) A magistrate or justice may extend the assistance period for a relevant person if satisfied—

(a) the relevant person has given consent for the assistance period to be extended; and

(b) the extension of the assistance period is reasonably necessary.

(2) An order may extend the assistance period for a reasonable time of not more than 8 hours.

(3) There may be only 1 extension of the assistance period for a police assistance removal order.

411J Withdrawal of consent

(1) A relevant person may withdraw consent to help the police service under this division at any time.

(2) If a relevant person withdraws consent after the person is taken into custody under a police assistance removal order, the relevant police officer must return the person to the watch-house as soon as reasonably practicable.

Division 4 Other provisions about investigations and questioning

412 When person detained may be taken to a place other than a police establishment or police station

A police officer may take a person to whom this part applies to a place other than a police establishment or police station if the police officer considers it is reasonably necessary to facilitate the purpose of the detention.

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Example—

A person who has been arrested and is being questioned about an indictable offence may be taken—

(a) to the scene of the offence to identify it or re-enact the offence; or

(b) to a doctor for medical treatment or examination.

413 Persons helping in covert investigations not under arrest

(1) This section applies to covert investigations conducted by a police officer into whether a person other than a person who is in custody following an arrest has been involved in the commission of an offence or suspected offence.

(2) For this part, if the person in custody following an arrest agrees voluntarily to take part in the covert investigation, the person stops being under arrest for the offence.

(3) The agreement must, if reasonably practicable, be electronically recorded.

(4) However, the person may refuse to consent to the electronic recording of the agreement.

(5) If the agreement is not electronically recorded, a police officer must make a written record of the circumstances of the agreement.

(6) Subsection (2) does not prevent the person from being rearrested for the offence.

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

Division 1 Preliminary

414 Part applies only to indictable offences

This part applies only to indictable offences.

415 When does this part apply to a person

(1) This part applies to a person (***relevant person***) if the person is in the company of a police officer for the purpose of being questioned as a suspect about his or her involvement in the commission of an indictable offence.

(2) However, this part does not apply to a person only if the police officer is exercising any of the following powers—

(a) power conferred under any Act or law to detain the person for a search;

(b) power conferred under any Act to require the person to give information or answer questions.

(3) Also, nothing in this part prevents a police officer exercising a power under chapter 18A, including under the Road Use Management Act, section 80, as it applies under the chapter.

Note—

Chapter 18A applies the Road Use Management Act, section 80 for breath, saliva, blood and urine testing of persons suspected of committing particular assault offences.

416 Questioning generally

A police officer who is questioning a relevant person must not obtain a confession by threat or promise.

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Note—

See also the *Criminal Law Amendment Act 1894*, section 10 (Confessions).

417 Questioning of person after proceeding started

(1) Nothing in this part prevents a relevant person from helping a police officer by making a statement or answering questions relating to the matter for which the person is charged after a proceeding for the offence has been started.

(2) Also, a police officer may question the person to clarify any ambiguity in relation to what was previously said by the person.

(3) If new evidence of the offence becomes available, a police officer may tell the person of the evidence and invite the person to make a statement.

Example for subsection (3)—

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

Division 2 Other persons may be present during questioning

418 Right to communicate with friend, relative or lawyer

(1) Before a police officer starts to question a relevant person for an indictable offence, the police officer must inform the person he or she may—

(a) telephone or speak to a friend or relative to inform the person of his or her whereabouts and ask the person to be present during questioning; and

(b) telephone or speak to a lawyer of the person's choice and arrange, or attempt to arrange, for the lawyer to be present during the questioning.

(2) The police officer must delay the questioning for a reasonable time to allow the person to telephone or speak to a person mentioned in subsection (1).

(3) If the person arranges for someone to be present, the police officer must delay the questioning for a reasonable time to allow the other person to arrive.

(4) What is a reasonable time to delay questioning to allow a friend, relative or lawyer to arrive at the place of questioning will depend on the particular circumstances, including, for example—

(a) how far the person has to travel to the place; and

(b) when the person indicated he or she would arrive at the place.

(5) What is a reasonable time to delay questioning to allow the relevant person to speak to a friend, relative or lawyer will depend on the particular circumstances, including, for example, the number and complexity of the matters under investigation.

(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

419 Speaking to and presence of friend, relative or lawyer

(1) If the relevant person asks to speak to a friend, relative or lawyer, the investigating police officer must—

(a) as soon as practicable, provide reasonable facilities to enable the person to speak to the other person; and

(b) if the other person is a lawyer and it is reasonably practicable—allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(2) If the relevant person arranges for another person to be present during questioning, the investigating police officer must also allow the other person to be present and give advice to the relevant person during the questioning.

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Not authorised—indicative only

(3) If the police officer considers the other person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

(4) This section does not apply to a person who is an Aboriginal person, Torres Strait Islander person or a child.

Note—

For Aboriginal peoples and Torres Strait Islander peoples, see section 420 and for children, see section 421.

Division 3 Special requirements for questioning particular persons

420 Questioning of Aboriginal peoples and Torres Strait Islander peoples

(1) This section applies if—

(a) a police officer wants to question a relevant person; and

(b) the police officer reasonably suspects the person is an adult Aboriginal person or Torres Strait Islander person.

(2) Unless the police officer is aware that the person has arranged for a lawyer to be present during questioning, the police officer must—

(a) inform the person that a representative of a legal aid organisation will be notified that the person is in custody for the offence; and

(b) as soon as reasonably practicable, notify or attempt to notify a representative of the organisation.

(3) Subsection (2) does not apply if, having regard to the person's level of education and understanding, a police officer reasonably suspects the person is not at a disadvantage in comparison with members of the Australian community generally.

(4) The police officer must not question the person unless—

(a) before questioning starts, the police officer has, if practicable, allowed the person to speak to the support person, if practicable, in circumstances in which the conversation will not be overheard; and

(b) a support person is present while the person is being questioned.

(5) Subsection (4) does not apply if the person has, by a written or electronically recorded waiver, expressly and voluntarily waived his or her right to have a support person present.

(6) If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during questioning.

421 Questioning of children

(1) This section applies if—

(a) a police officer wants to question a relevant person; and

(b) the police officer reasonably suspects the person is a child.

(2) Unless the police officer is aware the child has arranged for a lawyer to be present during questioning, or has spoken, under subsection (3)(a), to a lawyer acting for the child, the police officer must—

(a) inform the child that a representative of a legal aid organisation will be notified that the child is in custody for the offence; and

(b) as soon as reasonably practicable and before questioning starts, notify or attempt to notify a representative of the legal aid organisation that the child is in custody for the offence.

(3) The officer must not question the child unless—

(a) before questioning starts, the police officer has, if practicable, allowed the child to speak to a support

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Not authorised—indicative only

person chosen by the child in circumstances in which the conversation will not be overheard; and

(b) a support person is present while the child is being questioned.

(4) However, the child may not choose as a support person a person against whom the offence is alleged to have been committed.

(5) If the police officer considers the support person is unreasonably interfering with the questioning, the police officer may exclude the person from being present during the questioning.

422 Questioning of persons with impaired capacity

(1) This section applies if—

(a) a police officer wants to question a relevant person; and

(b) the police officer reasonably suspects the person is a person with impaired capacity.

(2) A police officer must not question the person unless—

(a) before questioning starts, the police officer has, if practicable, allowed the person to speak to a support person in circumstances in which the conversation will not be overheard; and

(b) a support person is present while the person is being questioned.

(3) Also, the police officer must suspend questioning and comply with subsection (2) if, during questioning, it becomes apparent that the person being questioned is a person with impaired capacity.

423 Questioning of intoxicated persons

(1) This section applies if a police officer wants to question or to continue to question a relevant person who is apparently under the influence of liquor or a drug.

(2) The police officer must delay the questioning until the police officer is reasonably satisfied the influence of the liquor or drug no longer affects the person's ability to understand his or her rights and to decide whether or not to answer questions.

Division 4 Excluding persons unreasonably interfering with questioning

424 What is *unreasonable interference* for divs 2–3

(1) The following may be unreasonable interference for divisions 2 and 3—

(a) conduct that prevents or unreasonably obstructs—

(i) proper questions being put to a relevant person; or

(ii) the person's response to a question being recorded;

(b) answering questions on behalf of the relevant person;

(c) providing written replies during the questioning for the relevant person to quote.

(2) However, it is not unreasonable interference to reasonably do any of the following—

(a) to seek clarification of a question;

(b) to challenge an improper question put to the relevant person;

(c) to challenge the way in which a question is put;

(d) for a lawyer—

(i) to advise the relevant person not to answer any question or any further question; or

(ii) to say he or she wishes to give the relevant person further legal advice.

Not authorised—indicative only

Not authorised—indicative only

425 Requirements before excluding persons unreasonably interfering with questioning

(1) This section applies if a police officer considers a friend, relative, lawyer, support person present during the questioning of a relevant person is unreasonably interfering with the questioning.

(2) Before excluding the person from being present during questioning, the police officer must—

(a) warn the person not to interfere with the questioning; and

(b) give the person 1 further opportunity to stop unreasonably interfering with the questioning; and

(c) tell the person that he or she may be excluded from being present during the questioning if he or she continues to interfere unreasonably with the questioning.

426 If police officer excludes person from questioning

(1) If a police officer excludes a person from being present during questioning, the police officer must—

(a) if the excluded person was a friend, relative or lawyer—advise the relevant person that he or she may telephone or speak to another friend, relative or lawyer, to ask the person to be present during the questioning; and

(b) if the relevant person arranges for another person to be present—delay the questioning for a reasonable time to allow the other person to be present during the questioning.

(2) Also, the police officer must arrange for someone else to be present during the questioning if—

(a) the police officer must not question the relevant person without a support person being present because of a requirement under this Act; and

(b) the relevant person has not arranged for another person to be present during the questioning.

Division 5 Exclusion of support persons in particular circumstances

427 Application of div 5

(1) This division applies if a police officer reasonably considers—

(a) a support person present during questioning of a relevant person is unable to properly perform the role of a support person; and

(b) in the particular circumstances, it would be in the interests of the relevant person to exclude the person and arrange for another support person to be present during questioning.

(2) This division is in addition to, and does not limit, division 4.

428 When is a person unable to properly perform the role of a support person

(1) This section states circumstances in which a person may be unable to properly perform the role of a support person for a relevant person.

(2) However, this section does not limit the circumstances in which a person may be unable to properly perform the role of a support person.

(3) The circumstances are as follows—

(a) the person's ability to perform the role is substantially impaired by the effect of something the person has ingested, for example, alcohol, a drug or a potentially harmful thing, to the extent that the person is unable to act in the best interests of the relevant person;

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(b) the person is a person with an impaired capacity and the person's impairment prevents the person from acting in the best interests of the relevant person;

(c) the person is, or appears to a police officer to be, unwilling to perform the role of a support person because of illness, injury, pain, tiredness or a similar cause;

(d) the person has an affiliation, association or other relationship with a police officer questioning the relevant person;

(e) the person has a relationship of authority with the relevant person that may prevent the person from acting in the best interests of the relevant person;

Example for paragraph (e)—

a teacher who recently excluded the relevant person from a school

(f) the person is a victim of the offence for which the relevant person is being questioned or a friend of the victim;

(g) the person witnessed the commission of the offence for which the relevant person is being questioned.

(4) In this section—

ingest includes—

(a) administer; and

(b) inhale; and

(c) smoke.

429 Police officer may exclude support person from questioning

(1) This section applies if a police officer considers a support person present during questioning is unable to properly perform the role of support person.

(2) The police officer must exclude the support person from being present during questioning.

(3) The police officer must explain to the support person the reasons for the person's exclusion.

(4) The explanation must be written or electronically recorded.

430 If police officer excludes support person from questioning of relevant person

If a police officer excludes the support person from being present during questioning, the police officer must advise the relevant person—

(a) if the relevant person was not present when the support person was excluded from questioning—that the support person has been excluded from questioning and the reasons for the person's exclusion; and

(b) if the relevant person is a person in relation to whom section 420, 421 or 422 applies, questioning is delayed for a reasonable time to allow another person to be present as a support person during questioning; and

(c) if the relevant person is a child—that he or she may choose another person to be present as a support person during the questioning.

Division 6 Cautioning and rights of persons

431 Cautioning of persons

(1) A police officer must, before a relevant person is questioned, caution the person in the way required under the responsibilities code.

(2) The caution must be given in, or translated into, a language in which the person is able to communicate with reasonable fluency, but need not be given in writing unless the person can not hear adequately.

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(3) If the police officer reasonably suspects the person does not understand the caution, the officer may ask the person to explain the meaning of the caution in his or her own words.

(4) If necessary, the police officer must further explain the caution.

(5) This section does not apply if another Act requires the person to answer questions put by, or do things required by, the police officer.

432 Provision of information relating to a relevant person

(1) This section applies if a relative, friend or lawyer of a relevant person asks for information about the person's whereabouts.

(2) A police officer must, if practicable, inform the relevant person of the request and, after doing so, give the information to the person who asked for it.

(3) The police officer is not required to disclose the person's whereabouts if—

(a) the relevant person refuses to agree to giving the information and the refusal is in writing or electronically recorded; or

(b) the whereabouts of the relevant person—

(i) are not in a register that the police officer may inspect; and

(ii) are otherwise not actually known to the police officer.

(4) Also, the police officer is not required to inform the relevant person of the request if the police officer reasonably suspects the person asking for the information is not a relative, friend or lawyer of the relevant person.

433 Right to interpreter

(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of inadequate knowledge of

the English language or a physical disability, to speak with reasonable fluency in English.

(2) Before starting to question the person, the police officer must arrange for the presence of an interpreter and delay the questioning or investigation until the interpreter is present.

(3) In this section—

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

434 Right of visiting foreign national to communicate with embassy etc.

(1) This section applies to a relevant person who is not—

(a) an Australian citizen; or

(b) a foreign national with a right of residence in Australia.

(2) Before a police officer starts to question the person, the police officer must inform the person that he or she may telephone, or attempt to telephone, the embassy or consular office of the country of which the person is a citizen.

(3) If the person wishes to telephone the appropriate embassy or consular office, the police officer must—

(a) as soon as practicable, make available to the person reasonable facilities for the purpose; and

(b) delay the questioning for a reasonable time to allow the person to telephone, or attempt to telephone, the appropriate embassy or consular office.

435 Rights of a person to be electronically recorded

A police officer who is required under this division to give to a relevant person information (including a caution) must, if

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practicable, electronically record the giving of the information to the person and the person's response.

Division 7 Recording of questioning

436 Recording of questioning etc.

(1) This section applies to the questioning of a relevant person.

(2) The questioning must, if practicable, be electronically recorded.

Examples for subsection (2)—

1 It may be impracticable to electronically record a confession or admission of a murderer who telephones police about the murder and immediately confesses to it when a police officer arrives at the scene of the murder.

2 It may be impracticable to electronically record a confession or admission of someone who has committed an armed hold-up, is apprehended after pursuit, and makes a confession or admission immediately after being apprehended.

3 Electronically recording a confession or admission may be impracticable because the confession or admission is made to a police officer when it is not reasonably practicable to use recording facilities.

(3) If the person makes a confession or admission to a police officer during the questioning, the confession or admission is admissible in evidence against the person in a proceeding only if it is recorded as required by subsection (4) or section 437.

(4) If the confession or admission is electronically recorded, the confession or admission must be part of a recording of the questioning of the person and anything said by the person during questioning of the person.

437 Requirements for written record of confession or admission

(1) This section applies if a record of a confession or admission is written.

(2) The way the written record of the confession or admission is made must comply with subsections (3) to (7).

(3) While questioning the relevant person, or as soon as reasonably practicable afterwards, a police officer must make a written record in English of the things said by or to the person during questioning, whether or not through an interpreter.

(4) As soon as practicable after making the record—

(a) it must be read to the person in English and, if the person used another language during questioning, the language the person used; and

(b) the person must be given a copy of the record.

(5) Before reading the record to the person, an explanation, complying with the responsibilities code, must be given to the person of the procedure to be followed to comply with this section.

(6) The person must be given the opportunity, during and after the reading, to draw attention to any error in or omission from the record he or she claims were made in the written record.

(7) An electronic recording must be made of the reading mentioned in subsection (4) and everything said by or to the person during the reading, and anything else done to comply with this section.

438 Access to electronic recordings of questioning etc.

(1) This section applies to the electronic record of the questioning, confession or admission, or confirmation of a confession or admission, of a relevant person that is made under section 436 or 437(7).

(2) A police officer must, without charge—

(a) if the recording is—

(i) an audio recording only—make a copy of the recording available to the person or the person's lawyer within 7 days after making the recording; or

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(ii) a video recording only—make a copy of the recording available to the person or the person's lawyer within 14 days after making the recording; or

(b) if both audio and video recordings were made—

(i) make a copy of the audio recording available to the person or the person's lawyer within 7 days after making the recording; and

(ii) notify the person or the person's lawyer that, if the person asks, an opportunity will be provided to view the video recording; or

(c) if a transcript of an audio recording is made—on request, give to the person or the person's lawyer a copy of the transcript.

(3) Subsection (2) applies subject to any other Act.

439 Admissibility of records of questioning etc.

(1) Despite sections 436 and 437, the court may admit a record of questioning or a record of a confession or admission (the ***record***) in evidence even though the court considers this division has not been complied with or there is not enough evidence of compliance.

(2) However, the court may admit the record only if, having regard to the nature of and the reasons for the noncompliance and any other relevant matters, the court is satisfied, in the special circumstances of the case, admission of the evidence would be in the interests of justice.

Division 8 General

440 List of support persons and interpreters

(1) The commissioner must keep a list of support persons and interpreters or, if an organisation provides interpreter services

at a particular place, organisations providing interpreter services at the place.

(2) The commissioner must revise the list at the times the commissioner considers appropriate.

(3) The list must specify the languages that each person on the list is able to understand and speak.

441 When sections 418–422, 432 and 434 do not apply

(1) Sections 418 to 422, 432 and 434 do not apply if a police officer reasonably suspects that compliance with the sections is likely to result in—

(a) an accomplice or accessory of the relevant person taking steps to avoid apprehension; or

(b) an accomplice or accessory being present during questioning; or

(c) evidence being concealed, fabricated or destroyed; or

(d) a witness being intimidated.

(2) Also, a police officer is not required to delay questioning if, having regard to the safety of other people, the police officer reasonably suspects questioning is so urgent that it should not be delayed.

(3) This section applies only for so long as the police officer has the reasonable suspicion.

Chapter 16 Search powers for persons in custody

442 Application of ch 16

This chapter applies to a person if the person—

(a) is lawfully arrested; or

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(b) is in lawful custody for a charge of an offence that has not been decided; or

Examples—

1 The person may be in lawful custody because bail has been refused or revoked or a condition of bail is contravened.

2 The person may be in lawful custody pending the satisfaction of a condition on which the person is to be released on bail.

(c) is in custody under a sentence for a period of imprisonment or, for a child, a detention order; or

(d) is detained for the purposes of testing under chapter 18A; or

(e) is detained under section 50 in relation to a breach of the peace and is to be transported to a place by a police officer; or

(f) is otherwise lawfully detained under another Act.

443 Police officer may search person in custody

(1) A police officer may search and re-search a person to whom this chapter applies.

(2) A police officer may seize from the person anything found during the search that the police officer reasonably suspects may provide evidence of the commission of an offence.

(3) Also, the police officer may take and retain, while the person is in custody—

(a) anything that may endanger anyone's safety, including the person's safety; or

(b) anything that may be used for an escape; or

(c) anything else the police officer reasonably considers should be kept in safe custody while the person is in custody.

444 Powers relating to thing taken from person taken to place of safety

(1) This section applies if a police officer takes a thing under section 443(3) from a person who is taken to a place of safety under section 378.

(2) A police officer may give the thing—

(a) if the place of safety is the person's home—to a person at the home who is an adult member of the person's family; or

(b) if the place of safety is the home of a friend or relative of the person—to the friend or relative for safe keeping while the person is at the place; or

(c) otherwise—to the person apparently in possession or in charge of the place of safety for safe keeping while the person is at the place.

(3) The person to whom the thing is given must give the police officer a signed receipt in the approved form for the thing and, if the place of safety is not the home of the person from whom the thing was taken, must return the thing to that person before the person voluntarily leaves the place of safety.

Chapter 17 Forensic procedures

Part 1 Qualified persons and authorising forensic procedures

445 Who are *qualified persons*

(1) This section states who are ***qualified persons*** to perform forensic procedures.

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(2) A doctor, dentist or forensic nurse examiner is a qualified person to perform an intimate forensic procedure and a non-intimate forensic procedure.

(3) A DNA sampler is a qualified person for taking a DNA sample.

(4) An authorised examiner is a qualified person to perform a non-intimate forensic procedure that is a non-medical examination.

(5) A police officer is a qualified person for taking identifying particulars.

(6) Without limiting subsections (2) to (5), a person who is specifically authorised under this chapter to perform a procedure that is a forensic procedure is a qualified person to perform the forensic procedure.

(7) If a qualified person may take a person's identifying particulars under this chapter, the qualified person may also photograph the person's identifying particulars.

446 Limitation on forensic procedures that dentist may perform

Despite section 445(2), a dentist may perform a forensic procedure only to the extent necessary to—

(a) examine a person's mouth; or

(b) take a sample of a person's saliva; or

(c) take a dental impression of a person's mouth; or

(d) examine a bite mark on a person.

447 When forensic procedures are authorised

(1) A forensic procedure may be performed on a person under this chapter if—

(a) either of the following gives consent (***forensic procedure consent***) to the procedure being performed—

(i) the person on whom it is proposed to perform the forensic procedure;

(ii) someone else authorised under part 2 to give consent for the person if the person is a child under 14 years or a person with impaired capacity; or

(b) the procedure is performed under a forensic procedure order; or

(c) this chapter otherwise authorises a qualified person to perform the procedure.

(2) A person on whom it is proposed to perform a forensic procedure may in this chapter be referred to as a ***relevant person***.

Part 2 Obtaining consent for forensic procedure

448 What pt 2 provides

(1) This part states general rules—

(a) for obtaining a forensic procedure consent from a person suspected of committing an offence; or

(b) for obtaining a forensic procedure consent, that relates only to the taking of a DNA sample, from a person for any of the following purposes—

(i) to help decide whether or not the person may be a suspect in relation to an offence;

Example—

Members of the community may be asked to provide DNA samples for DNA analysis for comparison with the results of analysis of a DNA sample seized at a crime scene.

(ii) to help locate a missing person;

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Example—

A relative of a missing person may be asked to provide a DNA sample to help locate the missing person.

(iii) to help identify a deceased person or the remains of a deceased person.

Example—

A person may be asked to provide a DNA sample to help decide whether a deceased person is a relative of the person.

Note—

See section 454 for the explanation that must be given to a person asked to give a forensic procedure consent.

(2) However, nothing in this part requires a police officer or other person to obtain consent under this part to perform a forensic procedure under this chapter that the person is not specifically required to have consent for.

(3) Also, nothing in this part requires a police officer to obtain a forensic procedure consent to perform a non-intimate forensic procedure on a person if the procedure does not involve the touching of the person by anyone other than the person or the taking of a DNA sample.

(4) Subject to subsection (1)(b), this part must not be construed as requiring a police officer to act under this part to obtain the consent of a person to the performance of a forensic procedure on the person if the person is not suspected of having committed an offence.

449 General rules about asking for consent

(1) A police officer may ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent only if the police officer is satisfied the person's ability to give the consent is not affected by alcohol or a drug.

(2) A police officer must not ask a relevant person, or another person who may act for the relevant person, to give a forensic procedure consent for an intimate forensic procedure unless

the police officer suspects the relevant person may have committed an indictable offence.

(3) This section applies whether or not the relevant person has been proceeded against for an offence for which the results of performing the forensic procedure may be relevant.

450 Special requirement for child of at least 14

(1) This section applies if a police officer reasonably suspects the relevant person is a child who is at least 14 years.

(2) The police officer may ask the child to give a forensic procedure consent.

(3) The police officer must ensure a support person is present when the explanation mentioned in section 454 is given and when any consent is given.

(4) To assist the child to consider the explanation and decide whether or not to consent, the police officer must ensure the child is given a reasonable opportunity to speak to the support person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.

(5) Subsection (6) applies if the child gives a forensic procedure consent relating to the performance of a non-intimate forensic procedure.

(6) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

451 Special requirement for child under 14

(1) This section applies if a police officer reasonably suspects the relevant person is a child who is under 14 years.

(2) The police officer may ask a parent of the child to give a forensic procedure consent for the child.

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Not authorised—indicative only

(3) If the parent gives a forensic procedure consent for the child authorising the taking of a sample for DNA analysis, the sample taken must be a DNA sample and not a sample of the child's blood.

(4) Subsection (5) applies if the parent gives a forensic procedure consent for the child relating to the performance of a non-intimate forensic procedure.

(5) Before the procedure is performed a police officer must ask the child whether he or she wants a support person to be present while the procedure is being performed and, if the child wants a support person to be present, must ensure a support person is present while the procedure is being performed.

452 Special requirement for person with impaired capacity

(1) This section applies if a police officer reasonably suspects the relevant person is a person with impaired capacity.

(2) The police officer may ask the person to give a forensic procedure consent.

(3) However, the police officer must ensure a support person is present when the explanation mentioned in section 454 is given and when any consent is given.

(4) Also, to assist the person to consider the explanation and decide whether or not to consent, the police officer must ensure the person is given a reasonable opportunity to speak to the support person in circumstances in which the conversation can not be overheard, if it is reasonably practicable to do so.

(5) If the person does not have the capacity to give a forensic procedure consent, the police officer may ask a parent of the person to give the consent for the person.

(6) Subsection (7) applies if the parent gives a forensic procedure consent for the person relating to the performance of a non-intimate forensic procedure.

(7) Before the procedure is performed a police officer must ask the person whether he or she wants a support person to be present while the procedure is being performed and, if the person wants a support person to be present, must ensure a support person is present while the procedure is being performed.

453 Consent must be informed consent

(1) A police officer must ensure a person asked to give a forensic procedure consent is given the explanation required under section 454 and a reasonable time to consider the explanation.

(2) If, under section 451(2) or 452(5) a parent is asked to give a forensic procedure consent for a child or a person with impaired capacity and the child or person is not present when the explanation required under section 454 is given to the parent, a police officer—

(a) must, to the extent that is reasonably practicable in the circumstances, give the child or person an explanation of the matters mentioned in section 454(1)(a) to (i); and

(b) must tell the child or person that he or she may object to the performance of the forensic procedure.

454 General requirements for giving informed forensic procedure consent

(1) To enable a person to give an informed forensic procedure consent, a police officer must explain all the following to the person—

(a) why it is proposed to perform the forensic procedure on the person;

(b) whether it is proposed to perform an intimate forensic procedure or a non-intimate forensic procedure or both;

(c) the general nature of the forensic procedure;

(d) the class of qualified person who may perform the forensic procedure;

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(e) that the person may refuse to give the consent;

(f) that if the person gives the consent, the person may withdraw the consent before the forensic procedure is performed or while it is being performed;

(g) if a sample may be taken for DNA analysis and sections 451(3) and 479 do not apply—

(i) that the person may limit the purpose for which the results of the DNA analysis may be used to the purpose stated by the police officer under paragraph (a); and

(ii) that unless the person limits the purposes of the consent in that way, the results of the DNA analysis of the sample may be included in QDNA and used in a way permitted under this chapter;

(h) if a sample may be taken for DNA analysis and sections 451(3) and 479 do apply—

(i) that the sample taken for DNA analysis must be a DNA sample and not a sample of blood; and

(ii) that a DNA analysis of the sample may be used only for the purpose stated by the police officer under paragraph (a);

(i) that the forensic procedure may provide evidence that may be used in a court proceeding.

(2) The police officer may give the explanation by giving the person a statement, in the approved form, containing the explanation if it is appropriate in the circumstances to do so.

455 Recording consent

(1) If a police officer gives the explanation under section 454 orally, the giving of the explanation and any consent to perform the forensic procedure must, if reasonably practicable, be electronically recorded.

(2) Unless a forensic procedure consent is electronically recorded under subsection (1), it must be written and signed by the person giving the consent.

(3) If a child mentioned in section 450(1) or a person with impaired capacity gives a written forensic procedure consent, it must also be signed by the support person present when the consent is given.

(4) A person giving a written forensic procedure consent may give the consent by signing an approved form for the consent.

456 Qualified person may perform forensic procedure

A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure consent.

Part 3 Forensic procedure orders

457 Application of pt 3

(1) This part applies if a police officer is satisfied performing a forensic procedure on a person suspected of committing an indictable offence may provide evidence of the commission of the offence.

Note—

In some circumstances, procedures that are forensic procedures may be performed under part 4, 5 or 6.

(2) Also, this part applies whether or not the relevant person is dead.

(3) A police officer may not apply for a forensic procedure order under this part in relation to a child if—

(a) the only purpose of the application is to obtain authority to take a sample for DNA analysis; and

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Not authorised—indicative only

(b) it is practicable to make an application under section 488 (***other application***) for an order to take a DNA sample from the child; and

(c) it is likely that an order made under that section can be given immediate effect.

(4) A police officer may not apply for a forensic procedure order under this part in relation to a child if—

(a) the only purpose of the application is to obtain authority to take an identifying particular within the meaning of the *Youth Justice Act 1992*, section 25; and

(b) it is practicable to make an application under section 25 (also ***other application***) of that Act for an order to take the identifying particular from the child; and

(c) it is likely that an order made under that section can be given immediate effect.

(5) Without limiting subsection (3)(b) or (4)(b), it is taken not to be practicable to make the other application if the whereabouts of the child to whom it relates are not sufficiently known to the police officer to allow the officer to give notice of the other application to the child.

458 Application for forensic procedure order

(1) A police officer may apply to a magistrate in the approved form for an order (***forensic procedure order***) authorising a qualified person to perform an intimate or non-intimate forensic procedure, or both an intimate and a non-intimate forensic procedure, on the person named in the application.

(2) If the person is a child, the application must be made to a Childrens Court magistrate.

(3) The application—

(a) must be sworn and state the grounds on which it is made; and

(b) may be made whether or not the person has previously consented to the forensic procedure being performed.

(4) The magistrate may refuse to consider the application until the police officer gives the magistrate the information the magistrate requires about the application in the way the magistrate requires.

Example—

The magistrate may require additional information supporting the application to be given by statutory declaration.

459 Notice of application must ordinarily be given

(1) The person to whom the application relates must be given notice in the approved form of the application at least 7 days before the day the application is to be heard.

(2) The notice must state—

(a) the grounds on which the application is made; and

(b) the date when and the place where the application is to be heard; and

(c) the person may appear at the hearing and be heard on the application; and

(d) that if the person does not appear, the application may be decided in the absence of the person; and

(e) if the police officer making the application knows the person is in lawful custody in another State, the effect of subsections (5) and (6) and the address of the place where the written submissions mentioned in subsection (5) may be sent.

(3) If the person appears at the time and place stated in the notice, the person is entitled to be heard on the application.

(4) If the person does not appear at the time and place stated in the notice, the application may be decided in the absence of the person.

(5) If the person is in lawful custody in another State, the magistrate may receive submissions about the application through the person's lawyer, in writing from the person or by using technology allowing reasonably contemporaneous and

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Not authorised—indicative only

continuous communication between the magistrate and the person.

(6) Written submissions made under subsection (5) need not be considered by the magistrate unless they are received at the place where the application is to be heard before the date the application is heard.

(7) Subsection (1) does not apply if the person is dead.

(8) This section is subject to section 460.

460 When notice of application need not be given etc.

(1) This section applies if the magistrate is satisfied—

(a) a police officer has made a reasonable attempt to locate the person to whom the application relates and was unable to locate the person; or

(b) the person is likely to abscond if given notice of the application; or

(c) evidence that may be obtained by performing the forensic procedure to which the application relates on the person is likely to be lost or destroyed if the person is given notice of the application; or

(d) giving notice of the application to the person may jeopardise the investigation of any indictable offence the person is suspected of having committed because—

(i) evidence relating to the offence may be concealed, fabricated or destroyed; or

(ii) a witness may be intimidated; or

(iii) an accomplice or accessory of the person may take steps to avoid apprehension.

(2) The person is not entitled to be given notice of the application under section 459 or to be heard on the application.

461 Making forensic procedure order

(1) A magistrate may make a forensic procedure order in relation to a person only if satisfied on the balance of probabilities there are reasonable grounds for believing performing the forensic procedure concerned on the person may provide evidence of the commission of an indictable offence the person is suspected of having committed (a ***suspected offence***) and carrying out the forensic procedure is justified in the circumstances.

(2) In deciding whether performing the forensic procedure on the person is justified in the circumstances, the magistrate must balance the rights and liberties of the person and the public interest.

(3) In balancing those interests the magistrate may have regard to any of the following matters—

(a) the seriousness of the circumstances surrounding the commission of the suspected offence and the gravity of that offence;

(b) the degree of the person's alleged participation in the commission of the suspected offence;

(c) the age and physical and mental health of the person, to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);

(d) if the person is a child or a person with impaired capacity—the welfare of the person;

(e) whether there is a less intrusive but reasonably practicable way of obtaining evidence tending to confirm or disprove that the person committed the suspected offence;

(f) if the person has been asked for and refused to give a forensic procedure consent in relation to the suspected offence—the reasons for the refusal to the extent they are known to the magistrate or can be reasonably discovered by the magistrate (by asking the person or otherwise);

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Not authorised—indicative only

(g) if the person is in custody for the suspected offence—

(i) the period for which the person has already been detained; and

(ii) the reason for any delay in applying for the forensic procedure order;

(h) any other matter the magistrate considers relevant to balancing those interests.

462 What forensic procedure order must state

A forensic procedure order must state—

(a) the relevant person's name; and

(b) that a forensic procedure may be performed on the person by a qualified person; and

(c) whether a qualified person may perform—

(i) an intimate forensic procedure; or

(ii) a non-intimate forensic procedure; or

(iii) both an intimate and a non-intimate forensic procedure; and

(d) that a police officer may exercise the powers in section 464.

463 When forensic procedure order ends

(1) A forensic procedure order stops having effect when the forensic procedure authorised under the order is completed.

(2) However, if a doctor or forensic nurse examiner is performing an intimate forensic procedure under the order and the doctor or forensic nurse examiner decides to also perform a non-intimate procedure under section 509(3) or 509A(3), the order extends to the performance of the non-intimate procedure and stops having effect when both procedures are completed.

464 Powers for enforcing forensic procedure order

(1) For enforcing a forensic procedure order, a police officer has the following powers—

(a) power to detain the relevant person for a reasonable time and take the person to a place with appropriate facilities and persons for performing the relevant forensic procedure;

(b) power to direct the relevant person—

(i) to attend at a stated place on a stated day or between stated hours, within 7 days after the direction is given to the person to enable the relevant forensic procedure to be performed; and

(ii) to stay at the place for the time reasonably necessary to enable the relevant procedure to be performed.

(2) Subsection (1)(a) applies whether or not the relevant person is given a direction under subsection (1)(b).

465 Order must be given before forensic procedure is performed

(1) A police officer must give a copy of a forensic procedure order to a relevant person before a qualified person performs a forensic procedure on the person under the order.

(2) Subsection (1) does not apply if the person is unconscious or dead.

466 Qualified person may perform forensic procedure

A qualified person for performing a forensic procedure may perform the forensic procedure on a person under a forensic procedure order.

Not authorised—indicative only

Not authorised—indicative only

Part 4 Identifying particulars

Division 1 Particular provisions about taking identifying particulars

467 Taking identifying particulars of person in custody

(1) If a person is in custody for an identifying particulars offence the charge of which has not been decided, a police officer may take or photograph all or any of the person's identifying particulars.

(2) If the person is to be released after arrest for the offence, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars.

(3) If the offence involves the conduct of a number of persons acting alone or together, a police officer may photograph the person at the scene of the arrest before taking or photographing all or any of the person's identifying particulars.

468 Taking identifying particulars—proceeding started by notice to appear or complaint and summons

(1) This section applies if a police officer decides to start a proceeding against an adult for an identifying particulars offence by notice to appear or complaint and summons.

(2) Within a reasonable time before, or immediately after, serving the notice to appear or complaint and summons, a police officer may detain the person for the time reasonably necessary to take or photograph all or any of the person's identifying particulars and take or photograph those particulars.

Division 2 Taking identifying particulars under identifying particulars notice

469 Application of div 2

This division applies if a police officer decides to start, or continues, a proceeding against an adult for an identifying particulars offence by notice to appear or complaint and summons and decides it is not necessary to immediately take the identifying particulars.

470 Identifying particulars notice may be given

(1) A police officer may, by written notice (***identifying particulars notice***) given to the person, require the person—

(a) to report to a police officer at a stated police station or police establishment within 7 days after the issue of the notice to enable a police officer to take or photograph all or any of the person's identifying particulars; and

(b) to stay at the police station or police establishment for the time reasonably necessary to enable the identifying particulars to be taken or photographed.

(2) The identifying particulars notice—

(a) may state the days and times within which the person must attend the police station or police establishment; and

(b) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the identifying particulars are taken, the person must produce satisfactory evidence of his or her identity; and

(c) must be given to the person with the notice to appear or complaint and summons; and

(d) must be signed by the police officer giving the notice.

Not authorised—indicative only

Not authorised—indicative only

(3) If the person attends at a police station or police establishment as required under the identifying particulars notice, a police officer may take or photograph all or any of the person's identifying particulars.

Division 3 Taking identifying particulars under court order

471 Court may order taking of identifying particulars

(1) This section applies if, in a proceeding for an identifying particulars offence against an adult, a court is satisfied it is necessary to take or photograph the person's identifying particulars to help—

(a) identify the person in relation to the offence or another offence the person is suspected of having committed; or

(b) confirm the person's identity; or

(c) find out the person's criminal history; or

(d) keep criminal records.

(2) The court may make either of the following orders—

(a) an order that a police officer may detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars;

(b) an order—

(i) that the person—

(A) report to a police officer at a stated police station or police establishment on a stated day or between stated hours within 7 days; and

(B) stay at the place for the time reasonably necessary to enable a police officer to take or photograph all or any of the person's identifying particulars; and

(ii) authorising a police officer to detain the person to enable a police officer to take or photograph all or any of the person's identifying particulars if the person does not comply with subparagraph (i).

(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

472 Detention for taking identifying particulars

(1) A police officer may, to give effect to an order made under section 471(2)(a) or (b)(ii), detain the person.

(2) If the person is not already in custody, the time for which the person may be detained is—

(a) 1 hour; or

(b) a longer reasonably necessary time, having regard to the particular circumstances.

473 Who may take identifying particulars

Any police officer may take or photograph all or any of the identifying particulars of a person to whom an order made under section 471(2) relates.

Division 4 Destruction of identifying particulars

474 Destruction of identifying particulars

(1) If a person is found not guilty of an identifying particulars offence or is not further proceeded against for the offence, any identifying particulars taken under this part in relation to the

Not authorised—indicative only

Not authorised—indicative only

offence must be destroyed within a reasonable time in the presence of a justice.

(2) Subsection (1) does not apply if—

(a) the person has been proceeded against for another identifying particulars offence the charge of which has not been decided; or

(b) the person has previously been found guilty of another identifying particulars offence, whether before or after the commencement of this section; or

(c) the identifying particulars are required for the investigation of another identifying particulars offence the person is reasonably suspected of having committed; or

(d) the person is not proceeded against for the identifying particulars offence because he or she has been found incapable of standing trial because of mental illness.

(3) If, because of subsection (2)(a), a person's identifying particulars are not destroyed and the person is found not guilty of the other identifying particulars offence or the charge of that other offence is not proceeded with, the identifying particulars must be destroyed within a reasonable time after the relevant event happens.

(4) However, the identifying particulars must not be destroyed under subsection (3) if subsection (2) continues to apply to the person.

(4A) If—

(a) the person is a child; and

(b) the *Youth Justice Act 1992* applies for proceeding against the child for the identifying particulars offence; and

(c) the child pleads guilty before the court; and

(d) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative

justice process under the *Youth Justice Act 1992*, section 24A;

the requirement to destroy the identifying particulars under subsection (1) does not apply until the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

(5) In this section—

identifying particulars, of a person, includes a photograph of the identifying particulars.

restorative justice agreement see the *Youth Justice Act 1992*, schedule 4.

restorative justice process see the *Youth Justice Act 1992*, schedule 4.

Part 5 DNA procedures

Division 1 Preliminary provisions about DNA sampling and DNA analysis

475 Taking DNA sample by doctor or nurse

A DNA sampler who is a doctor or nurse may take a DNA sample from a person for DNA analysis under this chapter only if asked by a police officer to do so.

476 Commissioner may authorise police officers to take DNA samples

(1) The commissioner may authorise a police officer to take DNA samples.

(2) However, the commissioner may authorise a police officer only if the commissioner is satisfied the police officer—

(a) has the necessary experience or expertise to be able to take the samples; or

Not authorised—indicative only

Not authorised—indicative only

(b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

477 Where DNA sample may be taken

A DNA sampler may take a DNA sample from a person at a location in any of the following places that provide reasonable privacy for the person—

(a) a police station or police establishment;

(b) a hospital;

(c) a prison or detention centre;

(d) another place the sampler considers is appropriate in the circumstances.

478 How DNA samples may be taken

A DNA sampler may take a DNA sample from a person only by—

(a) having the person use a mouth swab to swab the person's mouth; or

(b) collecting hair, including roots of the hair, from the person.

Division 2 Taking DNA sample from particular persons with consent

479 Use of DNA analysis of DNA sample taken from child under 14

(1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a child under 14 years.

(2) A DNA analysis of the sample may be used only for the purpose for which the consent was given.

480 Taking DNA sample from person with impaired capacity

(1) This section applies if a forensic procedure consent authorises a DNA sample to be taken from a person with impaired capacity.

(2) A police officer must ensure a support person is present when the sample is being taken if it is reasonably practicable to do so.

Division 3 Taking DNA samples after proceedings commenced and from certain prisoners

481 Taking DNA sample if proceeding started or continued against an adult by arrest, notice to appear or complaint and summons etc.

(1) This section applies if—

(a) a police officer starts or continues a proceeding for an indictable offence against an adult by arrest; or

(b) a police officer starts a proceeding for an indictable offence against an adult by a notice to appear or complaint and summons.

(2) A police officer may detain the person for the time reasonably necessary to take a DNA sample from the person and, if necessary, take the person to a place mentioned in section 477(a), (b) or (d) for the purpose.

(3) A DNA sampler may take a DNA sample for DNA analysis from a person detained under this section.

482 DNA sample notice

(1) This section applies if a police officer—

(a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 377(2)(b); or

Not authorised—indicative only

Not authorised—indicative only

(b) decides to start, or continues, a proceeding for an indictable offence against an adult by a notice to appear or complaint and summons;

and decides it is not necessary to immediately take a DNA sample from the person.

(2) A police officer may, by written notice (***DNA sample notice***), require the person to report to a police officer at a stated police station or police establishment to enable a DNA sampler to take a DNA sample from the person.

(3) A DNA sampler may take a DNA sample for DNA analysis from a person who attends at a police station or police establishment as required under a DNA sample notice.

483 Requirements for DNA sample notice

A DNA sample notice—

(a) must require the relevant person to report to a police officer at a stated police station or police establishment—

(i) within 7 days after the issue of the notice; or

(ii) on a stated day or within stated hours within 7 days after the issue of the notice;

to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

(b) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the DNA sample is taken, the person must produce to a police officer satisfactory evidence of his or her identity; and

(c) must be given to the person—

(i) if section 482(1)(a) applies, with the notice to appear or summons mentioned in section 377(2)(b); or

(ii) if section 482(1)(b) applies, with the notice to appear or complaint and summons; and

(d) must be signed by the police officer giving the notice.

484 Taking DNA sample from adult before court

(1) This section applies if, in a proceeding against an adult for an indictable offence, a court is satisfied it is reasonably necessary, having regard to the rights and liberties of the person and the public interest, to take a DNA sample for DNA analysis from the person.

(2) The court may make either of the following orders—

(a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;

(b) an order—

(i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

(ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).

(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

(5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police

Not authorised—indicative only

Not authorised—indicative only

establishment as required under an order made under subsection (2)(b).

485 Taking DNA sample after finding of guilt

(1) This section applies if a court finds an adult guilty of an indictable offence, including an indictable offence that is dealt with summarily.

(2) The court may make either of the following orders—

(a) an order that a police officer may detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis;

(b) an order—

(i) that the person report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

(ii) authorising a police officer to detain the person to enable a DNA sampler to take a DNA sample from the person for DNA analysis if the person does not comply with subparagraph (i).

(3) A person must not contravene an order made under subsection (2)(b), unless the person has a reasonable excuse.

Maximum penalty—2 years imprisonment.

(4) It is not a reasonable excuse for the person to contravene the order that complying with it may tend to incriminate the person.

(5) A DNA sampler may take a DNA sample for DNA analysis from a person who is detained under an order made under subsection (2)(a) or (b) or reports to a police station or police establishment as required under an order made under subsection (2)(b).

(6) If the application for the order is not made at the time, or soon after, the person is found guilty of the indictable offence, the court must consider whether it is appropriate to make the order having regard to the period of time that has elapsed since the finding of guilt and any reason given for the delay in making the application.

486 Detention for taking DNA sample

(1) To give effect to an order made under section 484(2)(a) or (b)(ii) or 485(2)(a) or (b)(ii), a police officer may detain the person.

(2) If the person is not already in custody, the time for which the person may be detained is—

(a) 1 hour; or

(b) a longer reasonably necessary time, having regard to the particular circumstances.

487 Taking DNA sample from transferred prisoner

(1) This section applies to a transferred prisoner who is detained in a corrective services facility.

(2) A DNA sampler may, under an arrangement between the commissioner and the chief executive (corrective services)—

(a) enter the facility; and

(b) detain the prisoner and take the prisoner to an appropriate place in the facility for the purpose of taking a DNA sample from the prisoner for DNA analysis; and

(c) take the DNA sample from the prisoner.

(3) A corrective services officer under the *Corrective Services Act 2006* may be present when the DNA sample is taken.

(4) This section has effect from when section 314 expires.

Editor's note—

Previous section 314 (Taking DNA sample from prisoner in corrective services facility) expired on 2 February 2005.

Not authorised—indicative only

Not authorised—indicative only

(5) In this section—

transferred prisoner means—

(a) a prisoner who—

(i) was transferred to Queensland from another State under an arrangement under the *Prisoners (Interstate Transfer) Act 1982*; and

(ii) is serving a term of imprisonment for an indictable offence committed in the other State, even though the offence was dealt with summarily; or

(b) a prisoner who—

(i) is transferred to Australia from another country under the *International Transfer of Prisoners Act 1997* (Cwlth) and is detained in a Queensland prison under an arrangement made under section 50 of that Act between the Governor-General and the Governor; and

Note—

The Governor may make the arrangement under the *Prisoners International Transfer (Queensland) Act 1997*, section 8.

(ii) is serving a term of imprisonment for an offence that, if committed in Australia, would be an indictable offence.

488 Taking DNA sample from child

(1) This section applies if a police officer—

(a) starts or continues a proceeding for an indictable offence against a child by arrest, notice to appear or complaint and summons; and

(b) considers it is reasonably necessary to take a DNA sample from the child for DNA analysis.

(2) The police officer may apply to the Childrens Court for an order authorising a DNA sampler to take a DNA sample from the child for DNA analysis.

(3) The police officer must give notice of the application to—

(a) the child; and

(b) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(c) the chief executive (communities) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which that chief executive has responsibility.

(4) The court may order the taking of a DNA sample if satisfied—

(a) an indictable offence has been committed; and

(b) the child is reasonably suspected of having committed the offence; and

(c) a DNA analysis may tend to prove or disprove the child's involvement in the offence.

(5) If the child will not be in custody when the sample is proposed to be taken, the order—

(a) must require the child to report to a police officer at a stated police station or police establishment within 7 days, or on a stated day or within stated hours within 7 days, to enable a DNA sampler to take a DNA sample from the person for DNA analysis; and

(b) may authorise a police officer to detain the child and take the child to an appropriate place to enable a DNA sample to be taken from the child for DNA analysis if the child does not comply with paragraph (a).

(6) A child named in an order made under subsection (4) that contains a requirement mentioned in subsection (5) must not contravene the order, unless the child has a reasonable excuse.

Maximum penalty—10 penalty units.

(7) For subsection (6)—

(a) it is a reasonable excuse for the child to contravene the order that a copy of the order has not been given to the child; and

Not authorised—indicative only

Not authorised—indicative only

(b) it is not a reasonable excuse for the child to contravene the order that complying with it may tend to incriminate the child.

(8) A DNA sampler may take a DNA sample from the child if the child is in custody, attends at a police station or police establishment as required under an order made under subsection (5) or is detained under an order made under that subsection.

(9) To give effect to an order made under subsection (4) or (5)(b), a police officer may detain the child.

(10) If the child is not already in custody, the time for which the child may be detained is—

(a) 1 hour; or

(b) a longer reasonably necessary time, having regard to the particular circumstances.

(11) In this section—

parent, of a child, includes an approved carer of the child under the *Child Protection Act 1999*.

488A Taking DNA sample from reportable offender for Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

A DNA sampler may take a DNA sample for DNA analysis from a person who—

(a) is a reportable offender; and

(b) as required under the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 40A(2), allows the sample to be taken.

Note—

The person commits an offence against the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*, section 50(1) if the person fails to comply with the person's obligation under that Act, section 40A(2).

Division 4 Analysis and use of DNA samples

488B Commissioner may enter into DNA arrangement

(1) The commissioner may enter into a contract or other arrangement (each a ***DNA arrangement***) with 1 or both of the following about analysing DNA under section 489—

(a) the chief executive (health);

(b) the chief executive officer, however described, of an accredited laboratory.

(2) In this section—

accredited laboratory means a laboratory accredited as complying with ISO/IEC 17025:2005 by—

(a) the National Association of Testing Authorities, Australia; or

(b) another entity the commissioner is satisfied is appropriately qualified to accredit a laboratory for compliance with ISO/IEC 17025:2005.

ISO/IEC 17025:2005 means the standard titled 'ISO/IEC 17025: 2005—General requirements for the competence of testing and calibration laboratories', published jointly by the International Organisation for Standardisation and the International Electrotechnical Commission.

489 Power to analyse etc. DNA samples

(1) It is lawful for a police officer or a person acting under a DNA arrangement—

(a) to perform a DNA analysis of a DNA sample taken under this chapter or received from a declared agency; and

(b) to perform any further analysis of a DNA sample that may be reasonably necessary for ensuring the accuracy of an earlier analysis; and

Not authorised—indicative only

Not authorised—indicative only

(c) to keep a DNA sample and the results of a DNA analysis of the sample until they are required under this part to be destroyed; and

(d) to take the steps reasonably necessary to ensure the results of the analysis are included in QDNA; and

(e) to compare the results of a DNA analysis of a DNA sample with other results of DNA analyses of samples, whether or not DNA samples, to which the police officer or person has access.

(2) A DNA sample mentioned in subsection (1)(c) must be kept in a secure place.

(3) It is lawful for a police officer to use the results of any DNA analysis for performing any function of the police service.

490 When DNA sample taken from suspected person and results must be destroyed

(1) A DNA sample taken from a person suspected of having committed an indictable offence and the results of a DNA analysis of the sample must be destroyed within a reasonably practicable time after the end of 1 year from—

(a) if the person's arrest for the indictable offence is discontinued under section 376(1) or 379(6)—the day the arrest is discontinued; or

(b) if the proceeding for the indictable offence is discontinued before a court—the day the proceeding is discontinued; or

(c) if the person is found not guilty of the indictable offence, including on appeal—the day the person is found not guilty of the offence; or

(d) if a proceeding for the indictable offence is not started within 1 year after the sample is taken—the day the sample is taken.

(2) Subsection (1) does not apply if—

(a) the person has been proceeded against for another indictable offence the charge of which has not been decided; or

(b) the person has been found guilty of another indictable offence, including an indictable offence dealt with summarily, whether before or after the commencement of this section; or

(c) the DNA sample and the results of the DNA analysis of the sample are required for the investigation of another indictable offence the person is reasonably suspected of having committed; or

(d) the person is not proceeded against for an indictable offence because he or she has been found unfit for trial because of mental illness.

(3) Subsection (1) does not apply if the DNA sample was taken under a forensic procedure consent and the person has not, under section 454(1)(g), limited the purpose for which the sample may be used under the consent.

(4) Subsection (1) does not apply to a DNA sample taken from a prisoner under section 487 or the results of a DNA analysis of the sample, other than to the extent subsection (1)(c) applies to the offence for which the person was imprisoned.

(5) For subsection (1), the results of a DNA analysis may be destroyed by deleting any information in QDNA that identifies the person from whom the DNA sample was taken with the results obtained by analysing the sample.

Division 5 DNA databases

491 State DNA database

(1) The commissioner may record information obtained by a DNA analysis of a DNA sample taken under this chapter in a database in Queensland that is approved by the commissioner (***QDNA***).

Not authorised—indicative only

Not authorised—indicative only

(2) The commissioner may also include in QDNA—

(a) information held by or for the commissioner and obtained by a DNA analysis of either of the following—

(i) a sample, including blood, taken before or after the commencement of this section;

(ii) a thing a police officer reasonably suspects is evidence of the commission of an offence; and

(b) information obtained under an arrangement made under section 533; and

(c) information obtained from a declared agency if there is no arrangement made under section 533 relevant to the information.

(3) If the commissioner considers it appropriate, the information may also be included in an appropriate QDNA index.

(4) If the commissioner considers it appropriate, the commissioner may—

(a) transfer information from one QDNA index to another QDNA index; or

(b) use information in one QDNA index for the purposes of another QDNA index; or

(c) compare information within a QDNA index; or

(d) compare information in one QDNA index with information in another QDNA index.

492 Transmitting information to the ACC

(1) The commissioner may transmit to the ACC information kept in QDNA for inclusion in the ACC database for the purpose of the ACC, on behalf of the commissioner—

(a) comparing the information; or

(b) comparing the information with other information supplied to the ACC by a declared agency.

(2) The comparison mentioned in subsection (1) may happen at any time.

(3) The commissioner may enter into an arrangement with the ACC about how, and in what circumstances, information transmitted to it by the commissioner may be compared, kept or otherwise managed.

(4) Subsection (1) is not dependent on the existence of an arrangement made under section 533.

493 Use of QDNA or ACC database

It is lawful for the commissioner to use QDNA or the ACC database for performing any function of the police service.

494 Limitation on use of results of DNA analysis

(1) The use of the results of a DNA analysis under section 489, 491(4), 492 or 493 is subject to—

(a) any limitation made under section 454(1)(g) that applies to that analysis; or

(b) section 479.

(2) The results of a DNA analysis must not be compared with the results of another DNA analysis that is in a QDNA index unless a table prescribed under a regulation permits the comparison.

(3) The table must not permit a comparison that is contrary to—

(a) any limitation made under section 454(1)(g) that applies to that analysis; or

(b) section 479.

(4) A regulation may exempt a comparison of the results of DNA analyses from subsection (2).

(5) A regulation may prescribe the types of QDNA indexes and the type of information that may be included in each index.

Not authorised—indicative only

Not authorised—indicative only

Part 6 Non-medical examinations

495 Application of pt 6

This part applies if a police officer is satisfied performing a non-medical examination on a person may provide evidence of the commission of an indictable offence.

496 Definition for pt 6

In this part—

authorised police officer means—

(a) if the police officer seeking approval under section 498(3)—

(i) holds rank below the rank of senior sergeant—a police officer of at least the rank of senior sergeant; or

(ii) holds the rank of senior sergeant or above—a police officer who is more senior than the police officer seeking approval; or

(b) in any case—

(i) the police officer in charge of a police station or police establishment; or

(ii) a police officer performing functions for the police service as a scientific officer or scenes of crime officer.

497 Commissioner may authorise police officer to perform non-medical examinations

(1) The commissioner may authorise a police officer to perform non-medical examinations.

(2) However, the commissioner may authorise a police officer only if the commissioner is satisfied the police officer—

(a) has the necessary experience or expertise to be able to perform the examinations; or

(b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

498 Examination if proceeding started against adult by arrest, notice to appear or complaint and summons

(1) This section applies if a police officer—

(a) starts or continues a proceeding for an indictable offence against an adult by arrest; or

(b) starts a proceeding for an indictable offence against an adult by notice to appear or complaint and summons.

(2) A police officer may detain the person for a reasonable time, of not more than 1 hour, to obtain the approval of an authorised police officer under subsection (3) to perform a non-medical examination on the person.

(3) A police officer may, with the approval of an authorised police officer, detain the person for the time reasonably necessary to perform the examination on the person and, if necessary, take the person to a place with appropriate facilities for performing the examination.

(4) Before approving the detention of the person, the authorised police officer must be satisfied performing the examination may provide evidence of the commission of an indictable offence.

(5) An authorised examiner may perform a non-medical examination on a person detained under an approval of an authorised police officer under this section.

499 Non-medical examination notice

(1) This section applies if a police officer—

(a) starts or continues a proceeding for an indictable offence against an adult by arrest and intends to release the person under section 377(2)(b); or

Not authorised—indicative only

Not authorised—indicative only

(b) decides to start, or continues, a proceeding for an indictable offence against an adult by notice to appear or complaint and summons;

and decides it is not necessary to immediately perform a non-medical examination on the person.

(2) With the approval of an authorised police officer, a police officer may, by written notice (***non-medical examination notice***) given to the person, require the person to report to a police officer at a stated police station or police establishment to enable an authorised examiner to perform a non-medical examination on the person.

(3) Before approving the issue of a non-medical examination notice, the authorised police officer must be satisfied performing the examination may provide evidence of the commission of an indictable offence.

(4) An authorised examiner may perform a non-medical examination on a person who attends at a police station or police establishment as required under a non-medical examination notice.

500 Requirements for non-medical examination notice

A non-medical examination notice—

(a) must require the person to report to a police officer at a stated police station or police establishment—

(i) within 7 days after the issue of the notice; or

(ii) on a stated day or within stated hours within 7 days after the issue of the notice;

to enable an authorised examiner to perform a non-medical examination on the person; and

(b) must state—

(i) it is an offence to fail to comply with the notice; and

(ii) that, before the examination is performed, the person must produce to a police officer satisfactory evidence of his or her identity; and

(c) must be given to the person—

(i) if section 499(1)(a) applies, with the notice to appear or summons mentioned in section 377(2)(b); or

(ii) if section 499(1)(b) applies, with the notice to appear or complaint and summons; and

(d) must be signed by the police officer giving the notice.

Part 7 Forensic procedures performed by doctors, dentists and forensic nurse examiners

Division 1 Preliminary

501 Application of pt 7

(1) This part applies to the performance of a forensic procedure by a doctor, dentist or forensic nurse examiner (each a ***forensic examiner***) under this chapter other than the taking of a DNA sample under part 5.

(2) Nothing in this part requires a person who has custody of an independent person mentioned in section 503(b) to deliver the independent person to the place where a forensic procedure is to be performed by a forensic examiner.

(3) Also, nothing in this part requires a police officer to allow a relevant person to telephone or speak to an independent person, or allow an independent person to be present while a forensic procedure is being performed by a forensic examiner—

Not authorised—indicative only

Not authorised—indicative only

(a) if the police officer reasonably suspects the independent person is an accomplice or accessory of the relevant person; or

(b) if the police officer considers that to do so is likely to result in—

(i) an accomplice or accessory of the relevant person taking steps to avoid apprehension; or

(ii) evidence being concealed, fabricated or destroyed; or

(iii) a witness being intimidated.

Division 2 Actions by police officers and presence of independent persons

502 When forensic examiner may be asked to perform forensic procedure

(1) A police officer may ask a forensic examiner to perform a forensic procedure on a person only if the performance of the procedure is authorised under a forensic procedure consent or a forensic procedure order.

(2) The police officer may ask a forensic nurse examiner to perform the forensic procedure only if the forensic nurse examiner is the same sex as the person who is to undergo the procedure.

(3) Subsection (2) does not apply if it is not reasonably practicable to ask a forensic nurse examiner of the same sex to perform the forensic procedure.

(4) If the forensic procedure is to be performed under a forensic procedure order, the police officer must give the forensic examiner a copy of the order.

Not authorised—indicative only

503 What person must be told before forensic examiner performs a forensic procedure

Before a forensic examiner performs a forensic procedure on a person, a police officer must tell the person—

(a) if the procedure is authorised under a forensic procedure order—a forensic procedure may be performed on the person without the person's consent because a forensic procedure order authorises its performance; and

(b) that the person has the right to have 2 people (each of whom is an ***independent person***) of his or her choice present while it is being performed; and

(c) that, for exercising the right mentioned in paragraph (b), he or she may—

(i) telephone or speak to a friend or relative to inform that person of his or her whereabouts and ask the person to be present while the procedure is being performed; and

(ii) telephone or speak to a lawyer and arrange, or attempt to arrange, for the lawyer to be present while the procedure is being performed.

504 Arrangements for attendance of independent person

(1) The police officer must delay performing the forensic procedure for a reasonable time to allow the relevant person to telephone or speak to a person mentioned in section 503(c).

(2) What is a reasonable time to delay performing the procedure to allow the relevant person to speak to an independent person will depend on the particular circumstances, including, for example, the relevant person's age and the nature of the proposed procedure.

(3) If the relevant person arranges for an independent person to be present, the police officer must delay performing the procedure for a reasonable time to allow the independent person to arrive.

Not authorised—indicative only

(4) What is a reasonable time to delay performing the procedure to allow the independent person to arrive will depend on the particular circumstances, including, for example—

(a) how far the independent person has to travel to the place where the forensic procedure is to be performed; and

(b) when the independent person indicated he or she would arrive at the place.

(5) The State is not responsible for paying any costs of the independent person's attendance.

(6) Unless special circumstances exist, a delay of more than 2 hours may be unreasonable.

505 Speaking to and presence of independent person

(1) This section applies if the independent person arrives.

(2) If the relevant person asks to speak to the independent person, the investigating police officer must—

(a) as soon as practicable, provide reasonable facilities to enable the relevant person to speak to the independent person; and

(b) if the relevant person is a child and it is reasonably practicable to do so—allow the relevant person to speak to the independent person in circumstances in which the conversation can not be overheard; and

(c) in any case—if the independent person is a lawyer and it is reasonably practicable to do so, allow the relevant person to speak to the lawyer in circumstances in which the conversation can not be overheard.

(3) If the relevant person asks that the independent person be present while the forensic procedure is being performed, the investigating police officer must allow the independent person to be present and give advice to the relevant person during the performance of the procedure.

506 Absence of independent person does not affect lawfulness of custody etc.

(1) This section applies if a relevant person wishes to have an independent person present while a forensic procedure is being performed on the person and—

(a) after having indicated that he or she is willing and able to attend—the independent person fails to attend within a reasonable time; or

(b) evidence is likely to be lost or destroyed if the forensic procedure is delayed to allow the independent person to attend.

(2) The lawfulness of the detention in custody of the relevant person or of the performance of the forensic procedure is not affected by the absence, while the procedure is being performed, of the independent person.

507 When police officer may exclude independent person

(1) If a police officer considers an independent person is unreasonably interfering with the performance of a forensic procedure, the police officer may exclude the independent person from being present while the procedure is being performed.

(2) Before excluding the independent person, the police officer must—

(a) warn the person not to unreasonably interfere with the performance of the procedure; and

(b) tell the person that he or she may be excluded from being present if he or she continues to unreasonably interfere with the performance of the procedure; and

(c) give the person 1 opportunity to stop unreasonably interfering.

Not authorised—indicative only

Not authorised—indicative only

508 Action by police officer if independent person excluded

(1) This section applies if a police officer excludes an independent person from being present while a forensic procedure is being performed on a person.

(2) The police officer must—

(a) advise the person that he or she may telephone or speak to another independent person, to ask the person to be present while the procedure is being performed; and

(b) if the person arranges for another independent person to be present—delay the performance of the procedure for a reasonable time to allow the other independent person to be present while the procedure is being performed.

(3) Also, the police officer must arrange for someone else to be present while the procedure is being performed if the person on whom the procedure is being performed—

(a) is a child or a person with impaired capacity; and

(b) has not arranged for another independent person to be present while the procedure is being performed.

Division 3 Performing forensic procedures

509 Doctor's powers

(1) This section applies if a police officer asks a doctor under section 502 to perform a forensic procedure on a person.

(2) The doctor may perform a forensic procedure that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

(3) If the doctor is performing an intimate forensic procedure and considers it reasonably necessary to also perform a non-intimate forensic procedure or a medical examination the doctor may also perform a non-intimate forensic procedure or

a medical examination on the person that may provide evidence of the commission of the offence.

(4) The doctor may act under subsection (3) whether or not it is necessary to do so to enable the doctor to perform the intimate forensic procedure.

509A Forensic nurse examiner's powers

(1) This section applies if a police officer asks a forensic nurse examiner to perform a forensic procedure on a person under section 502.

(2) The forensic nurse examiner may perform a forensic procedure that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

(3) If the forensic nurse examiner is performing an intimate forensic procedure and considers it reasonably necessary to also perform a non-intimate forensic procedure, the forensic nurse examiner may also perform a non-intimate forensic procedure on the person that may provide evidence of the commission of the offence.

(4) The forensic nurse examiner may act under subsection (3) whether or not it is necessary to do so to enable the forensic nurse examiner to perform the intimate forensic procedure.

510 Dentist's powers

(1) This section applies if a police officer asks a dentist to perform a forensic procedure on a person under section 502.

(2) The dentist may perform a forensic procedure to the extent mentioned in section 446 that may provide evidence of the commission of the offence to which the forensic procedure consent or forensic procedure order relates.

Not authorised—indicative only

Not authorised—indicative only

511 Samples and results of analysis to be given to person

(1) A forensic examiner who takes a sample or other thing from another person in performing an intimate forensic procedure under this chapter must give the other person, or someone nominated by the person, a part of the sample or thing or an equivalent sample or thing for the other person's own purposes.

(2) However, subsection (1) does not apply if—

(a) it is not practicable to give a part of the sample or thing or an equivalent sample or thing to the other person; or

Example—

The size of the sample taken is too small to effectively provide the person with an equivalent sample.

(b) in the case of a sample, an equivalent sample for the purpose may be taken from the other person's body at any time.

Example—

a sample of blood taken for DNA analysis

(3) Also, if a doctor or forensic nurse examiner considers complying with subsection (1) may be inappropriate because, for example, the part or equivalent sample or thing may be used to, or could, transmit a communicable disease, the doctor or forensic nurse examiner may instead send, at the other person's expense, the part or equivalent sample or thing to a doctor nominated by the other person or by the other person's lawyer for safe custody.

(4) If the other person or the other person's lawyer does not nominate a doctor, the doctor or forensic nurse examiner taking the sample or thing need not provide the part or equivalent sample or thing and the part or equivalent sample or thing intended to be given to the other person may be destroyed.

(5) As soon as reasonably practicable after a police officer is given the results of an analysis conducted using a sample or other thing taken as mentioned in subsection (1), the police

officer must give the person to whom the results relate, or someone nominated by the person, a copy of the results.

Part 8 Matters relating to performing forensic procedures

512 Right to interpreter

(1) This section applies if a police officer reasonably suspects a relevant person is unable, because of an inadequate knowledge of the English language or a physical disability, to speak with reasonable fluency in English.

(2) Before a qualified person performs a forensic procedure under a forensic procedure consent or a forensic procedure order, the police officer must arrange for the presence of an interpreter and delay performing the procedure until the interpreter is present.

513 Power to analyse samples

(1) It is lawful for a person to analyse a sample, substance, impression, photograph or other thing taken under this chapter.

(2) It is lawful for a police officer to keep the thing and the results of the analysis for use in a proceeding for an offence.

(3) It is lawful for the commissioner to use the thing or results of the analysis for performing any function of the police service.

(4) This section is subject to section 474 and part 5, division 4.

514 Order for person who fails to comply with reporting notice

(1) This section applies if a police officer reasonably believes that a person has failed to comply with a reporting notice.

Not authorised—indicative only

Not authorised—indicative only

(2) A police officer may apply to a magistrate in the approved form for an order authorising a police officer to detain the person to perform any forensic procedure to which the reporting notice relates for the time reasonably necessary to perform the procedure.

(3) A magistrate may make the order if the magistrate is satisfied on the balance of probabilities that the person failed to comply with a reporting notice and making the order is justified in the circumstances.

(4) The person named in the application is not entitled to be given notice of, or to be heard on, the application.

(5) A qualified person for the forensic procedure to which the order relates may perform the procedure on the person.

(6) In this section—

reporting notice means an identifying particulars notice, DNA sample notice or non-medical examination notice.

515 Detention for performing forensic procedure

To give effect to an order made under section 514(3), a police officer may detain the person for—

(a) 1 hour; or

(b) a longer reasonably necessary time, having regard to the particular circumstances.

516 General power for performing forensic procedure

(1) This section applies for performing a forensic procedure under this chapter.

(2) A police officer may give any reasonably necessary directions for ensuring the procedure is performed.

(3) If the procedure is being performed under a forensic procedure consent, it is not an offence for the person who gave the consent or the person to whom it relates to fail to comply with a direction given under subsection (2).

(4) In performing the forensic procedure, a qualified person may use any equipment necessary for the purpose.

517 Help with, and use of force for, performing forensic procedure

(1) This section applies if a qualified person may perform a forensic procedure on a person.

(2) The qualified person may ask another person to give reasonably necessary help.

(3) If the forensic procedure is an intimate forensic procedure, the person asked to help must be—

(a) a person of the same sex as the person who is to undergo the procedure; or

(b) another doctor, dentist or forensic nurse examiner;

unless a person mentioned in paragraph (a) or (b) can not reasonably be called on.

(4) It is lawful for the qualified person and the person helping to use reasonably necessary force for performing the procedure.

518 General power to require further attendance

(1) This section applies if a person attends at a stated place as required by an order, requirement or direction (***original direction***) to have a forensic procedure performed on the person and a police officer considers it is not reasonably practicable to perform the forensic procedure because—

(a) a qualified person who may perform the procedure is not available to perform the procedure; or

(b) equipment required to perform the procedure is not available at the place; or

(c) for another reason it is impracticable to perform the procedure.

(2) A police officer may direct the person (***later direction***) to attend the place or another place for the performance of the

Not authorised—indicative only

Not authorised—indicative only

relevant forensic procedure at a stated reasonable time on a stated reasonable day.

(3) A later direction has effect as an extension of the original direction.

519 Protecting the dignity of person in performing a non-intimate forensic procedure

(1) If it is reasonably necessary for performing a non-intimate forensic procedure on a person, a police officer may ask the person to remove stated items of the person's clothing.

(2) Subsection (3) applies if a direction under section 516(2) relating to a non-intimate forensic procedure requires a person to remove stated items of the person's clothing.

(3) If it is reasonably necessary for clothing other than outer garments to be removed, the police officer—

(a) must not require the person to remove more clothing than is necessary for the procedure to be performed; and

(b) if reasonably practicable, must ensure the procedure is not performed—

(i) in the presence of someone whose presence is not required while the procedure is being performed; or

(ii) where someone not involved in performing the procedure can see the procedure being performed.

520 Effect of withdrawal of consent

(1) This section applies if a forensic procedure is being performed under a forensic procedure consent.

(2) If the person who gave the consent withdraws the consent, the person performing the procedure and any person helping that person must immediately stop performing the procedure.

(3) Subsection (4) applies if the procedure is to be, or is being, performed on—

(a) a child under 14 years; or

(b) a person with impaired capacity and the consent was given for the person by a parent of the person.

(4) The person who consented to the procedure being performed is taken to have withdrawn the consent if the child or person with impaired capacity objects to the performance of the procedure or resists while the procedure is being performed.

(5) Withdrawal of consent does not affect the admissibility in evidence of—

(a) anything observed, taken or collected before the consent was withdrawn; or

(b) an analysis done on anything taken or collected before the consent was withdrawn; or

(c) anything else done under this chapter in relation to a thing mentioned in paragraph (a) or an analysis mentioned in paragraph (b).

521 Powers under this part are additional to other powers

The powers a person has under this part are additional to, and are not limited by, the powers the person otherwise has under this chapter.

Part 9 Corresponding forensic procedure orders

522 Definitions for pt 9

In this part—

appropriate person means—

(a) the person performing functions in relation to the police force or service of the Commonwealth or another State that correspond to the functions of the commissioner; or

(b) another authority prescribed under a regulation.

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Not authorised—indicative only

responsible Minister means a Minister of the Commonwealth or of another State responsible for the administration of a law that authorises the performance of any forensic procedure.

523 Arrangements with the Commonwealth and other States

The Minister may, for the State, enter into an arrangement with a responsible Minister providing for—

(a) the registration by the commissioner of orders for performing forensic procedures made under the law of the responsible Minister's jurisdiction (***corresponding forensic procedure orders***); or

(b) the registration of forensic procedure orders under the law of the responsible Minister's jurisdiction.

524 Registration of orders

(1) An appropriate person may apply to the commissioner for the registration, or the cancellation of registration, of a corresponding forensic procedure order.

(2) The application must be accompanied by a copy of the corresponding forensic procedure order, certified by the person who made it.

525 Effect of registration

On registration of a corresponding forensic procedure order by the commissioner, the order has effect and may be enforced as if it were a forensic procedure order made under this chapter.

Part 10 Offences

526 Unlawful supply of destroyable DNA sample

(1) A person must not unlawfully supply a destroyable DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the ACC database knowing that the material was a destroyable DNA sample.

Maximum penalty—2 years imprisonment.

(2) In this section—

destroyable DNA sample means a DNA sample for which the time in which it must be destroyed under section 490 has passed.

527 Unlawful supply of DNA sample

(1) A person must not unlawfully supply a DNA sample to another person for DNA analysis for the purpose of including the results of the analysis in QDNA or the ACC database.

Maximum penalty—2 years imprisonment.

(2) In this section—

a DNA sample means a DNA sample that is not related to the performance at any time of a function of the police service or a function authorised under this chapter.

528 Unlawful use of stored information

(1) A person must not access information stored in QDNA or the ACC database (***stored information***) other than to perform a function of the police service or a function authorised under this chapter.

Maximum penalty—2 years imprisonment.

(2) Subsection (1) does not apply to—

Not authorised—indicative only

Not authorised—indicative only

(a) stored information that can not be used to discover the identity of any person; or

(b) accessing information stored in the ACC database if the access is authorised under another law.

529 Unlawful matching of DNA analysis results

(1) A person must not knowingly do anything that results in a DNA record being compared with another DNA record, other than as permitted under this chapter.

Maximum penalty—2 years imprisonment.

(2) Subsection (1) applies whether or not the DNA record is compared with DNA records kept on the same or a separate part of QDNA or the ACC database.

(3) It is not an offence to match DNA records in contravention of subsection (1) only for the purpose of administering QDNA or the ACC database.

(4) In this section—

DNA record means a record on QDNA or the ACC database of the results of a DNA analysis.

530 Unlawful recording of identifying information on QDNA

(1) A person must not knowingly cause identifying information about a person that is obtained from a DNA sample taken from the person under this chapter to be recorded in QDNA after the time the sample to which the information relates is required under section 490 to be destroyed.

Maximum penalty—2 years imprisonment.

(2) In this section—

identifying information, about a person, means information that identifies the person.

531 Unlawful retention of results of DNA analysis in QDNA

(1) A person must not wilfully retain in QDNA the results of a DNA analysis after the time the results are required to be destroyed under section 490.

Maximum penalty—2 years imprisonment.

(2) A person does not commit an offence against subsection (1) if the results of the DNA analysis have been destroyed as mentioned in section 490(5).

532 Unlawful disclosure of information

(1) A person who has access to information stored in QDNA or the ACC database must not unlawfully disclose the information to anyone else.

Maximum penalty—2 years imprisonment.

(2) A person may only disclose information stored in QDNA or the ACC database for one or more of the following purposes—

(a) to perform a function of the police service;

(b) for a purpose authorised under this or another Act;

(c) in accordance with an arrangement made under section 523 or 533;

(d) to make the information available, as permitted under a regulation, to the person to whom the information relates;

(e) to administer QDNA or the ACC database;

(f) for a coronial inquest or investigation.

(3) This section does not apply to information that can not be used to discover the identity of a person.

Not authorised—indicative only

Not authorised—indicative only

Part 11 Other provisions

533 Ministerial arrangements

(1) The Minister may, for the State, make an arrangement with a declared agency, or a responsible Minister of another jurisdiction, relating to any of the following—

(a) access by the declared agency or an entity of the other jurisdiction to DNA material held by the commissioner;

(b) access by the commissioner to DNA material held by a declared agency or an entity of the other jurisdiction;

(c) the use by the declared agency, an entity of the other jurisdiction or the commissioner of the DNA material.

(2) An arrangement may recognise that access to, and comparison of, the results of DNA analyses may be by use of the ACC database.

(3) The commissioner may, under an arrangement made under this section, provide access to DNA material held by the commissioner or stored on the ACC database to a declared agency or an entity of another jurisdiction.

(4) The commissioner may use DNA material to which the commissioner has access under an arrangement made under this section for performing any function of the police service.

(5) In this section—

DNA material means—

(a) the results of DNA analyses of things whether or not stored on a database; or

(b) things on which DNA analyses have been performed.

responsible Minister, of another jurisdiction, means a Minister of the Commonwealth or another State responsible for the administration of a law that authorises the taking of a sample for DNA analysis.

534 Application of other laws

(1) This chapter does not limit or exclude the operation of another law of the State relating to any of the following—

(a) performing a forensic procedure, including a procedure not mentioned in this chapter;

(b) without limiting paragraph (a), performing a breath analysis or a breath test or producing samples of blood or urine to determine the level of alcohol or drugs, if any, present in a person's body;

(c) taking forensic samples, including samples not mentioned in this chapter;

(d) taking identification evidence;

(e) searching a person;

(f) keeping or using anything taken or information obtained because of an activity described in paragraphs (a) to (e).

(2) It is lawful for a person to exercise a power under this chapter to do something mentioned in subsection (1) even though the other law specifies the way the power may or must be exercised.

535 Forensic material lawfully obtained in another jurisdiction

(1) This section applies to forensic material lawfully obtained under the law of another jurisdiction, whether before or after the commencement of this section.

(2) The material may be retained and used in this State for performing a function of the police service despite the material having been obtained in circumstances in which this Act would not authorise the material to be obtained, or under requirements that are less stringent, or otherwise substantially different to, the requirements that would apply under this Act.

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only

forensic material means anything obtained by performing a forensic procedure and includes the results of the analysis of the thing.

536 Evidentiary provision

(1) A certificate signed by the commissioner and stating any of the following is evidence of what it states—

(a) on a stated day and at a stated time a stated police officer authorised the performance of a stated forensic procedure on a stated person;

(b) on a stated day and at a stated time a stated police officer or a stated watch-house officer used a stated device to generate a digital image of a fingerprint, footprint or palm print from a stated person;

(c) a stated police officer was on a stated day an authorised examiner;

(d) a stated person was on a stated day a DNA sampler;

(e) how a stated thing taken from a stated person as the result of the performance of a stated forensic procedure was handled and stored;

(f) a stated person took or sent a stated thing taken as the result of the performance of a forensic procedure from a stated place to another stated place;

(g) a stated person received a stated thing taken as the result of the performance of a forensic procedure at a stated place;

(h) a certificate given under the *Evidence Act 1977*, section 95A relates to a stated DNA sample taken from a stated person.

Note for subsection (1)(b)—

See section 650 for the power of a watch-house officer to take a person's identifying particulars.

(2) If, in a criminal proceeding, the prosecuting authority intends to rely on the certificate, it must at least 20 business days

before the hearing day, give a copy of the certificate to the defendant or the defendant's lawyer.

(3) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 15 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.

(4) If the defendant acts under subsection (3), the certificate stops being evidence of the matter to be challenged.

(5) In this section—

hearing day means the day the hearing of the criminal proceeding starts.

prosecuting authority means the entity responsible for prosecuting the criminal proceeding.

Chapter 18 Blood and urine testing of persons suspected of committing sexual or other serious assault offences

Part 1 Preliminary

537 Purpose of ch 18

The purpose of this chapter is to help ensure victims of particular sexual offences and serious assault offences, and certain other persons receive appropriate medical, physical and psychological treatment by authorising—

(a) the taking of blood and urine samples from a person a police officer reasonably suspects has committed the relevant offence; and

Not authorised—indicative only

Not authorised—indicative only

(b) the analysis of the samples to find out whether the person may have transmitted a relevant disease to the victim.

538 Application of ch 18

(1) This chapter applies in relation to the following offences against the Criminal Code (***chapter 18 offences***), but only if semen, blood, saliva or another bodily fluid may have been transmitted into the anus, vagina, a mucous membrane, or broken skin of a victim of the offence—

(a) rape;

(b) a sexual assault involving penetration of a penis into the victim's mouth;

(c) incest committed against a child under 12;

(e) carnal knowledge of a child under 12;

(f) abuse of a person with an impairment of the mind involving penetration of a penis into the victim's mouth;

(g) a serious assault if—

(i) blood, saliva or another bodily fluid has penetrated, or may have penetrated, the victim's skin; or

(ii) blood, saliva or another bodily fluid has entered, or may have entered, a mucous membrane of the victim.

Note—

For the offences, see the Criminal Code, sections 215 (Carnal knowledge with or of children under 16), 216 (Abuse of persons with an impairment of the mind), 222 (Incest), 340 (Serious assaults) and 349 (Rape).

(2) This chapter also applies to a person other than the victim if semen, blood, saliva or another bodily fluid may have been transmitted to the person during or soon after the commission of a chapter 18 offence.

(3) However, this chapter does not apply to an assault that involves—

(a) the penetration of the anus or vagina by an object other than a penis; or

(b) the transfer of blood or another bodily fluid in a way that does not penetrate the anus, vagina, a mucous membrane or the skin of a victim; or

(c) spitting saliva onto intact skin.

539 Public Records Act does not apply to this chapter

The Public Records Act does not apply to activities or records under this chapter to the extent that Act would otherwise enable the identity of a person in relation to whom a disease test order is made or of a victim of a chapter 18 offence to be disclosed.

Part 2 Taking blood and urine samples

540 Application for order for blood and urine testing of person

(1) This section applies if a police officer arrests a person (***relevant person***) the police officer reasonably suspects has committed a chapter 18 offence.

(2) A police officer may apply to a magistrate or, if the relevant person is a child, the Childrens Court for an order (***disease test order***) authorising the taking of a sample of blood and urine from the relevant person.

(3) The application must be written and state the grounds on which it is made.

(4) Before the application is made, the police officer must give the relevant person a copy of the application and inform the person that he or she has the right to be represented by a lawyer at the hearing of the application.

Not authorised—indicative only

Not authorised—indicative only

(5) The magistrate may refuse to consider the application unless the police officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

541 Notice to be given of application for disease test order for child

(1) This section applies if a police officer applies under section 540 for a disease test order for a child.

(2) The police officer must give notice of the application to—

(a) the child; and

(b) a parent of the child, unless a parent can not be found after reasonable inquiry; and

(c) the chief executive (communities) or a person, nominated by that chief executive for the purpose, who holds an office within the department for which that chief executive has responsibility.

542 Disease test order

(1) This section applies to the consideration of an application for a disease test order.

(2) The magistrate or Childrens Court—

(a) must hear and decide the application with as little delay as possible and in the absence of the public; and

(b) may, in extraordinary circumstances, adjourn the application for no more than 24 hours to allow further evidence to be put before the magistrate or Childrens Court; and

(c) must not hear the application unless satisfied the relevant person has been informed of the right to be represented by a lawyer at the hearing.

(3) Also, the victim of the chapter 18 offence can not be compelled to give evidence at the hearing.

(4) If the relevant person, or the relevant person's lawyer, is present when the application is being heard, the relevant person or the lawyer may make submissions to the magistrate or Childrens Court, but not submissions that will unduly delay the consideration of the application.

(5) If the magistrate or Childrens Court is satisfied there are reasonable grounds for suspecting a chapter 18 offence has been committed and, in the circumstances of the offence, a blood and urine sample should be taken from the relevant person, the magistrate or Childrens Court may make a disease test order in relation to the relevant person.

543 What disease test order must state

A disease test order must state the following—

(a) the name of the relevant person;

(b) that the relevant person may be held in custody for the time reasonably necessary to enable a sample of the person's blood and a sample of the person's urine to be taken;

(c) that a police officer may take the relevant person to a place the police officer considers has appropriate facilities for taking the sample;

(d) that a doctor or a prescribed nurse may take a blood sample and a urine sample from the relevant person.

544 Appeal against disease test order

(1) A relevant person may appeal against a disease test order to the District Court.

(2) The appeal—

(a) must be filed without delay; and

(b) does not stay the operation of the disease test order, unless the court otherwise orders.

Not authorised—indicative only

Not authorised—indicative only

(3) The court may not order a stay of a disease test order of more than 48 hours from the time the order appealed against is made.

(4) The court must hear and decide the appeal—

(a) within 48 hours after the order appealed against is made; and

(b) in the absence of the public; and

(c) without adjourning the appeal.

(5) If the relevant person, or the relevant person's lawyer, is present when the appeal is being heard, the relevant person or the lawyer may make submissions to the court, but not submissions that will unduly delay the consideration of the appeal.

(6) The court may allow or refuse to allow the appeal.

545 Taking blood and urine samples

(1) A police officer may ask a doctor or prescribed nurse to take a blood sample and a urine sample from a relevant person under a disease test order.

(2) When asking the doctor or nurse to take the sample, the police officer must produce for the doctor's or nurse's inspection a copy of the disease test order for the relevant person.

(3) It is lawful for the doctor or nurse to take a blood sample from the relevant person or ask the person to provide a urine sample.

(4) If help is needed for taking the sample, the doctor or nurse may ask other persons to give reasonably necessary help.

(5) It is lawful for the doctor or nurse and a person helping the doctor or nurse to use reasonably necessary force for taking the sample.

(6) The doctor or nurse must immediately send the sample to a health agency with appropriate facilities for testing the sample for relevant diseases.

Part 3 General

546 Analysis of blood and urine samples

(1) It is lawful for an officer of the health agency to analyse, or arrange for someone else to analyse, a blood sample or urine sample sent to a health agency under section 545.

(2) Also, it is lawful for an officer of the health agency to destroy blood or urine from a sample if it is not used for the analysis or a further analysis and the sample or any part of the sample used for the analysis.

547 Restriction on disclosure of results of analysis

(1) A person who conducts an analysis of a blood sample or urine sample under this chapter must not disclose the results of the analysis to any person other than the following—

(a) the victim of the chapter 18 offence;

(b) the relevant person;

(c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person;

(d) a person providing counselling for the victim of the offence or the relevant person;

(e) a person, nominated by the chief executive (health), who, as part of the person's duties, requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) A person to whom information is disclosed under subsection (1) must not disclose information obtained under this chapter to a person other than—

(a) the victim of the chapter 18 offence; or

(b) the relevant person; or

Not authorised—indicative only

Not authorised—indicative only

(c) a doctor or other health care professional involved in treating or providing care for the victim of the offence or the relevant person; or

(d) a person providing counselling for the victim of the offence or the relevant person; or

(e) a person, nominated by the chief executive (health), who, as part of the person's duties requires knowledge of the results.

Maximum penalty—40 penalty units or 6 months imprisonment.

(3) Subsection (2) does not apply to the victim of the chapter 18 offence or the relevant person, unless the disclosure is—

(a) a public disclosure through the mass media by the victim of the results of the analysis and the identity of the relevant person; or

(b) a public disclosure through the mass media by the relevant person of the results of the analysis and the identity of the victim.

548 Certain evidence inadmissible

In a proceeding, the making of an application for a disease test order or the results of an analysis of a blood or urine sample under this chapter are not admissible in evidence.

Chapter 18A Breath, saliva, blood and urine testing of persons suspected of committing particular assault offences

Part 1 Preliminary

548A Purposes of ch 18A

The purposes of this chapter are to allow for the following things to happen, by applying the Road Use Management Act, section 80 to the extent provided for in this chapter—

(a) the taking of specimens of breath, saliva, blood and urine from persons suspected of committing a relevant assault offence;

(b) the testing of the specimens;

(c) the production of certificates for use as evidence in proceedings for relevant assault offences.

Note—

The Criminal Code, chapter 35A and the *Penalties and Sentences Act 1992*, part 5, division 2, subdivision 2, apply to the sentencing of offenders convicted of relevant assault offences committed in a public place while the offender was adversely affected by an intoxicating substance.

548B Interpretation provision for ch 18A

(1) In this chapter—

relevant assault offence means any of the following offences under the Criminal Code—

(a) grievous bodily harm under section 320;

(b) wounding under section 323;

Not authorised—indicative only

Not authorised—indicative only

(c) serious assault of a police officer under section 340(1)(b), with the circumstance of aggravation mentioned in section 340(1), penalty, paragraph (a);

(d) serious assault of a public officer under section 340(2AA), with the circumstance of aggravation mentioned in section 340(2AA), penalty, paragraph (a).

(2) A reference in this chapter to section 80, or a subsection of section 80, is a reference to the Road Use Management Act, section 80, or a subsection of the section.

(3) Words and expressions used in this chapter, to the extent the context permits, have the same meaning as they have for section 80.

Part 2 Application of section 80

548C Person suspected of committing relevant assault offence

(1) This section applies if a police officer—

(a) finds a person the officer reasonably suspects is committing, or has within the preceding 3 hours committed, a relevant assault offence; and

(b) reasonably suspects—

(i) the person is intoxicated; and

(ii) the relevant assault offence is being committed, or was committed, in a public place.

(2) A police officer may make a requirement under section 80(2) in relation to the person as if they were a person to whom section 80(2) applies.

548D Person arrested for relevant assault offence

(1) This section applies if a police officer—

(a) has arrested a person for committing a relevant assault offence; and

(b) reasonably suspects—

(i) the person is intoxicated; and

(ii) the relevant assault offence was committed in a public place.

(2) A police officer may make a requirement under section 80(8) in relation to the person as if they were a person to whom section 80(8) applies.

548E Application of s 80

(1) For sections 548C and 548D, section 80, other than subsections (2A), (11), (11A), (22) to (22D), (24) and (24A), applies in relation to the person.

(2) For applying section 80, the following apply—

(a) a matter or thing prescribed by regulation for section 80 is taken to also be prescribed by the regulation for the purposes of section 80 as applied under this chapter;

(b) a reference in section 80(6)(aa) to a person to whom section 79(2A), (2B), (2D), (2J), (2K) or (2L) refers is taken to be a reference to a person mentioned in section 548C;

(c) a reference to an offence mentioned in section 80(8) is taken to be a reference to a relevant assault offence;

(d) a reference to an offence against section 79 in section 80(16L) and (30) is taken to be a reference to a relevant assault offence;

(e) a requirement under section 80(10C) for a health care professional to give a specimen to a person as soon as practicable is taken to be a requirement for the health care professional to give the specimen to a police officer, and for the officer to give the specimen to the person, as soon as practicable;

(f) a requirement under section 80(20A) for a health care professional to give a specimen to a person is taken to be a requirement for the health care professional to give the

Not authorised—indicative only

Not authorised—indicative only

specimen to a police officer, and for the officer to give the specimen to the person, as soon as practicable;

(g) a reference in section 80 to—

(i) a subsection of the section is taken to be a reference to the subsection as applied by this section; and

(ii) a requirement made by a police officer under—

(A) subsection (2) is taken to be a reference to a requirement made by a police officer under the subsection as applied by section 548C; or

(B) subsection (8) is taken to be a reference to a requirement made by a police officer under the subsection as applied by section 548D.

Part 3 Miscellaneous

548F Relationship with other provisions and Acts

The powers of a police officer under section 80, as applied under this chapter, are additional to, and are not limited by, the powers the officer otherwise has under this Act or another Act.

Chapter 19 Other powers

Part 1 State buildings

Division 1 Preliminary

549 Meaning of *state building*

(1) A ***state building***—

(a) is—

(i) a building, or part of a building, owned or occupied by the State or a non-commercial authority of the State; or

(ii) a building, or part of a building, prescribed by regulation for the purpose of this definition; and

(b) includes the precincts of the building, or part of the building, under paragraph (a).

(2) If a state building is constituted by only part of a building, a reference to the state building includes the areas of the state building the State or a non-commercial authority of the State may lawfully use together with other owners or occupiers of the state building.

(3) A regulation may prescribe a building, or part of a building, to be a state building only if the building or part of the building is to be used for an activity with which the State is directly concerned.

(4) In this section—

precincts, of a building or part of a building, includes—

(a) a forecourt, or other similar area, used in conjunction or associated with the building or part of the building; and

(b) a yard, or other similar area, used in conjunction or associated with the building or part of the building; and

Not authorised—indicative only

Not authorised—indicative only

(c) if the building or part of the building has been prescribed by regulation under subsection (1)(a)(ii)—an area within the boundaries of the building or part of the building as identified in the regulation; and

(d) if the building or part of the building is aligned next to a public place—any wall, fence or other structure along the alignment; and

(e) any area above or below the foundations, walls, roof or other area of the building of part of the building.

Division 2 Screening of entrants to state buildings

550 Power to require name and address and reason for entry

(1) A police officer or protective services officer may require an entrant to a state building to state the following information—

(a) the entrant's name and address;

(b) the entrant's reason for being at, or about to enter, the building.

(2) However, subsection (1) applies only if the police officer or protective services officer reasonably suspects making the requirement is necessary for the security of the state building.

(3) Also, the police officer or protective services officer may require the entrant to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the entrant to be in possession of, or to otherwise be able to give, the evidence.

(4) This section does not limit or otherwise affect chapter 2, part 4, division 1 or part 5.

551 Use of electronic screening devices

(1) This section applies if the system for the security of a state building involves the use of 1 or more of the following electronic screening devices—

(a) a walk-through detector;

(b) an X-ray machine;

(c) a hand held scanner.

(2) A police officer or protective services officer may ask an entrant to the state building to do 1 or more of the following things—

(a) to walk through a walk-through detector;

(b) to pass the entrant's belongings through an X-ray machine;

(c) to allow the officer to pass a hand held scanner in close proximity to the entrant;

(d) to allow the officer to pass a hand held scanner in close proximity to the entrant's belongings.

552 Power to inspect entrant's belongings

(1) This section applies if—

(a) a police officer or protective services officer reasonably considers it necessary for the security of a state building to make a request under subsection (2) in relation to an entrant to the state building, or the entrant's belongings, whether or not the entrant or belongings have been subjected to electronic screening; and

(b) the officer tells the entrant the reasons for making the request.

(2) The police officer or protective services officer may ask the entrant to do 1 or more of the following things—

(a) allow the officer to inspect the entrant's belongings;

Not authorised—indicative only

Not authorised—indicative only

(b) remove 1 or more outer garments worn by the entrant as specified by the officer and allow the officer to inspect the garments;

(c) remove all articles from the entrant's clothing and allow the officer to inspect them;

(d) open an article for inspection and allow the officer to inspect it;

(e) allow the officer, or another adult assisting the officer, to touch a garment the entrant is wearing for the purpose of the officer inspecting the entrant's belongings;

(f) open a vehicle or a part of it for inspection and allow the officer to inspect it;

(g) remove an article from a vehicle as specified by the officer and allow the officer to inspect it;

(h) move a vehicle to, and park it in, a place specified by the officer;

(i) if the officer reasonably believes a belonging of the entrant is capable of concealing a proscribed thing—deposit the belonging in a place specified by the officer.

(3) Subsection (2)(e) applies only if the police officer or protective services officer, or another adult assisting the officer, is of the same sex as the entrant.

(4) In this section—

inspect, an article, includes handle the article, open it and examine its contents.

553 Safeguards for inspection of entrant's belongings

(1) A police officer or protective services officer conducting an inspection of an entrant's belongings under section 552 must—

(a) ensure, as far as reasonably practicable, the way the inspection is conducted causes minimal embarrassment to the entrant; and

(b) take reasonable care to protect the dignity of the entrant; and

(c) ensure the touching of a garment the entrant is wearing, under section 552(2)(e), is conducted only by a police officer or protective services officer, or another adult assisting the officer, who is of the same sex as the entrant.

(2) Also, if a police officer or protective services officer reasonably suspects it is necessary to protect the dignity of an entrant to a state building and it is reasonably practicable, the officer may ask the entrant to allow an inspection of the entrant's belongings under section 552(2) to be conducted out of public view, for example, in a room of the state building.

554 Direction to leave state building

(1) A police officer or protective services officer may direct an entrant, or group of entrants, to a state building to not enter, or to leave the building immediately, and to take the belongings of the entrant or group of entrants out of the building, if the officer reasonably suspects—

(a) the behaviour of the entrant or entrants is or has been disorderly, indecent, offensive or threatening to a person entering, at or leaving the building; or

(b) the entrant or entrants have not complied with a requirement under section 550; or

(c) the entrant or entrants have not complied with a request under section 551 or 552; or

(d) the entrant or entrants have no good and lawful reason to enter or be at the building.

Note—

See also sections 791 and 791B.

Not authorised—indicative only

Not authorised—indicative only

(2) However, a police officer or protective services officer must not give a direction under subsection (1) unless the officer reasonably suspects the direction is necessary to maintain the security of the state building.

(3) Also, a protective services officer must not give a direction under subsection (1)(c) if the entrant or entrants—

(a) tell the officer they—

(i) do not want an electronic screening device used in relation to their belongings, and are prepared to leave the building; or

(ii) do not want their belongings inspected, and are prepared to leave the building; and

(b) immediately leave the building with their belongings.

Note—

See also sections 633 and 633A.

(4) The entrant or entrants may tell the protective services officer a matter mentioned in subsection (3) before or after the officer starts to—

(a) use an electronic screening device in relation to the entrant or entrants under section 551; or

(b) conduct an inspection of the belongings of the entrant or entrants under section 552.

(5) Also, a police officer or protective services officer must not give a direction under subsection (1) that interferes with a person's right of peaceful assembly unless the direction is reasonably necessary in the interests of—

(a) public safety; or

(b) public order; or

(c) the protection of the rights and freedoms of other persons.

Examples of rights and freedoms for subsection (5)(c)—

- the rights and freedoms of the public to enjoy the place

- the rights of persons to carry on lawful business in or in association with the place

(6) Without limiting subsection (1), a direction under the subsection may require an entrant, or group of entrants, to a state building to do 1 of the following things—

(a) leave the building and not return or be within the building within a stated reasonable time of not more than 24 hours;

(b) leave a stated part of the building and not return or be within the stated part of the building within a stated reasonable time of not more than 24 hours;

(c) move from a particular location at or near the building for a stated reasonable distance, in a stated direction, and not return or be within the stated distance from the building within a stated reasonable time of not more than 24 hours.

(7) The police officer or protective services officer must give the entrant or group of entrants the reasons for the direction.

(8) This section does not limit or otherwise affect—

(a) chapter 2, part 4, division 1; or

(b) chapter 2, part 5.

555 Power of police officers to search person or vehicle without warrant not affected

This division does not limit or otherwise affect the powers a police officer has under this Act to search a person or vehicle without a warrant.

Division 3 Other powers relating to screening

556 Seizure of proscribed thing

A police officer or protective services officer may seize a proscribed thing found in the possession of an entrant to a

Not authorised—indicative only

Not authorised—indicative only

state building, unless the entrant has a reasonable excuse for possessing the proscribed thing in the state building.

Example of reasonable excuse for possessing proscribed thing in a state building—

possessing a proscribed thing for use in the course of the person's trade, business or calling in a state building

Note—

See section 622.

557 Refusal of entry to and removal from state building

(1) This section applies if a police officer or protective services officer reasonably suspects—

(a) the behaviour of an entrant to a state building is or has been disorderly, indecent, offensive or threatening to a person entering, at or leaving the building; or

(b) an entrant to a state building has not complied with a requirement under section 550; or

(c) an entrant to a state building has not complied with a request under section 551 or 552; or

(d) an entrant to a state building has no good and lawful reason to enter or be at the building.

(2) The police officer or protective services officer may—

(a) remove the entrant from the state building; and

(b) if the entrant is about to enter the state building—prevent the entrant from entering the state building.

Note—

See also section 615A.

558 Detention of entrants by protective services officers

(1) This section applies if a protective services officer reasonably suspects a person who is an entrant to a state building has committed an offence at or in connection with the building.

(2) The protective services officer may detain the person for the time reasonably necessary to give the person into the custody of a police officer.

(3) It is the duty of the protective services officer to release the person at the earliest reasonable opportunity if the person is no longer reasonably suspected of committing the offence for which the person was detained.

(4) Subsection (3) does not apply if the person is reasonably suspected of another offence, whether or not arising out of the circumstances of the offence for which the person was detained.

Division 4 Miscellaneous

559 Protective services officer must produce identity card unless in uniform

(1) This section applies if a protective services officer, other than a protective services officer who is in uniform, exercises a power under this part in relation to an entrant or group of entrants.

(2) The protective services officer must—

(a) produce the officer's identity card for inspection by the entrant or entrants before exercising the power; or

(b) display the officer's identity card so it is clearly visible to the entrant or entrants when exercising the power.

(3) However, if it is not reasonably practicable to comply with subsection (2), the protective services officer must produce the identity card for inspection by the entrant or entrants at the first reasonable opportunity.

(4) The failure of a protective services officer to comply with subsection (2) or (3) does not make the exercise of a power under this part unlawful.

(5) In this section—

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Not authorised—indicative only

identity card, of a protective services officer, means the identity card issued to the officer under the *Police Service Administration Act 1990*, section 5.21.

560 Relationship with other powers

This part does not limit or otherwise affect another Act or law, or any inherent jurisdiction, power or authority of a court or tribunal, that regulates the conduct or presence of a person in a court, tribunal or other state building.

Part 3 Powers relating to noise

Division 1 Noise abatement direction

576 Application of pt 3

(1) This part applies to an environmental nuisance caused by noise of a kind mentioned in section 578(1)(b), 579(1)(b) or 580(1)(b) or (2)(b) that is audible at or near any residential or commercial premises and is excessive in the circumstances.

(2) However, this part does not apply to an environmental nuisance caused by noise emitted from a place—

(a) while being used for an open-air concert or commercial entertainment; or

(b) by a public meeting under a permit under a law authorising the amplification or reproduction of sound by—

(i) any electrical or mechanical appliance, apparatus or device; or

(ii) another way; or

(c) while the place is being used by motor vehicles under a permit under a law.

Not authorised—indicative only

577 Complaint about noise

(1) A person may make a complaint, including an anonymous complaint, to a police officer about noise emitted from a place.

(2) As soon as practicable after the complaint is made, a police officer must investigate the complaint, or cause the complaint to be investigated, unless the officer believes the complaint is frivolous or vexatious.

(3) However, this section does not stop a police officer taking action under this part without a complaint in relation to excessive noise emitted from a motor vehicle on a road or in a public place.

578 How to decide what is excessive noise—noise emitted from a place

(1) This section applies if—

(a) a complaint has been made about noise; and

(b) the complaint relates to noise emitted from a place by—

(i) a musical instrument; or

(ii) an appliance for electronically producing or amplifying music or other sounds; or

(iii) a motor vehicle, other than a motor vehicle on a road; or

(iv) a gathering of people for a meeting, party, celebration or similar occasion; and

(c) a police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near residential or commercial premises; and

(d) section 579 does not apply.

(2) In deciding, for this part, whether the noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including—

Not authorised—indicative only

(a) the degree of interference the noise is causing or is likely to cause to the conduct of activities ordinarily carried out in the vicinity of the place from which the noise is being emitted; and

(b) the nature of the lawful uses permitted for premises in the vicinity of the place from which the noise is being emitted.

579 How to decide what is excessive noise—noise emitted by motorbike driven on a place that is not a road

(1) This section applies if—

(a) a complaint has been made about noise; and

(b) the complaint relates to noise emitted by a motorbike being driven on a place that is not a road; and

(c) a police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near residential or commercial premises.

(2) In deciding, for this part, whether the noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including—

(a) the degree of interference the noise is causing, or is likely to cause, to the conduct of activities ordinarily carried out in the vicinity of the place from which the noise is being emitted; and

(b) the nature of the lawful uses permitted for premises in the vicinity of the place from which the noise is being emitted.

580 How to decide what is excessive noise—noise emitted in other particular circumstances

(1) This section applies if—

(a) a complaint is made about noise; and

(b) the complaint relates to noise that—

(i) is emitted from a motor vehicle on a road or in a public place; and

(ii) is emitted by an appliance for electronically producing or amplifying music or other sounds including, for example, by a radio, CD player or other similar equipment for producing or amplifying music or other sounds that is in the motor vehicle; and

(c) the police officer attending in response to the complaint is reasonably satisfied the noise complained of is clearly audible at or near residential or commercial premises.

(2) This section also applies if—

(a) a police officer hears noise; and

(b) the noise is emitted from a motor vehicle in the circumstances mentioned in subsection (1)(b); and

(c) the police officer is satisfied that the noise is clearly audible at or near residential or commercial premises.

(3) In deciding, for this part, whether noise is excessive in the circumstances, the police officer may have regard to any relevant matters, including the degree of interference or annoyance the noise is causing, or is likely to cause, to persons in the vicinity of the road or public place.

Example—

The person may be causing interference or annoyance to patrons of a motel by continually driving past the motel with the volume of a radio in the car at an excessive level.

581 Powers of police officer to deal with excessive noise

(1) This section applies if a police officer is reasonably satisfied that noise to which this part applies is excessive in the circumstances.

(2) The police officer may enter the place without warrant.

(3) The police officer must give the person responsible for the noise a direction (***noise abatement direction***)—

Not authorised—indicative only

Not authorised—indicative only

(a) orally or in writing; or

(b) if the direction relates to noise emitted by a motorbike being driven on a place other than a road—by a notice in the approved form.

(4) Also, if the person to whom the direction is given under subsection (3)(b) is a child, a copy of the notice must be given to the child's parent or guardian if it is reasonably practicable to do so.

(5) A direction given under subsection (3)(a) must direct any person responsible for the noise, or for permitting the noise to be caused, to immediately abate the excessive noise from the place.

(6) A notice given to a person under subsection (3)(b) must direct the driver to immediately abate the excessive noise from the motorbike and include—

(a) the time the notice was given; and

(b) the name and other particulars of the person given the direction; and

(c) the particulars necessary to properly identify the motorbike; and

(d) a general description of the place or, if the noise abatement direction relates only to a part of the place, the part of the place to which the direction relates.

(7) Unless otherwise stated, the noise abatement direction applies to the whole of the place to which it relates.

(8) However, a notice given under subsection (3)(b) may be limited to a stated part of a place if the police officer giving the notice is satisfied, having regard, for example, to the size or topography of the place—

(a) the driving of the motorbike on the stated part of the place is appropriate; and

(b) another complaint about noise emitted from the motorbike is unlikely to be made if the motorbike is

driven on the place but not on the part of the place stated in the notice.

(9) For subsection (5), persons responsible for noise include—

(a) if the noise is being emitted from or by a motor vehicle—the person driving the motor vehicle; or

(b) if the noise is being emitted from another place—the person apparently in charge of the place.

582 Compliance with noise abatement direction

(1) A person to whom a noise abatement direction is given must—

(a) immediately comply with the direction; and

(b) refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates or, if the direction relates only to a part of the place, the stated part of the place, for the noise abatement period.

Maximum penalty—10 penalty units.

(2) A person who knows a noise abatement direction has been given must refrain from the emission, or contributing to the emission, of excessive noise from the place to which the direction relates or, if the direction relates only to a part of the place, the stated part of the place, for the noise abatement period.

Maximum penalty—10 penalty units.

(3) For applying subsection (1) or (2), it does not matter that noise emitted from a place in contravention of the subsection is not of the same level or nature of the excessive noise for which the noise abatement direction was given.

(4) In a proceeding for an offence against this section, it is not necessary to prove the noise abatement direction was given in response to a complaint about noise made to a police officer.

(5) In this section—

Not authorised—indicative only

Not authorised—indicative only

noise abatement period means—

(a) for a noise abatement direction given in relation to a motorbike being used on a place that is not a road—48 hours after the direction is given; or

(b) for any other noise abatement direction—96 hours after the direction is given.

583 Additional powers of police officers on later investigation

(1) This section applies if—

(a) a noise abatement direction has been given about a place; and

(b) within the noise abatement period as defined under section 582(5), a police officer is satisfied on further investigation that the police officer must again exercise the powers mentioned in section 581 about the same place or the same motor vehicle.

(2) A police officer may—

(a) without a warrant, enter the place from which the noise is being emitted; and

(b) in relation to the property that is or was being used to produce or contribute to the production of the noise—

(i) lock, seal or otherwise deal with it in a way to prevent its further use; or

(ii) seize and remove it from the place; or

(iii) make it inoperable by removing any part or parts and seize and remove the part or parts from the place; or

(iv) if it is a motorbike and section 80 applies—impound the motorbike under section 80.

(3) However, in exercising or attempting to exercise the powers, the police officer must take all reasonable steps to ensure the officer does as little damage as is practicable in the circumstances.

584 Offence to interfere with locked etc. property

(1) This section applies if a police officer locks, seals or otherwise deals with property under section 583(2)(b)(i).

(2) A person must not unlock, unseal or use the property during the noise abatement period, as defined under section 582(5), for the place where the property is found.

Maximum penalty for subsection (2)—100 penalty units.

585 Recovery of seized property

(1) Property seized by a police officer may be claimed by—

(a) the owner of the property or a person acting for the owner; or

(b) the person from whose possession the property was seized or someone acting for the person.

(2) The claim may be made only during stated hours on a business day after the end of the noise abatement period, as defined under section 582(5), for the place where the property is found.

(3) A police officer must not give seized property to a person claiming it unless the police officer is satisfied the claimant is—

(a) the owner of the property or the person from whose possession the property was seized; or

(b) a person acting for a person mentioned in paragraph (a).

(4) Nothing in this section prevents a police officer retaining seized property if the police officer reasonably suspects the property is evidence of the commission of an offence.

586 Recovery of costs of seizure etc.

(1) The State may recover as a debt owing to it the reasonable costs incurred by a police officer exercising powers under section 583.

Not authorised—indicative only

Not authorised—indicative only

(2) Subsection (1) does not apply to costs incurred if, because of section 583(2)(b)(iv), a police officer impounds a motorbike under chapter 4.

Note—

Chapter 4, part 6 makes provision about who is liable to pay the costs of removing and keeping a motorbike impounded because of the exercise of powers under this part.

587 General powers and role of community police officers

A community police officer may exercise powers under this part only in the community government or IRC area for which the officer is appointed under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

588 Power to require answers to questions

(1) This section applies if a police officer reasonably suspects that—

(a) an offence against this part has been committed; and

(b) a person may be able to give information about the offence.

(2) The police officer may require the person to answer a question about the offence.

Division 2 Noise abatement order

589 Noise abatement order—application for order

(1) This section applies if a person (the ***respondent***)—

(a) contravenes a noise abatement direction in relation to excessive noise emitted by a motorbike driven on a place other than a road; or

(b) is given 2 noise abatement directions within a period of 1 month in relation to excessive noise emitted by a

motorbike and the directions both relate to the driving of the motorbike on the same place which is not a road.

Example for subsection (1)(b)—

The driver of a motorbike is given 2 noise abatement directions, one on 1 July and the other on 5 July. Both directions relate to excessive noise emitted by a motorbike when being driven on the same place. An application may be made under this section for a noise abatement order even though the person does not contravene either direction.

(2) A police officer may apply for an order that the driving of the motorbike by the respondent be restricted in the way requested in the application (a ***noise abatement order***).

(3) The application must be made—

(a) if the respondent contravened a noise abatement direction mentioned in subsection (1)(a)—within 48 hours after the contravention; or

(b) if the second of 2 noise abatement directions mentioned in subsection (1)(b) was given to the respondent—within 48 hours after the second direction was given.

(4) The application must be made to the relevant court in the approved form but may be made to a magistrate in the way provided under section 800 and subsection (5) of this section.

(5) If the application is properly made to a magistrate under section 800, the magistrate must—

(a) order that a police officer may have the application brought on for hearing and decision in the relevant court and adjourn the application to that court; and

(b) give a copy of the application and the order to the clerk of the court of the relevant court.

(6) As soon as reasonably practicable after a date is set for hearing the application, a police officer must give notice of the application to—

(a) the respondent; and

(b) if the respondent is not the owner of the motorbike—the owner of the motorbike; and

Not authorised—indicative only

Not authorised—indicative only

(c) if a person mentioned in paragraph (a) or (b) is a child, the child's parent or guardian if it is reasonably practicable to do so; and

(d) if a person mentioned in paragraph (a), (b) or (c) is not the owner of the land on which the contravention happened, the owner of the land if it is reasonably practicable to do so.

(7) The notice must be in the approved form and state—

(a) the name and other particulars of the respondent; and

(b) the particulars necessary to properly identify the motorbike; and

(c) a description sufficient to identify the land on which the contravention happened and who owns the land; and

(d) that an application has been made to a stated court for an order to restrict the driving of a stated motorbike by the respondent in stated ways; and

(e) when and where the application is to be heard; and

(f) that if the respondent does not appear at the hearing, the application may be heard and decided in the respondent's absence.

(8) The notice may be combined with another notice given under this Act.

(9) In this section—

Magistrates Court, for an application brought against a child, means a Childrens Court constituted by a magistrate.

relevant court means the Magistrates Court for the Magistrates Court district, or division of the district, in which the noise abatement order was contravened.

590 Noise abatement order—making the order

(1) The relevant court may make a noise abatement order against the respondent if satisfied that—

(a) the respondent—

(i) has contravened a motorbike noise abatement direction; or

(ii) has been given 2 noise abatement directions in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of a motorbike on the same place which is not a road; and

(b) section 589 has been complied with.

(2) However, if the respondent has been charged with having committed an offence arising out of conduct on which the application is based and the proceeding on the charge has not been decided, the court must adjourn the application until the proceeding has been decided.

(3) The order must be in the approved form and state—

(a) the name and address of the respondent; and

(b) the particulars necessary to properly identify the motorbike; and

(c) the period, of not more than 2 years, for which the order is in force; and

(d) a description sufficient to identify the land on which the contravention happened and who owns the land; and

(e) any conditions the court considers appropriate to impose on the respondent in relation to the driving of the motorbike.

(4) Without limiting subsection (3)(e), the order may include conditions restricting the use of the motorbike including, for example, any of the following conditions—

(a) the hours of day during which the respondent may drive the motorbike on private property;

(b) the maximum length of time the respondent may drive the motorbike at any one time during those hours;

(c) any particular areas on private property that must be avoided by the respondent when driving the motorbike;

Not authorised—indicative only

Not authorised—indicative only

Example for paragraph (c)—

The respondent must not drive the motorbike within 100m of the boundaries of neighbours.

(d) the particular manoeuvres that must not be performed by the respondent when driving the motorbike.

(5) The respondent must not drive the motorbike in contravention of the noise abatement order.

Maximum penalty—40 penalty units.

(6) The owner of the motorbike must not knowingly permit the respondent to drive the motorbike in contravention of the noise abatement order.

Maximum penalty for subsection (6)—40 penalty units.

591 Noise abatement order—appeal against order

(1) An adult against whom a noise abatement order has been made may appeal against the order to the District Court within 28 days after the day the order is made.

(2) A child against whom a noise abatement order has been made may appeal against the order to the Childrens Court constituted by a judge within 28 days after the day the order is made.

(3) An appeal under subsection (1) or (2) is by way of rehearing from the start.

(4) A person may appeal against an order of the District Court or the Childrens Court constituted by a judge to the Court of Appeal within 28 days after the day the order is made.

Part 4 Powers relating to nuisance in moveable dwelling parks

592 Behaviour in moveable dwelling park causing serious nuisance

A person causes a serious nuisance in a moveable dwelling park if, while in the park, the person causes a serious nuisance to residents of, or anyone else in, the park.

Examples—

1 A person assaults a resident or someone else.

2 A person uses threatening or abusive language towards a resident or someone else.

3 A person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else.

4 A person causes substantial, unreasonable annoyance to a resident or someone else.

5 A person causes substantial, unreasonable disruption to the privacy of a resident or someone else.

6 A person wilfully damages property of a resident or someone else.

593 Power to enter moveable dwellings

A police officer may, without a warrant, enter a moveable dwelling in a moveable dwelling park if the officer reasonably suspects there is a person in the dwelling—

(a) causing a serious nuisance in the park; or

(b) who has just caused a serious nuisance in the park.

594 Initial direction about serious nuisance

(1) This section applies if a police officer—

(a) finds a person causing a serious nuisance in a moveable dwelling park; or

(b) reasonably suspects a person has just caused a serious nuisance in a moveable dwelling park.

Not authorised—indicative only

Not authorised—indicative only

(2) The police officer may—

(a) if subsection (1)(a) applies—direct the person to immediately stop causing the nuisance and also direct the person not to cause another serious nuisance in the park; or

(b) if subsection (1)(b) applies—direct the person not to cause another serious nuisance.

(3) The direction under subsection (2) (***initial nuisance direction***) may be given orally or by written notice.

595 Direction to leave park

(1) This section applies if—

(a) an initial nuisance direction is given to a person; and

(b) a police officer suspects on reasonable grounds—

(i) for an initial nuisance direction not to cause another serious nuisance—the person contravened the direction within 24 hours after the direction was given; or

(ii) in other cases—the person has contravened the direction.

(2) The police officer may direct the person to leave the moveable dwelling park and not re-enter it for a stated period, not longer than 24 hours.

(3) A direction under subsection (2) (a ***final nuisance direction***) may be given orally or by written notice.

Part 5 Powers for assisting coroners

596 Entry of place on suspicion of death or injury

(1) This section applies if a police officer reasonably suspects someone in a place is dead or in need of urgent medical treatment.

Example—

A police officer may form a reasonable suspicion because of a person's concerns about an elderly neighbour who has not been seen for several days and whose absence can not otherwise be explained.

(2) The police officer may enter the place to find out whether someone in the place is dead or in need of urgent medical treatment.

(3) If a person at the place is found dead or in need of urgent medical treatment, the police officer may remain at the place for only as long as is necessary to ensure that anything necessary to be done for the person is done.

Examples for subsection (3)—

1 It may be necessary for a body to be taken to a mortuary.

2 It may be necessary for an ambulance to be called to take a person to hospital.

3 It may be necessary for a police photographer to photograph a body or other thing that may help a coroner establish the cause of death of the person.

4 It may be necessary to take steps to secure the premises.

597 Powers for reportable deaths

(1) This section applies if—

(a) a police officer attends a place where there is the body of a deceased person; and

(b) the officer reasonably believes the person's death is a death that must, under the *Coroners Act 2003*, be reported to a coroner.

(2) The officer may arrange for the person's body to be taken to a mortuary where autopsies ordered by coroners are conducted.

Note—

See the *Coroners Act 2003*, section 18(2)(a) for the power of a police officer to give directions to a person taking the body to a mortuary.

(3) The officer may take reasonable steps to restrict entry to the place for as long as is necessary to arrange for the person's body to be taken to the mortuary.

Not authorised—indicative only

Not authorised—indicative only

(4) The officer may search for and seize anything at the place that the officer reasonably suspects may be relevant to an investigation of the death by a coroner.

(5) However, a police officer may not search the place under subsection (4) if the police officer reasonably believes the death was from natural causes.

(6) The officer may photograph the body, or anything else at the place that the officer reasonably suspects may be relevant to an investigation of the death by a coroner.

(7) The officer may stay on the place and re-enter it for the time reasonably necessary to do something permitted under this section.

598 Restricting entry to place to allow investigation

(1) This section applies if—

(a) a coroner is investigating a death at a place where—

(i) the death is believed to have happened; or

(ii) something that caused or contributed to the death is believed to have happened; and

(b) the place is not a crime scene; and

(c) the coroner directs a police officer to restrict entry to the place.

(2) The officer may take reasonable steps to restrict entry to the place by anyone other than—

(a) a police officer or another person who is helping the coroner investigate the death; or

(b) a person whose presence is needed to preserve life or property at the place; or

(c) someone who has the coroner's permission to be at the place.

(3) The officer must not restrict entry to the place for any longer than is necessary for the investigation.

(4) A person must not enter a place to which entry is restricted, unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—120 penalty units.

599 Coroner's search warrant

(1) A coroner may, on his or her own initiative, issue a search warrant for a place if the coroner reasonably suspects that there is evidence at the place that may be relevant to the coroner's investigation.

(2) The search warrant must state—

(a) that a police officer may exercise the powers mentioned in subsection (4) at the place; and

(b) brief particulars that identify the death that the coroner is investigating; and

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

(d) if the warrant is to be executed at night, the hours when the place may be entered; and

(e) the day and time the search warrant ends, being no more than 7 days after the search warrant is issued.

(3) The ways that a coroner may send the search warrant to a police officer include by fax or electronic communication.

(4) Under the search warrant, a police officer has—

(a) the powers described in section 157(1)(a) to (e) and (g); and

(b) power to seize a thing found at the place, or on a person found at the place, that the police officer reasonably suspects may be relevant to the coroner's investigation; and

Example of paragraph (b)—

a suicide note

(c) power to inspect, measure, photograph or film the place or anything at the place; and

Not authorised—indicative only

Not authorised—indicative only

(d) power to take a thing, or a sample of a thing, from the place for testing; and

(e) power to copy a document at the place; and

(f) power to require a person at the place to give the police officer reasonable help to exercise the powers mentioned in paragraphs (a) to (e).

(5) A police officer must comply with section 158 when executing the search warrant.

(6) A police officer must not exercise a power under subsection (4)(c) to (f) unless the police officer reasonably suspects that the exercise of the power is necessary for the coroner's investigation.

600 Dealing with seized things

(1) This section applies if a police officer seizes something under—

(a) section 597(4); or

(b) a search warrant issued under section 599.

(2) Having seized something, the officer may—

(a) move the thing from the place; or

(b) leave the thing at the place, but take reasonable action to restrict access to it; or

Examples of restricting access to a thing—

1 sealing a thing and marking it to show access to it is restricted

2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

(c) deal with the thing in another way that a coroner directs.

(3) If the police officer restricts access to a seized thing, a person must not tamper, or attempt to tamper, with the thing, or something restricting access to the thing, without the approval of a police officer.

Maximum penalty—120 penalty units.

601 Power to require information

(1) This section applies if—

(a) a police officer is helping a coroner to investigate a death; and

(b) the officer reasonably believes a person may be able to give information relevant to the investigation.

(2) The officer may require the person to give information relevant to the investigation.

(3) When making the requirement, the officer must inform the person that the person may—

(a) fail to give the information if the information would tend to incriminate the person; and

(b) seek legal advice before giving the information.

602 Use of evidence obtained under Coroners Acts

To remove doubt, it is declared that a thing obtained by a police officer under this part may be used in a criminal proceeding.

Part 5A Police banning notices

Division 1 Preliminary

602A Definitions for pt 5A

In this part—

extended police banning notice see section 602F(2).

initial police banning notice see section 602C(1).

police banning notice see section 602B.

relevant public place means each of the following—

(a) licensed premises;

Not authorised—indicative only

Not authorised—indicative only

(b) a public place in a safe night precinct;

(c) a public place at which an event is being held and liquor is being sold for consumption.

respondent, for a police banning notice, means the person named in the notice.

602B What is a *police banning notice*

(1) A ***police banning notice*** is a written notice that prohibits a stated person from doing, or attempting to do, any of the following—

(a) entering or remaining in stated licensed premises or a stated class of licensed premises;

(b) entering or remaining in a public place located in a safe night precinct;

(c) attending or remaining at a stated event, being held in a public place, at which liquor will be sold for consumption;

(d) entering or remaining in a stated area that is designated by its reasonable distance from, or location in relation to—

(i) premises mentioned in paragraph (a); or

(ii) a public place mentioned in paragraph (b); or

(iii) an event mentioned in paragraph (c).

(2) A police banning notice may prohibit a person from doing a thing mentioned in subsection (1) during stated days or at stated times.

Division 2 Initial police banning notice

602C Police officer may give initial police banning notice

(1) A police officer may give a police banning notice (an ***initial police banning notice***) to an adult.

(2) Before giving the initial police banning notice, the police officer must obtain the approval of a police officer of at least the rank of sergeant, unless the police officer giving the notice has that rank.

(3) The police officer giving the initial police banning notice or, if an approval is required under subsection (2), the approval, must be reasonably satisfied that giving the notice is necessary because—

(a) the respondent has behaved in a disorderly, offensive, threatening or violent way; and

Examples of disorderly, offensive, threatening or violent behaviour—

- assaulting or threatening to assault a person
- damaging property, attempting to damage property or threatening to damage property
- possessing a knife in contravention of the *Weapons Act 1990*, section 51
- stealing an item from a person or premises
- taking a photograph of a person using a toilet facility from under a cubicle door
- urinating, wilfully exposing genitals or being intoxicated in a public place in contravention of the *Summary Offences Act 2005*, section 7, 9 or 10
- using or possessing a dangerous drug
- wearing or carrying an item in contravention of the *Summary Offences Act 2005*, section 10C

(b) the respondent's behaviour was at, or in the vicinity of, a relevant public place; and

(c) the person's ongoing presence, or presence in the immediate future, at the relevant public place and any other place stated in the notice, poses an unacceptable risk of—

(i) causing violence at the places; or

(ii) impacting on the safety of other persons attending the places; or

Not authorised—indicative only

Not authorised—indicative only

(iii) disrupting or interfering with the peaceful passage, or reasonable enjoyment of other persons, at the places.

(4) The approval mentioned in subsection (2) may be sought and given verbally, including, for example, in person or by telephone, radio, internet or other similar facility.

602D Duration of initial police banning notice

An initial police banning notice—

(a) takes effect from the day and time the notice—

(i) is personally served on the respondent; or

(ii) is sent, under section 602G(1)(b), by electronic communication to a unique electronic address nominated by the respondent to a police officer; and

(b) continues in effect until—

(i) if the notice applies in relation to a stated event—the end of the day on which the event ends; or

(ii) otherwise—the end of the day stated in the notice that is no more than 1 month after the day the notice takes effect.

602E Notice to be explained

Before giving an initial police banning notice, the police officer giving the notice must explain, or cause to be explained, to the respondent—

(a) the duration and effect of the notice; and

(b) the consequences of contravening the notice; and

(c) an extended police banning notice may be given under division 3; and

(d) the initial police banning notice may be cancelled by a police officer under section 602JA; and

(e) the respondent may apply to the commissioner to amend or cancel the initial police banning notice under division 5.

Division 3 Extension of initial police banning notice by police officer

602F Extended police banning notice

(1) This section applies if an initial police banning notice has been given to the respondent for the notice.

(2) A police officer of at least the rank of senior sergeant may decide, on the officer's own initiative, to make 1 or more of the changes mentioned in subsection (3) to the initial police banning notice by giving the respondent a new police banning notice (an ***extended police banning notice***).

(3) For subsection (2), the changes are the following—

(a) extend the duration of the initial police banning notice to the end of a day that is no more than 3 months after the day the initial police banning notice took effect;

(b) state additional relevant public places;

(c) state additional days or times for the purposes of section 602B(2).

(4) Before making a decision under subsection (2), the police officer must be reasonably satisfied giving the extended police banning notice is necessary after considering the following matters—

(a) the respondent's behaviour (the ***relevant behaviour***) that led to the respondent being given the initial police banning notice;

Not authorised—indicative only

Not authorised—indicative only

(b) whether the respondent has been charged with an offence, a proceeding has been commenced, or an infringement notice has been issued, in relation to—

(i) the relevant behaviour; or

(ii) other behaviour of the respondent that the officer reasonably considers is similar to the relevant behaviour or involves violence to a person or property;

(c) whether the respondent is, or previously has been, subject to—

(i) a court banning order made under the *Penalties and Sentences Act 1992*, part 3B; or

(ii) a special condition mentioned in the *Bail Act 1980*, section 11(3);

(d) whether the respondent has previously received a police banning notice, other than a notice that has been cancelled;

(e) whether the respondent has been found guilty of an offence, if the officer reasonably considers the circumstances in which the offence was committed are similar to the relevant behaviour or involved violence to a person or property;

(f) the respondent's personal circumstances and the likely effect of giving the extended police banning notice on those circumstances;

(g) other matters the officer reasonably considers are related to the relevant behaviour.

(5) However, the police officer may decide to give an extended police banning notice only if the decision is made at least 3 days before the initial police banning notice stops having effect.

(6) The police officer must, when giving the respondent the extended police banning notice, also give written notice of the officer's reasons for the decision.

Division 4 General provisions about notices

602G How police banning notices may be given

(1) A police banning notice may be given by a police officer to the respondent for the notice—

(a) by personally serving the notice on the respondent; or

(b) by sending the notice by electronic communication to a unique electronic address nominated by the respondent to the police officer.

(2) However, a police officer must not give an initial police banning notice under subsection (1)(b) unless the respondent for the notice is in the presence of the officer when the notice is given.

(3) Unless the contrary is proved, a police banning notice given by a police officer under subsection (1)(b) is taken to have been received by the respondent for the notice on the day and at the time the notice is sent to the unique electronic address nominated by the respondent to the police officer.

602H Form of notice

A police banning notice must be in the approved form and state the following—

(a) the name and date of birth of the respondent for the notice;

(b) the day and time the notice starts;

(c) the day and time the notice ends;

(d) the acts that are prohibited by the notice;

(e) if the notice is an initial police banning notice—an extended police banning notice may be given under division 3;

(f) the police banning notice may be cancelled by a police officer under section 602JA;

Not authorised—indicative only

Not authorised—indicative only

(g) that a respondent may apply to the commissioner to amend or cancel the notice and the process for seeking amendment or cancellation;

(h) that it is an offence to contravene the notice;

(i) that a police officer may detain and photograph the respondent;

(j) that an image of the respondent may be attached to the notice and distributed under chapter 19, part 5B.

602I Written record for notices

(1) This section applies to a police officer who—

(a) approves the giving of an initial police banning notice; or

(b) gives an extended police banning notice.

(2) The police officer must make a written record of the following—

(a) the officer's decision to approve or give the police banning notice;

(b) the reason for the officer's decision;

(c) the date and time of the decision;

(d) the officer's name, rank, registered number and station.

(3) However, a police banning notice is not invalid merely because the approval is not in writing, if the police officer makes the written record as required under subsection (2) at the first reasonable opportunity after the notice is given.

602J Actions not prohibited by notice

Despite section 602B, a police banning notice does not prohibit the respondent for the notice from entering or remaining in the respondent's residence, place of employment or place of education.

602JA Cancellation of police banning notices by police officers

(1) A police officer of at least the rank of senior sergeant may decide, at any time and on the officer's own initiative, to cancel a police banning notice.

(2) Before making a decision under subsection (1), the police officer must be reasonably satisfied, having regard to the circumstances in which the police banning notice was given that—

(a) the notice should not have been given to the respondent; or

(b) the notice is causing, or will cause, undue hardship to the respondent or a member of the respondent's family.

602K Amendment or cancellation if court banning order made

(1) This section applies if the commissioner receives a court banning order—

(a) for a person who is the respondent named in a police banning notice; and

(b) that states the court's decision about the cancellation or amendment of the notice.

Note—

A proper officer of a court must give a copy of a banning order to the commissioner under the *Penalties and Sentences Act 1992*, section 43M.

(2) The commissioner must ensure that, as soon as practicable, but not more than 2 business days after receiving the banning order, the police banning notice is—

(a) cancelled; or

(b) amended in the way decided by the court.

(3) The commissioner must give the respondent a written notice stating the police banning notice has been amended or cancelled.

(4) In this section—

Not authorised—indicative only

Not authorised—indicative only

court banning order means a banning order made under the *Penalties and Sentences Act 1992*, part 3B, for a person by a court.

602L Procedure if police banning notice amended or cancelled

(1) This section applies if the commissioner (the ***decision-maker***) decides to amend or cancel, or a police officer (also the ***decision-maker***) decides to cancel, a police banning notice under this part.

Note—

For cancellation of a police banning notice by a police officer, see section 602JA. For amendment or cancellation of a police banning notice on application by the respondent, see division 5.

(2) The decision-maker must, as soon as reasonably practicable, give the respondent named in the police banning notice—

(a) if the decision-maker decides to amend the notice—a new police banning notice that includes the changes decided by the decision-maker; and

(b) if the decision-maker decides to cancel the notice—a written statement stating the notice has been cancelled and the day and time of the cancellation.

(3) Subsection (4) applies if an amended or cancelled police banning notice has, before the amendment or cancellation, been distributed to a person by a police officer under section 602U.

(4) The decision-maker must ensure the person is notified of the cancellation or amendment of the police banning notice.

Note—

Section 602W requires the person to destroy a police banning notice in particular circumstances.

602M Effect of cancellation of notice

A police banning notice cancelled by the commissioner or a police officer has no effect immediately after it is cancelled.

Division 5 Review of notices

602N Internal review for police banning notices

(1) A respondent for a police banning notice may apply, in the approved form, to the commissioner to amend or cancel the notice—

(a) if the application relates to an initial police banning notice—within 15 days after the notice takes effect; or

(b) otherwise—at any time.

(2) Without limiting subsection (1), the respondent may apply to the commissioner on the ground that the police banning notice—

(a) prevents the respondent from entering, remaining in, or using a mode of transport to travel to, the respondent's residence, place of employment or place of education; or

(b) is causing, or will cause, undue hardship to the respondent or a member of the respondent's family.

(3) The respondent must give the commissioner sufficient information with the application to enable the commissioner to decide the application.

602O Commissioner's decision about notices

(1) The commissioner must decide an application made under section 602N—

(a) as soon as reasonably practicable; and

(b) if the application relates to an extended police banning notice—no later than 5 business days after receiving the application.

(2) If the application relates to an extended police banning notice, the commissioner must give the respondent for the notice a QCAT information notice for the commissioner's decision on the application.

Not authorised—indicative only

Not authorised—indicative only

(3) In this section—

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

602P Review by QCAT

A person given, or entitled to be given, a QCAT information notice under section 602O(2) for a police banning notice may apply, as provided under the QCAT Act, to QCAT for review of the commissioner's decision.

Note—

The QCAT Act, section 22(3) provides that QCAT may stay the operation of a reviewable decision, either on application by a person or on its own initiative.

Division 6 Offence

602Q Offence to contravene notice

A person named in a police banning notice must not, without reasonable excuse, contravene the notice.

Maximum penalty—60 penalty units.

Part 5B Photographing persons and distributing orders and images

Division 1 Preliminary

602R Definitions for pt 5B

In this part—

approved ID scanning system see the *Liquor Act 1992*, section 173EE.

approved operator see the *Liquor Act 1992*, section 173EE.

banning order means—

(a) a police banning notice; or

(b) a document recording a special condition to which a person's bail is subject under the *Bail Act 1980*, section 11(3); or

(c) a banning order made under the *Penalties and Sentences Act 1992*, part 3B.

destroy, an image, includes—

(a) deleting an electronic copy of the image; and

(b) ending the way in which the image may be accessed electronically.

distribute, an imaged order, means giving the order to a person, whether the order is given in hard copy, electronically or by allowing the person electronic access to a database.

image, of a person, means an image, including a digital image, taken by a police officer photographing the person under this part.

imaged order see section 602T(2).

photograph does not include videotaping.

Division 2 Power to photograph persons and distribute orders and images

602S Power to detain and photograph

(1) A police officer may detain and photograph the following persons at a police vehicle, watch-house or police station—

(a) a respondent for a police banning notice;

(b) a person whose bail is subject to a special condition mentioned in the *Bail Act 1980*, section 11(3), if—

Not authorised—indicative only

Not authorised—indicative only

(i) the person was granted bail by a police officer at a place mentioned in section 11(4AA)(a) of that Act; or

(ii) a condition was imposed on the person by the court under section 11(4AA)(b) of that Act;

(c) a person who has been ordered by a court to attend a police station under the *Penalties and Sentences Act 1992*, section 43J(4).

(2) If the police officer is unable to photograph the respondent without transporting the respondent to a police vehicle, watch-house or police station, the police officer may detain and transport the respondent to the police vehicle, watch-house or police station.

(3) Under this section, a police officer may only—

(a) detain a person for the period reasonably necessary to photograph the person; and

(b) if subsection (2) applies, detain a person for the period reasonably necessary to transport the person; and

(c) photograph a person for the purpose of attaching an image of the person to a banning order for the person.

602T Attaching image to a banning order

(1) A police officer may attach an image of a person taken under this part to a banning order for the person.

(2) An ***imaged order*** is a banning order to which an image has been attached.

(3) To remove doubt, it is declared that an image of a person taken for a particular banning order may be attached to a different banning order for the person.

Example for subsection (3)—

An image of a person taken for a police banning notice may be later attached to a banning order made under the *Penalties and Sentences Act 1992*, part 3B for the person.

602U Distribution of imaged order or police banning notice

(1) A police officer may distribute an imaged order for a person to the Commissioner for Liquor and Gaming, or an approved operator for an approved ID scanning system, for recording on the approved ID scanning system.

(2) A police officer may also distribute an imaged order to any 1 or more of the following persons for the purposes of preventing the entry of the person named in the order to the places stated in the order—

(a) the licensee of any licensed premises stated in the order;

(b) the licensee of any licensed premises included in a class of licensed premises stated in the order;

(c) an approved manager working at the licensed premises mentioned in paragraph (a) or (b) or at an event to which the order applies;

(d) if there is no approved manager working at an event stated in the order—the person responsible for the sale of liquor at the event.

(3) The distribution of the imaged order may be subject to reasonable conditions decided by the commissioner.

(3A) Also, a police officer may distribute a police banning notice that does not have an image attached to it in the same way as an imaged order may be distributed under this section.

Notes—

1 The *Bail Act 1980*, section 34F provides for the distribution of information about a special condition made under section 11(3) of that Act in circumstances where the condition does not have an image attached to it.

2 The *Penalties and Sentences Act 1992*, section 43N provides for the distribution of a banning order made under that Act in circumstances where the order does not have an image attached to it.

(4) In this section—

approved manager means a person holding an approval as an approved manager under the *Liquor Act 1992*.

Not authorised—indicative only

Not authorised—indicative only

Commissioner for Liquor and Gaming means the Commissioner for Liquor and Gaming under the *Gaming Machine Act 1991*.

Division 3 Destruction of images

602V Commissioner to destroy image

(1) The commissioner must take reasonable steps to ensure that an image of a person taken for a banning order is destroyed as soon as reasonably practicable after the day the banning order no longer has effect.

(2) However, if a relevant proceeding has started in relation to the person, the image must be destroyed as soon as reasonably practicable after the end of the period for appeal of a decision from the proceeding.

(3) Subsection (1) does not prevent an image being attached to another banning order, if the image has not been destroyed under this section.

(4) In this section—

relevant proceeding, in relation to a person named in a banning order, means—

(a) a proceeding for an offence committed, or alleged to have been committed, by the person arising from the circumstances that led to the giving of the order; or

(b) a proceeding for an offence under section 602W relating to the banning order.

602W Other persons who must destroy imaged order or police banning notice

(1) This section applies to a person to whom an imaged order has been distributed under section 602U, other than a person operating an approved ID scanning system or using an approved ID scanner under the *Liquor Act 1992*.

Note—

Part 6AA of the *Liquor Act 1992* deals with the use of banning orders held in an approved ID scanning system.

(2) The person must destroy the imaged order as soon as practicable, and not later than 7 days, after the day the banning order no longer has effect, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) The person must not, without reasonable excuse—

(a) use the imaged order in any way other than in a way that is reasonable for the purpose of preventing the entry of the person named in the order to a place stated in the order; or

Example of a reasonable way of using an order for paragraph (a)—

A person keeps an imaged order in a secure area of licensed premises and only gives the order to staff who are working at the front door of the premises.

Example of an unreasonable way of using an order for paragraph (a)—

A person puts an imaged order in a place at licensed premises that is visible to the public.

(b) contravene a condition decided for the imaged order under section 602U(3).

Maximum penalty—40 penalty units.

(4) In this section—

imaged order includes a police banning notice that does not have an image attached to it.

Not authorised—indicative only

Not authorised—indicative only

Part 6 Miscellaneous powers

Division 1 Potentially harmful things

603 Power to seize potentially harmful things

(1) This section applies if a police officer—

(a) finds a person in circumstances in which the police officer reasonably suspects the person is in possession of a potentially harmful thing the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale; or

(b) finds a person in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale, the thing.

Example for paragraph (a)—

A police officer finds a person with paint on the person's lips.

(2) The police officer may search the person and anything in the person's possession to find out whether the person is in possession of a potentially harmful thing.

(3) If the person is in possession of a potentially harmful thing, the police officer may ask the person to explain why the person is in possession of the thing.

(4) If the person does not give a reasonable explanation, the police officer may seize the potentially harmful thing.

(5) It is not a reasonable explanation for subsection (4) that the person is in possession of the potentially harmful thing to inhale it or ingest it.

(6) On the seizure of the potentially harmful thing, the thing is forfeited to the State.

(7) Section 622 does not apply to a thing seized under this section.

604 Dealing with persons affected by potentially harmful things

(1) This section applies to a person at a declared locality if, because of the way the person is behaving and other relevant indicators, a police officer is satisfied the person is affected by the ingestion or inhalation of a potentially harmful thing.

Example of a relevant indicator—

the presence of spray paint cans near the person

(2) However, this section applies to the person only if it is appropriate for the person to be taken to a place, other than a police establishment or police station, and the police officer considers the place is a place at which the person can receive the treatment or care necessary to enable the person to recover safely from the effects of the potentially harmful thing (a ***place of safety***).

Examples of a place of safety—

1 A hospital may be a place of safety for a person who needs medical attention.

2 A vehicle used to transport persons to a place of safety and under the control of someone other than a police officer may be a place of safety.

3 The person's home, or the home of a relative or friend, may be a place of safety if there is no likelihood of domestic violence or associated domestic violence happening at the place because of the person's condition or the person is not subject to a domestic violence order, police protection notice or release conditions preventing the person from entering or remaining at the place.

(3) It is lawful for the police officer to detain the person for the purpose of taking the person to a place of safety.

(4) In this section—

declared locality means a locality declared under a regulation for this section.

605 Duties in relation to person detained under s 604

(1) It is the duty of the police officer who detains a person under section 604, at the earliest reasonable opportunity—

Not authorised—indicative only

Not authorised—indicative only

(a) to take the person to a place of safety; and

(b) to release the person at the place of safety.

Example—

The place of safety may be a vehicle under the control of someone other than a police officer that is used to transport persons to another place of safety.

(2) Subsection (1) does not apply if the police officer is satisfied—

(a) a person at a place of safety refuses, or is unable, to provide care for the relevant person; or

(b) the relevant person's behaviour may pose a risk of harm, including, but not limited to, domestic violence or associated domestic violence, to other persons at a place of safety; or

(c) the police officer is unable to find a place of safety that is willing to provide care for the relevant person.

(3) If this section does not apply because of subsection (2), the person must be released.

(4) Before the police officer releases the person, the police officer must ensure the person apparently in possession or in charge of the relevant place of safety gives a police officer a signed undertaking in the approved form to provide care for the relevant person.

(5) If the place of safety is not the person's home, the person apparently in possession or in charge of the place of safety may lawfully provide care for the person until the person voluntarily leaves the place.

(6) As soon as practicable after a person is released under subsection (1) or (3), the police officer must enter in a register kept for this section the particulars prescribed under a regulation for this section.

606 No compulsion to stay at place of safety

A person taken to a place of safety can not be compelled to stay there, unless another Act otherwise requires.

607 Review of operation of ss 604–606

(1) The CCC must keep the operation of sections 604 to 606 under review for 9 months after the sections commence.

(2) The conduct of the review and the preparation of the report is a function of the CCC for the *Crime and Corruption Act 2001*.

(3) In the course of preparing the report, the CCC must consult with the Minister.

(4) The CCC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

Division 2 Other miscellaneous powers

609 Entry of place to prevent offence, injury or domestic violence

(1) This section applies if a police officer reasonably suspects—

(a) there is an imminent risk of either of the following happening at a place—

(i) injury to a person;

(ii) an offence involving damaging property; or

(b) domestic violence is occurring, or has occurred before the officer's arrival, at a place.

(2) It is lawful for the police officer to enter the place and stay on it for the time reasonably necessary—

(a) to establish whether the reason for the entry exists; and

(b) to ensure that, in the officer's opinion, an imminent risk of injury, damage or domestic violence does not exist at the place; and

Not authorised—indicative only

Not authorised—indicative only

(c) to give or arrange for reasonable help to any person at the place.

(3) The police officer may detain anyone at the place for the time reasonably necessary to establish whether the reason for the entry exists.

(4) If the police officer is reasonably satisfied a reason for the entry exists, the police officer may do any of the following—

(a) detain a person for a search or to prevent acts of violence or damage to property;

(b) search anyone detained for anything that may be, or has been used to cause the injury or damage or for domestic violence;

(c) search the place—

(i) for anyone who may be at risk of being injured or subject to domestic violence or associated domestic violence; and

(ii) for anything that may be, or has been, used to cause the injury or damage or for domestic violence or associated domestic violence;

(d) seize anything found at the place or on a person at the place that may be, or has been used to cause the injury or damage or for domestic violence or associated domestic violence.

Example for subsection (4)(c)(ii)—

The police officer may be satisfied the thing may be used for domestic violence or associated domestic violence because of apparently reliable information.

(5) Before searching a place under this section, the police officer must inform the occupier of the place, if present, that the occupier may accompany the police officer while the place is being searched.

(6) For this section, a place that is a building, includes a vehicle at the place.

609A Use of body-worn cameras

(1) It is lawful for a police officer or protective services officer to use a body-worn camera to record images or sounds while the officer is acting in the performance of the officer's duties.

(2) Use of a body-worn camera by a police officer or protective services officer under subsection (1) includes use that is—

(a) inadvertent or unexpected; or

(b) incidental to use while acting in the performance of the officer's duties.

(3) Subsection (1) does not affect an ability the police officer or protective services officer has at common law or under this Act or another Act to record images or sounds.

(4) To remove any doubt, it is declared that subsection (1) is a provision authorising the use by a police officer or protective services officer of a listening device, for the purposes of the *Invasion of Privacy Act 1971*, section 43(2)(d).

(5) In this section—

body-worn camera means a device—

(a) worn on clothing or otherwise secured on a person; and

(b) designed to be used to—

(i) record images; or

(ii) record images and sounds.

610 Police actions after domestic violence order, police protection notice or release conditions are made

(1) This section applies if, under the *Weapons Act 1990*, section 29B, the person named as the respondent in a domestic violence order, police protection notice or release conditions is to give a weapon the respondent possesses to a police officer.

(2) The police officer who serves the order, notice or conditions on the respondent must—

Not authorised—indicative only

Not authorised—indicative only

(a) if the order or notice is served on the respondent at the respondent's place of residence—take all steps necessary to ensure the respondent's weapons licence and weapon are seized immediately; and

(b) in any other case—make arrangements to ensure the respondent's weapons licence and weapon are surrendered to a police officer as soon as practicable.

Note—

A police officer must personally serve a domestic violence order, police protection notice or release conditions on the respondent. Also, the clerk of the court must, as soon as reasonably practicable after a domestic violence order is made, give a copy of the order to the officer in charge of the police station nearest the place where the respondent lives or was last known to live. See the *Domestic and Family Violence Protection Act 2012*, sections 109(1), 124 and 184(2) and (3).

(3) To seize a weapon as mentioned in subsection (2)(a), the police officer may enter and search the respondent's place of residence if the officer has reasonable grounds for suspecting the weapon is at the place.

Examples of how the police officer may have reasonable grounds for suspecting that a weapon is at a place of residence—

1 In making a domestic violence order or police protection notice, the court or police officer includes information about a weapons licence or weapon in the respondent's possession.

2 The police officer has received apparently reliable information that the respondent possesses a weapon.

(4) A police officer must exercise the powers under this section in a way that—

(a) is consistent with the need to ensure the protection of a person who is an aggrieved, or a named person, as stated in the order, notice or conditions; and

(b) tries to minimise disruption to the respondent.

611 Attendance at rental premises while person or property is removed

(1) At the request of a provider, a police officer may enter and stay in a person's room in rental premises while the provider,

or someone helping the provider, exercises a power under the *Residential Tenancies and Rooming Accommodation Act 2008*, section 375 to remove the person or the person's property from the rental premises.

(2) Subsection (1) does not limit any other power of the police officer under another Act or law.

(3) In this section—

provider see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

rental premises see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

612 Assistance in exercising powers

(1) It is lawful for a police officer exercising a power under this Act or any other Act—

(a) to seek the help of another person (an ***assistant***) the officer reasonably requires for performing a function of the police service; or

(b) to take onto a place any assistant, equipment, vehicle, animal or material the officer reasonably requires for exercising the power.

Examples—

1 A police officer may seek the help of an electrician to install a listening device under a surveillance device warrant.

2 A police officer making an arrest may seek the help of a member of the public to help the police officer subdue the person.

3 A police officer may seek the help of an investigator authorised under the *Liquor Act 1992*, section 174(1), for exercising powers under section 60 for monitoring or enforcing a liquor provision under that section.

4 A protective services officer may seek the services of a translator to explain to an entrant to a state building who does not speak English the screening process used in the building.

(2) The police officer may authorise the assistant—

(a) to take stated action at the place; and

Not authorised—indicative only

Not authorised—indicative only

(b) to exercise stated powers the police officer is authorised to exercise.

(3) However, the police officer can not authorise the assistant—

(a) to arrest a person; or

(b) to demand a person's name and address; or

(c) to exercise a power a police officer has when responding to a CBR emergency under the *Public Safety Preservation Act 1986*, section 23.

(4) The police officer must, if practicable, tell the assistant—

(a) of the action the assistant is authorised to take; and

(b) of the assistant's powers under this section.

(5) Also, if the stated action is to help the police officer search the place, the assistant may search the place to the extent authorised by the police officer whether or not a police officer is present while the assistant is searching the place.

(6) However, the assistant may not help search a dwelling unless a police officer is present while the assistant helps in the search.

(7) Subsection (1) applies, in relation to animals, despite any other Act or law.

(8) A reference in this section to a police officer and the police service includes—

(a) a reference to a law enforcement agency and a law enforcement officer when a person is performing the functions of a law enforcement officer under chapter 11 or 13; and

(b) a reference to a protective services officer when performing the functions of a protective services officer under chapter 19, part 1.

613 Protection for assistants from liability

(1) An assistant does not incur civil liability for an act done, or omission made, honestly and without negligence, while acting as an assistant.

(2) If subsection (1) prevents a liability attaching to an assistant, liability attaches instead to the State.

614 Power to use force—exercise of certain powers

(1) It is lawful for a police officer or law enforcement officer, and anyone helping the police officer or law enforcement officer, to use reasonably necessary force when exercising or attempting to exercise a power under—

(a) this Act, including, for example, powers under a surveillance device warrant or covert search powers under a covert search warrant; or

(b) another Act.

Examples—

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

2 Forced entry may be needed for covert entry to a place to install a surveillance device.

3 Force may be used to stop vehicles.

(2) This section does not apply to the use of force against an individual.

615 Power to use force against individuals—police officers

(1) It is lawful for a police officer exercising or attempting to exercise a power under this or any other Act against an individual, and anyone helping the police officer, to use reasonably necessary force to exercise the power.

Example—

A police officer may use reasonable force to prevent a person evading arrest.

Not authorised—indicative only

Not authorised—indicative only

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

(3) The force a police officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

615A Power to use force against individuals—protective services officers

(1) It is lawful for a protective services officer exercising or attempting to exercise a power under chapter 19, part 1 or another Act against an individual, and anyone helping the officer, to use reasonably necessary force to exercise the power.

Example—

A protective services officer may use reasonable force to prevent an entrant to a state building evading detention under section 558.

(2) The force a protective services officer may use under this section does not include force likely to cause grievous bodily harm to an individual or the individual's death.

616 Power to use force against individuals in critical situations

(1) This section applies if a police officer reasonably suspects a person—

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

(b) has committed an offence punishable by life imprisonment and is attempting to escape arrest or has escaped from arrest or custody.

(2) This section also applies if—

(a) a police officer reasonably suspects a person is doing, or is about to do, something likely to cause grievous bodily harm to, or the death of, another person; and

(b) the police officer reasonably suspects he or she can not prevent the grievous bodily harm or death other than in the way authorised under this section.

(3) It is lawful for the police officer to use the force reasonably necessary—

(a) to prevent the continuation or repetition of the offence or the commission of another offence punishable by life imprisonment; or

(b) to apprehend the person; or

(c) to prevent the escape of a person from arrest or custody; or

(d) to prevent the commission of an act mentioned in subsection (2).

(4) The force a police officer may use under this section includes force likely to cause grievous bodily harm to a person or the person's death.

(5) If the police officer reasonably believes it is necessary to use force likely to cause grievous bodily harm to a person or the person's death, the police officer must, if practicable, first call on the person to stop doing the act.

617 Identification of suspects

(1) It is lawful for a police officer to use 1 or more of the following procedures to help gather evidence of the identity of a person suspected of having committed an offence—

(a) an identification parade;

(b) a photo board containing at least 12 photos of people of similar appearance, 1 of whom is the person suspected of having committed the offence;

(c) videotape;

(d) computer generated images.

(2) The police officer must comply with the procedures in the responsibilities code for identification procedures.

Not authorised—indicative only

Not authorised—indicative only

(3) The police officer may ask a person to take part in an identification parade.

(4) The person may refuse to take part in the parade.

(5) This section does not limit the procedures a police officer may use to help gather evidence of the identity of a person suspected of having committed an offence.

618 Power to examine seized things

To remove doubt, it is declared that a power to seize a thing under this Act includes and always has included—

(a) power to examine the thing; and

(b) power to arrange for someone else to examine the thing.

619 Extent of power to examine seized things

Without limiting section 618, power to examine a thing seized under this Act includes, and always has included, a power to do something that is reasonably necessary for, or as part of, a scientific or other investigative procedure involving the thing, even though doing the thing may damage the thing or destroy it.

Examples—

- performing an analysis involving the thing
- making an appraisal of the thing
- inspecting the thing
- perusing the thing
- scanning the thing
- sifting the thing

Chapter 20 Other standard safeguards

Part 1 Preliminary

620 Chapter does not apply to covert operations

This chapter does not apply to functions of a police officer performed in a covert way, including, for example, anything done under a covert search warrant.

Part 2 Safeguards for things seized

Division 1 Application of part 2

621 Application of pt 2

This part does not apply to a thing seized by a police officer if, under another Act, the thing must be taken before a stated person.

Example—

The *Commissions of Inquiry Act 1950*, section 19A(1) requires property seized under a warrant issued by a commission of inquiry to be taken before the commission.

Division 2 General safeguards

622 Receipt for seized property

(1) This section applies if—

(a) a police officer seizes anything under this Act or a warrant; or

(b) a protective services officer seizes a proscribed thing under section 556.

Not authorised—indicative only

Not authorised—indicative only

(2) The police officer or protective services officer must, as soon as is reasonably practicable after seizing the thing—

(a) if the person from whom it is seized is present—give or cause to be given 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.

(3) However, if a police officer reasonably suspects giving the person the receipt may frustrate or otherwise hinder the investigation or another investigation, the police officer may delay complying with subsection (2), but only for so long as—

(a) the police officer continues to have the reasonable suspicion; and

(b) that police officer or another police officer involved in the investigation remains in the vicinity of the place to keep it under observation.

(4) The receipt may be for a single thing or for all things seized from the person or the place.

(5) Also, the receipt must describe the thing seized and include any other information required under the responsibilities code.

(6) This section does not apply if the police officer or protective services 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.

Examples for subsection (6)(c)—

blood, saliva, semen, hair, impressions, paint, glass, fibres, ballistic items, fire debris, vehicle identification plates, trace evidence

623 Right to inspect seized documents

(1) Unless a justice or coroner otherwise orders, a police officer who seizes a document must allow a person who would be entitled to the document—

(a) to inspect it at any reasonable time and from time to time; and

(b) to take extracts from or make copies of it.

(2) If a police officer seizes a document under a production order, the officer, if asked by the person to whom the order was addressed, must give the person a copy of the document certified by the officer in writing to be a true copy of the document.

(3) The police officer may refuse to comply with subsection (1) or (2) if the officer reasonably suspects complying with the subsection will enable the person to repeat or continue an offence of which the documents are evidence or commit another offence.

Part 3 Other safeguards

Division 1 General provisions about searches of persons and vehicles

624 General provision about searches of persons

(1) A police officer searching a person must—

(a) ensure, as far as reasonably practicable, the way the person is searched causes minimal embarrassment to the person; and

(b) take reasonable care to protect the dignity of the person; and

(c) unless an immediate and more thorough search of a person is necessary, restrict a search of the person in public to an examination of outer clothing; and

Not authorised—indicative only

Not authorised—indicative only

(d) if a more thorough search of a person is necessary but does not have to be conducted immediately, conduct a more thorough search of the person out of public view, for example, in a room of a shop or, if a police station is nearby, in the police station.

Example for subsection (1)(c)—

A more thorough search may be immediately necessary because a police officer reasonably suspects the person to be searched may have a bomb strapped to his or her body or has a concealed firearm or knife.

(2) Unless an immediate search is necessary, the person conducting the search must be either—

(a) a police officer of the same sex as the person to be searched; or

(b) if there is no police officer of the same sex available to search the person—someone acting at the direction of a police officer and of the same sex as the person to be searched; or

(c) a doctor acting at the direction of a police officer.

Example—

An immediate search by a person of the opposite sex may be necessary because the person searched may have a bomb strapped to his or her body or has a concealed firearm.

625 Taking a person to another place for search

(1) If it is impracticable to search for a thing that may be concealed on a person where the person is, the police officer may take the person to a place with adequate facilities for conducting the search.

Example—

To search a person out of public view and cause minimal embarrassment to the person, a person in a casino may be taken to another room in the casino.

(2) Before taking a person to another place for a search because it is impracticable to search for a thing that may be concealed on the person where the person is, the police officer must consider the following—

(a) whether the thing sought may be concealed on the person;

(b) whether, for an effective search, the search should be conducted somewhere else;

(c) the need to protect the dignity of the person.

626 Limitation on period of detention for search

A police officer who detains a person or vehicle for a search must not detain the person or vehicle any longer than is reasonably necessary for the purpose.

627 General provision about searches of vehicles

(1) This section deals with the searching of vehicles under this Act.

(2) Before deciding to take a vehicle to a place with appropriate facilities for searching it, a police officer must consider whether searching the vehicle somewhere else would be more effective because of the nature and size of a thing sought that may be concealed in the vehicle.

(3) If a police officer decides to take a vehicle to a place with appropriate facilities for searching it, the police officer must, if the person apparently in possession of the vehicle is known and present—

(a) tell the person where the vehicle is to be taken; and

(b) ask the person if he or she wants to be present during the search.

(4) If a police officer searches an unattended vehicle or anything in it, the police officer must leave a notice in a conspicuous place in or on the vehicle stating—

(a) that the vehicle or a stated thing in or on it has been searched; and

(b) the police officer's name, rank and station; and

Not authorised—indicative only

Not authorised—indicative only

(c) that a record of the search may be obtained from any police station.

(5) After searching an unattended vehicle or anything in it, the police officer must ensure, as far as reasonably practicable, the vehicle is left secured at least to the same extent as it was before the search.

628 Dealing with persons who obstruct search of person or vehicle

(1) If a person (the ***obstructing person***) obstructs a police officer conducting a lawful search of the person, another person or a vehicle, a police officer must, if reasonably practicable—

(a) warn the obstructing person it is an offence to obstruct a police officer in the performance of the police officer's duties; and

(b) give the obstructing person a reasonable opportunity to stop obstructing the search.

(2) It may not be reasonably practicable for a police officer to comply with subsection (1) if, for example—

(a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or

(b) there is a reasonable expectation that, if warned, the person may immediately dispose of, or destroy, evidence; or

(c) an immediate search is necessary to protect the safety of any person.

Division 2 Searches involving removal of clothing

629 Removal of clothing for search

A police officer conducting a lawful search of a person under this Act may require a person to remove all items of clothing or all items of outer clothing from the upper or lower part of the body.

630 Protecting the dignity of persons during search

(1) If reasonably practicable—

(a) the police officer must, before conducting the search—

(i) tell the person he or she will be required to remove clothing during the search; and

(ii) tell the person why it is necessary to remove the clothing; and

(iii) ask for the person's cooperation; and

(b) the person must be given the opportunity to remain partly clothed during the search, for example, by allowing the person to dress his or her upper body before being required to remove items of clothing from the lower part of the body.

(2) The search must be conducted in a way providing reasonable privacy for the person.

Example for subsection (2)—

Reasonable privacy may be provided by conducting the search in a way that ensures, as far as reasonably practicable, the person being searched can not be seen by anyone of the opposite sex and by anyone who does not need to be present.

(3) Also, the search must be conducted as quickly as reasonably practicable and the person searched must be allowed to dress as soon as the search is finished.

Not authorised—indicative only

Not authorised—indicative only

(4) The police officer conducting the search must not make physical contact with the genital and anal areas of the person searched, but may require the person to hold his or her arms in the air or to stand with legs apart and bend forward to enable a visual examination to be made.

(5) If the police officer seizes clothing because of the search, the police officer must ensure the person is left with or given reasonably appropriate clothing.

Example for subsection (5)—

The clothing may be evidence of the commission of an offence.

631 Special requirements for searching children and persons with impaired capacity

(1) If a person to be searched is a child, or a person with impaired capacity, who may not be able to understand the purpose of the search, the police officer must conduct the search in the presence of a support person.

(2) However, the police officer may search the person in the absence of a support person if the police officer reasonably suspects—

(a) delaying the search is likely to result in evidence being concealed or destroyed; or

(b) an immediate search is necessary to protect the safety of a person.

632 If video cameras monitor place where person is searched

(1) If a video camera monitors the area where the person is searched (***place of search***), the police officer must, unless the person viewing the monitor is a police officer of the same sex as the person being searched—

(a) ensure the camera is turned off; or

(b) conduct the search out of view of the camera.

(2) However, if, for safety or operational reasons, a video camera used to monitor the place of search can not be turned off

without turning off a video camera used to monitor another place, the monitor for the video camera for the place of search must, if it is reasonably practicable, be turned off or used to monitor another place while the person is being searched.

(3) If the video camera is not turned off, a recording of the search must not be shown to anyone other than—

(a) the person searched or his or her lawyer; or

(b) a doctor treating the person searched; or

(c) a person deciding if a proceeding is to be started against the person for an offence; or

(d) a police officer investigating an offence involving the person; or

(e) a police officer, lawyer, public prosecutor or witness involved in a proceeding against the person; or

(f) a court.

Division 3 Other provisions

633 Safeguards for oral directions or requirements—police officers

(1) This section applies if a police officer gives someone an oral direction or makes an oral requirement under this Act.

(2) If the person fails to comply with the direction or requirement, a police officer must, if practicable, warn the person—

(a) it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse; and

(b) the person may be arrested for the offence.

(3) The police officer must give the person a further reasonable opportunity to comply with the direction or requirement.

Not authorised—indicative only

Not authorised—indicative only

633A Safeguards for oral directions or requirements—protective services officers

(1) This section applies if a protective services officer gives someone an oral direction or makes an oral requirement under chapter 19, part 1, division 2.

(2) If the person fails to comply with the direction or requirement, a protective services officer must, if practicable, warn the person it is an offence to fail to comply with the direction or requirement, unless the person has a reasonable excuse.

(3) The protective services officer must give the person a further reasonable opportunity to comply with the direction or requirement.

634 Safeguards for declared offences under Summary Offences Act 2005

(1) This section applies to an offence under the *Summary Offences Act 2005* that is a declared offence for this Act.

(2) A police officer who suspects a person has committed a declared offence must, if reasonably practicable, give the person a reasonable opportunity to explain—

(a) if the offence involves the person's presence at a place—why the person was at the place; or

(b) if the offence involves entering a place—why the person entered the place; or

(c) if the offence involves any of the following, why the person did the relevant thing—

(i) parachuting or hang-gliding onto a building or structure;

(ii) BASE-jumping or hang-gliding from a building or structure;

(iii) climbing up or down the outside of a building or a structure;

(iv) abseiling from a building or structure; or

(d) if the offence involves possession of a graffiti instrument or an implement—why the person was in possession of the graffiti instrument or implement at the relevant time; or

(e) if the offence involves possession of a thing that is reasonably suspected of having been stolen or unlawfully obtained—how the person came to have possession of the thing.

(3) If—

(a) the person fails to give an explanation; or

(b) the police officer considers the explanation given is not a reasonable explanation; or

(c) because of the person's conduct, it is not reasonably practicable to give the person a reasonable opportunity to give an explanation;

Example for paragraph (c)—

It may not be reasonably practicable to give the person a reasonable opportunity to give an explanation because of the person's conduct, for example, the person may be struggling or speaking loudly without stopping.

the police officer may start a proceeding against the person for the declared offence.

(4) In this section—

declared offence means an offence against section 11, 12, 13(1), 14, 15, 16 or 17 of the *Summary Offences Act 2005*.

635 Use of force likely to cause damage to enter places

(1) This section applies if a police officer intends to enter a place to arrest or detain someone, or to search a place, or to establish a crime scene.

(2) Before the police officer uses force that may cause damage to a place to gain entry to the place, the police officer must, if reasonably practicable—

Not authorised—indicative only

Not authorised—indicative only

(a) ask the occupier of the place to allow the police officer to enter the place; and

(b) give the occupier a reasonable opportunity to allow the entry.

(3) It may not be reasonably practicable for a police officer to comply with subsection (2) if, for example—

(a) there is an immediate or sudden need to use force because, for example, the person is struggling with a police officer; or

(b) there is a reasonable expectation that, if warned, the person may immediately dispose of or destroy evidence; or

(c) an immediate search is necessary to protect the safety of any person.

636 Giving notice of damage

(1) This section applies if—

(a) a police officer damages something when exercising a power under this or another Act; or

(b) an assistant damages something.

(2) This section also applies if a protective services officer damages something when exercising a power under chapter 19, part 1 or another Act.

(3) The police officer or protective services officer must promptly give written notice to the person who appears to be the owner of the thing—

(a) stating the nature of the damage; and

(b) if the officer believes the damage was caused by a latent defect in the thing or circumstances beyond the officer's or assistant's control—stating the officer's belief.

(4) However, if the officer reasonably suspects giving the notice may frustrate or otherwise hinder an investigation, the officer may delay giving the notice, but only for so long as—

(a) the officer continues to have the reasonable suspicion; and

(b) that officer or a police officer involved in the investigation remains in the vicinity of the place.

(5) If the owner is not present, the notice must be left in a conspicuous place.

(6) This section does not apply—

(a) to damage the officer reasonably believes is trivial; or

(b) if the officer reasonably believes there is no-one apparently in possession of the thing or the thing has been abandoned.

(7) In this section—

owner, of a thing, includes the person in possession of the thing.

637 Supplying police officer's details

(1) This section applies if a police officer—

(a) searches or arrests a person; or

(b) searches a vehicle; or

(c) searches a place, other than a public place; or

(d) seizes any property; or

(e) stops or detains a person or vehicle; or

(f) requires a person to state his or her name and address; or

(g) gives to a person a direction under section 48 or 177; or

(h) enters a place to make an inquiry or investigation or to serve a document; or

(i) exercises a power as a public official.

(2) The police officer must, as soon as reasonably practicable, inform the person the subject of the power of the following—

(a) if the police officer is not in uniform—

Not authorised—indicative only

Not authorised—indicative only

(i) that he or she is a police officer; and

(ii) his or her name, rank and station;

(b) if the police officer is in uniform—his or her name, rank and station.

(3) If the police officer is not in uniform, the police officer must also produce for inspection his or her identity card.

(4) If the police officer is searching a person, vehicle or place, other than under a search warrant, the police officer must state the purpose of the search and the reason for seizing any property.

(5) If 2 or more police officers are searching the vehicle or place, only the senior police officer present is required to comply with subsections (2) to (4).

(6) However, if a person asks another police officer for the information mentioned in subsection (2) or to produce an identity card, the police officer must give to the person the information requested or produce the identity card.

638 Record of execution of warrant or order

A police officer who executes a warrant or order must, if reasonably practicable, write the following on the back of the original warrant or order, or the written form of warrant or order and sign the document—

(a) the day and time of execution;

(b) the name of the person on whom it was executed;

(c) if supplied—the name of the occupier of the place;

(d) the name, rank, registered number, if any, and station of the police officer.

Chapter 21 Administration

Part 1 Watch-houses

Division 1 Persons in custody at watch-houses

639 Control of persons in watch-houses

A watch-house manager may give or cause to be given to a person in custody in the watch-house any reasonably necessary directions, or take or cause to be taken any reasonably necessary steps, for ensuring the good management and control of the watch-house.

Examples—

1 The manager may direct a person in custody to move from 1 cell to another because the person is causing disruption to others or for the safety of others.

2 The manager may physically remove a person from 1 cell to another if the person fails to comply with a direction.

640 Transfer of persons in watch-houses

A watch-house manager may transfer a person in custody in a watch-house from the watch-house—

(a) to another watch-house; or

(b) to a holding cell at a police station; or

(c) to a court cell; or

(d) to another place at which the person may receive treatment necessary for the person's welfare; or

(e) to a corrective services facility; or

(f) into the custody of a police officer for the purposes of chapter 15.

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Not authorised—indicative only

Examples—

1 A person may be transferred from the watch-house at Holland Park to the Brisbane City watch-house because there are not enough cells or staff available at Holland Park to provide proper security at the watch-house or care for persons in custody.

2 A person held in custody at a watch-house may be transferred to a hospital to receive necessary medical treatment.

Division 2 Watch-house officer's functions and powers

Subdivision 1 Functions

641 Functions of watch-house officers

(1) A watch-house officer has the functions and powers conferred on a watch-house officer by this Act.

(2) Subsection (1) applies subject to any directions of the commissioner or the watch-house manager for the watch-house and the terms of the person's appointment that are consistent with any Act applicable to a watch-house officer.

(3) To remove doubt, it is declared that a watch-house officer is not taken to be a police officer merely because the watch-house officer has, under this chapter, some of the same functions and powers as a police officer.

(4) Also, this division does not limit the powers of a police officer to do something a police officer may otherwise do under this Act in relation to a person in custody at a watch-house.

Subdivision 2 Powers for screening of entrants to watch-houses

642 Power to require reasons for entry to watch-houses

A watch-house officer may require an entrant to a watch-house to state the entrant's reason for being in, or about to enter, the watch-house.

643 Use of electronic screening devices in watch-houses

(1) This section applies if the system for the security of a watch-house involves the use of 1 or more of the following electronic screening devices—

(a) a walk-through detector;

(b) an X-ray machine;

(c) a hand held scanner.

(2) A watch-house officer may ask the entrant to do 1 or more of the following—

(a) to walk through a walk-through detector;

(b) to pass the entrant's belongings through an X-ray machine;

(c) to allow the watch-house officer to pass a hand held scanner in close proximity to the entrant;

(d) to allow the watch-house officer to pass a hand held scanner in close proximity to the entrant's belongings.

644 Watch-house officer may ask entrant to remove outer garment etc.

(1) This section applies if—

(a) a watch-house officer reasonably considers it necessary to make a request under subsection (2) in relation to an entrant or the entrant's belongings, whether or not the

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Not authorised—indicative only

entrant or belongings have been subjected to electronic screening; and

(b) the watch-house officer tells the entrant the reasons for making the request.

(2) The watch-house officer may ask the person to do 1 or more of the following—

(a) allow the watch-house officer to inspect the entrant's belongings;

(b) remove 1 or more outer garments worn by the entrant as stated by the watch-house officer and allow the watch-house officer to inspect the garments;

(c) remove all articles from the entrant's clothing and allow the watch-house officer to inspect them;

(d) open an article for inspection and allow the watch-house officer to inspect it;

(e) open a vehicle or a part of it for inspection and allow the watch-house officer to inspect it;

(f) remove an article from the vehicle as specified by the watch-house officer and allow the watch-house officer to inspect it.

(3) A watch-house officer may touch a garment the entrant is wearing only if the watch-house officer is the same sex as the entrant.

(4) In this section—

inspect, an article, includes handle the article, open it and examine its contents.

645 Direction by watch-house officer to leave watch-house

A watch-house officer may direct an entrant to leave a watch-house immediately, and to take the entrant's belongings out of the watch-house, if the entrant fails—

(a) to state the person's reasons for being in or about to enter the watch-house; or

(b) to allow a watch-house officer to exercise a power under section 643 or 644.

646 Seizure of proscribed things

A watch-house officer may seize a proscribed thing found in the possession of a person in a watch-house, unless the person is lawfully in possession of it in the course of the person's trade, business or calling.

647 Refusal of entry to and removal from watch-house

(1) This section applies if a person fails to comply with a request made or a direction given under this subdivision or fails to satisfy a watch-house officer that the person has a good and lawful reason to be in a particular watch-house.

(2) If the person is in the watch-house, the watch-house officer may remove the person from the watch-house.

(3) If the person is about to enter the watch-house, the watch-house officer may prevent the person from entering the watch-house.

Subdivision 3 Powers relating to persons in custody in or reporting to watch-house

648 Watch-house officer may require person to state name and address

(1) Section 40, to the extent it applies to prescribed circumstances mentioned in section 41 that are circumstances in which a police officer may exercise a power under this Act in relation to a person at a watch-house applies to a watch-house officer in the same way as it applies to a police officer.

(2) For section 40, a reference in section 41 to a police officer includes a reference to a watch-house officer.

Not authorised—indicative only

Not authorised—indicative only

649 Watch-house officer may search person in custody at watch-house

(1) A watch-house officer may search and re-search a person to whom chapter 16 applies if the person is in custody at a watch-house.

(2) A watch-house officer may seize from the person anything found during the search that the watch-house officer reasonably suspects may provide evidence of the commission of an offence.

(3) Also, the watch-house officer may take and retain, while the person is in custody—

(a) anything that may endanger anyone's safety, including the person's safety; or

(b) anything that may be used for an escape; or

(c) anything else the watch-house officer reasonably considers should be kept in safe custody while the person is in custody.

650 Watch-house officer may take identifying particulars of person at watch-house

(1) A provision of chapter 17 that authorises a police officer to take the identifying particulars of a person, generally or in the following circumstances, is taken also to authorise a watch-house officer to take the identifying particulars of a person in those circumstances—

(a) the person is in custody at a watch-house;

(b) the person reports to the watch-house to enable a police officer to take the person's identifying particulars under an identifying particulars notice or an order of a court.

(2) The provision applies to the watch-house officer in the same way as it applies to a police officer.

(3) Also, the watch-house officer is taken to be a qualified person for chapter 17 for taking identifying particulars.

(4) A provision of this Act that applies to a police officer who is taking the identifying particulars of a person applies to a watch-house officer in the same way as it applies to a police officer.

651 Commissioner may authorise watch-house officer to take DNA samples of person at watch-house

(1) This section applies to a watch-house officer only if the commissioner is satisfied the watch-house officer—

(a) has the necessary experience or expertise to be able to take DNA samples; or

(b) has satisfactorily completed a course of training approved by the commissioner for the purpose.

(2) The commissioner may authorise the watch-house officer to take DNA samples from—

(a) a person in custody at a watch-house; or

(b) a person who reports to the watch-house to enable a police officer to take the person's identifying particulars under an identifying particulars notice or an order of a court.

(3) Also, sections 516 and 517 apply to the watch-house officer while performing the functions of a qualified person for taking a DNA sample.

652 Power to use force against individual at watch-house

(1) It is lawful for a watch-house officer exercising or attempting to exercise a power under this Act against a person at a watch-house to use reasonably necessary force to exercise the power.

(2) Also, it is lawful for a watch-house officer to use reasonably necessary force to prevent a person in custody at a watch-house from escaping from lawful custody.

Not authorised—indicative only

Not authorised—indicative only

(3) The force a watch-house officer may use under this section does not include force likely to cause grievous bodily harm to a person or the person's death.

653 Power to use force—transfer etc. of person in custody to or from holding place

(1) It is lawful for a watch-house officer who is authorised by a watch-house manager for the purpose of transferring a person in custody to use reasonably necessary force—

(a) to transfer a person in custody from a holding place to another holding place; or

(b) to ensure a person in custody at a court precinct appears before a court and is transferred to a holding place after the appearance, if the person is not otherwise released; or

(c) to ensure a person in custody does not escape from lawful custody while the person is—

(i) being transferred to a holding place under paragraph (a) or (b); or

(ii) being held in a holding place to which the person has been transferred under paragraph (a) or (b); or

(iii) in a court under paragraph (b).

(2) Also, it is lawful for a watch-house officer who is authorised by a watch-house manager for the purpose of escorting a person in custody to use reasonably necessary force—

(a) to escort a person in custody to a place other than a watch-house to enable the person to receive medical, dental, optical or other health related treatment; and

(b) to escort a person in custody from a place where the person is taken to receive medical, dental, optical or other health related treatment to the watch-house; and

(c) to ensure a person in custody does not escape from lawful custody while the person is being escorted to or from the watch-house and while the person is receiving

any necessary treatment at the place to which the person is taken under escort.

(3) The force a watch-house officer may exercise under this section—

(a) includes force that is reasonably necessary—

(i) to prevent someone else from helping the person in custody escape from lawful custody; and

(ii) to prevent someone the watch-house officer reasonably considers should not be given access to the person in custody from gaining access to the person in custody; and

(b) does not include force likely to cause grievous bodily harm to a person or the person's death.

(4) In this section—

court precinct means any land or building, or the part of any land or building, used for the purposes of a court of the State, including, for example, a court cell.

holding place means a watch-house, court precinct or corrective services facility.

Subdivision 4 Provisions about exercise of particular powers

654 Search of persons

The provisions of this Act applying to a search by a police officer of a person in custody, including the power to seize anything found during the search, apply, with necessary changes, to the search by a watch-house officer of a person in custody at a watch-house in the exercise of a power under this part.

Not authorised—indicative only

Not authorised—indicative only

655 Property seized during search etc.

(1) This section applies in relation to property seized by a watch-house officer at a watch-house, whether under section 646 or because of a search of a person in custody (***seized property***).

(2) The provisions of this Act stating the responsibilities of a police officer in relation to seized property apply, with necessary changes, to the watch-house officer who seized the property.

655A Offence to assault or obstruct watch-house officer

(1) A person must not—

(a) assault a watch-house officer in the performance of the officer's duties; or

(b) obstruct a watch-house officer in the performance of the officer's duties.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) In this section—

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

obstruct includes hinder, resist and attempt to obstruct.

656 Giving directions and making requirements

(1) This section applies if a watch-house officer who is exercising a power of a police officer because of this part in relation to an entrant to a watch-house or a person in custody at a watch-house—

(a) gives the person a direction; or

(b) make a requirement of the person.

(2) The person must comply with the direction or requirement, unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

(3) Section 633 applies to the giving of a direction or the making of the requirement in the same way as it applies to a police officer when giving an oral direction or making an oral requirement.

657 Making entries in registers

(1) This section applies if—

(a) a watch-house officer does something under this part; and

(b) the act were done by a police officer, the act would be an enforcement act that the police officer would have to enter in the register of enforcement acts under part 2.

(2) The watch-house officer must make the entry.

658 Responsibilities code

If a provision of the responsibilities code applies to a police officer in relation to a function or power also conferred on a watch-house officer under this part, the provision also applies, with necessary changes, to the watch-house officer in relation to the function or power.

659 Custody continues while person in custody is being transferred or escorted by watch-house officer

To remove doubt, it is declared that a person in the custody of a watch-house manager at a watch-house does not stop being in custody of the watch-house manager only because—

(a) the person is being transferred by a watch-house officer to or from a holding place under section 653(1); or

(b) the person is being escorted by a watch-house officer to or from a place other than a watch-house including, but not limited to, for receiving necessary health care.

Not authorised—indicative only

Not authorised—indicative only

Part 2 Registers

Division 1 Application and purpose

660 Application of pt 2

(1) This part applies to covert acts and enforcement acts done by a police officer for the CCC, the ACC or the police service.

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

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

661 Purpose and explanation of pt 2

(1) The purpose of this part is—

(a) to establish who is responsible for keeping registers under this Act and recording information in them; and

(b) to ensure, as far as possible, police officers record information about covert acts and enforcement acts in the correct register; and

(c) to state who may inspect each register.

(2) Police officers sometimes do covert acts and enforcement acts for declared agencies but do not stop being police officers only because the act is not done for the police service.

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

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

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

Division 2 Register of covert acts

Subdivision 1 Preliminary

662 Application of div 2

This division applies to covert acts.

663 Public Records Act does not apply to this division

The Public Records Act does not apply to information kept in a register under this division.

664 Register of covert acts

(1) The CCC and the police service must keep a register of covert acts.

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

(3) Each entity—

(a) may keep its register in the way the entity's chief executive officer considers appropriate; and

(b) must ensure its register is kept in a secure place.

Example for subsection (3)(a)—

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

Not authorised—indicative only

Not authorised—indicative only

Subdivision 2 Covert acts under chapters 8 and 9

665 Application of sdiv 2

This subdivision applies only in relation to the following covert acts—

(a) applications for a monitoring order or a suspension order;

(b) applications for a covert search warrant or an extension of a covert search warrant;

(c) the exercise of powers under a monitoring order, a suspension order or a covert search warrant.

666 Information to be recorded in register for sdiv 2

(1) The following information about an application for a covert search warrant must be recorded in the register—

(a) when and where the application for the warrant was made;

(b) the name of the person in relation to whom the warrant was sought and the description of the place mentioned in the application;

(c) the type of indictable offence mentioned in the application;

(d) whether or not the warrant was issued;

(e) if a warrant was issued—how long the warrant was in force.

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

(a) if and when powers were exercised under the warrant;

(b) when the initial search under the warrant was completed or, if the place was not searched, why it was not searched;

(c) whether anything was seized, inspected or photographed under the warrant;

(d) the benefits derived from the warrant, including, for example—

(i) any proceeding started; and

(ii) anything seized during a search;

(e) information about the return, destruction or disposal of anything seized.

(3) The information specified in the responsibilities code about other covert acts to which this subdivision applies must be recorded in the register.

Subdivision 3 Covert acts under chapters 11 and 13

667 Application of sdiv 3

This subdivision applies only in relation to the following covert acts—

(a) applications for surveillance device warrants or extensions or variations of surveillance device warrants;

(b) applications for retrieval warrants;

(c) revocations of surveillance device warrants or retrieval warrants;

(d) applications for emergency authorisations or for approval of the use of a surveillance device under an emergency authorisation;

(e) applications for authority for a controlled operation or for variation of an authority for a controlled operation;

(f) the exercise of powers under this Act under—

(i) a surveillance device warrant; or

(ii) a retrieval warrant; or

Not authorised—indicative only

Not authorised—indicative only

(iii) an emergency authorisation; or

(iv) a tracking device authorisation; or

(v) an authority for a controlled operation;

(g) the disclosure of information under section 352 or 353.

668 Information to be included in register for surveillance device warrants and retrieval warrants

The following information about surveillance device warrants and retrieval warrants must be recorded in the register—

(a) the date and time of issue of the warrant;

(b) the name of the judge or magistrate who issued the warrant;

(c) the name of the law enforcement officer stated in the warrant as the person primarily responsible for executing it;

(d) the relevant offence for which the warrant was issued;

(e) the period when the warrant is in force;

(f) details of any variation or extension of the warrant;

(g) whether the surveillance device was used in a participating jurisdiction;

(h) information prescribed under the responsibilities code about the exercise of powers under the warrant.

669 Information to be included in register for emergency authorisations

The following information about emergency authorisations must be recorded in the register—

(a) the date and time the emergency authorisation was given;

(b) the name of the senior officer who gave the emergency authorisation;

(c) the name of the law enforcement officer to whom the emergency authorisation was given;

(d) the relevant offence for which the emergency authorisation was given;

(e) the date on which the application for approval of powers exercised under the emergency authorisation was made;

(f) information prescribed under the responsibilities code about the exercise of powers under the emergency authorisation.

669A Information to be included in register for tracking device authorisations

The following information about tracking device authorisations must be recorded in the register—

(a) the date and time the authorisation was given;

(b) the name of the senior officer of the police service who gave the authorisation;

(c) the grounds on which the authorisation was given;

(d) if the authorisation period for the authorisation was extended—

(i) the date and time the extension was given; and

(ii) the name of the senior officer of the police service who gave the extension; and

(iii) the grounds on which the extension was given.

670 Information to be included in register for controlled operations

(1) The following information about each application made under chapter 11 by a law enforcement officer of a law enforcement agency, including for variation of authority, must be recorded in the register—

(a) the date of the application;

Not authorised—indicative only

Not authorised—indicative only

(b) whether the application was formal or urgent;

(c) whether the application was granted, refused or withdrawn;

(d) if the application was refused or withdrawn—the date and time of the refusal or withdrawal.

(2) The following information about each authority granted under chapter 11 to a law enforcement officer of a law enforcement agency must be recorded in the register—

(a) the date and time the authority was granted;

(b) whether the authority was formal or urgent;

(c) the name and rank or position of the person who granted the authority;

(d) each relevant offence for which controlled conduct under the authority was to be engaged in;

(e) the period of validity of the authority;

(f) if the authority was cancelled, the date and time of cancellation;

(g) the date and time the authorised operation began and the date of completion of the operation;

(h) the date on which the principal law enforcement officer for the operation made a report on the operation under section 267;

(i) if the authorised operation involved illicit goods, to the extent known—

(i) the nature and quantity of the illicit goods; and

(ii) the route through which the illicit goods passed in the course of the operation;

(j) details of any loss of or serious damage to property, or any personal injuries, happening in the course of or as a direct result of the operation;

(k) whether the operation was undertaken in a participating jurisdiction;

(l) information prescribed under the responsibilities code about the exercise of powers under the authority.

(3) The following information about each variation of authority under chapter 11 must be recorded in the register—

(a) the date and time the variation was made;

(b) whether the variation was formal or urgent;

(c) the name and rank or position of the person who made the variation.

Subdivision 4 General

671 Who must record information relating to covert search warrants in register

(1) The police officer who makes the application for the covert search warrant or exercises a power or does a covert act under the warrant (the ***relevant act***) must ensure the information required under section 666 to be recorded in the register of covert acts is recorded.

(2) However, if 2 or more police officers do the relevant act, the senior police officer involved in doing the act must ensure the information is recorded.

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

672 Which register to be used

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

(2) For subsection (1), the relevant register for the relevant act is—

(a) for an act done by a police officer performing functions for CCC—CCC's register; or

Not authorised—indicative only

Not authorised—indicative only

(b) if paragraph (a) does not apply—the police service register.

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

673 Who may inspect police service register

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

(a) the commissioner; or

(b) a monitor; or

(c) the CCC chairperson.

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

674 Who may inspect CCC's register

The register of covert acts kept by the CCC is not open to inspection by anyone other than—

(a) the CCC chairperson; or

(b) a monitor; or

(c) the parliamentary commissioner.

675 Other authorised inspections

(1) If the chief executive officer of a law enforcement agency that must keep a register of covert acts under this division considers it appropriate, the chief executive officer may, in writing, authorise a person who may not otherwise inspect the law enforcement agency's register to inspect the register on the conditions the chief executive officer considers appropriate.

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

(a) for an investigation into a serious indictable offence, corruption or a major offence in which information in the register may be relevant; or

(b) for maintaining the register; or

(c) for preparing an application for an approval, authorisation, order or warrant of a kind to which this division applies; or

(d) for monitoring compliance with this Act.

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

Note—

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

(4) In this section—

corruption see the *Crime and Corruption Act 2001*, schedule 2.

676 General restrictions on inspections by monitor

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

Division 3 Enforcement registers

677 Application of div 3

(1) This division only applies to enforcement acts.

(2) In this section—

Not authorised—indicative only

Not authorised—indicative only

enforcement act does not include an act done by a police officer while exercising powers under a covert search warrant, surveillance device warrant, retrieval warrant, emergency authorisation or tracking device authorisation.

678 Register of enforcement acts

(1) The CCC and the police service must keep a register of enforcement acts.

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

(3) Each entity—

(a) may keep its register in the way the entity's chief executive officer considers appropriate; and

(b) must ensure its register is kept in a way that enables police officers and protective services officers to comply with this Act; and

(c) may keep its register in a way the entity's chief executive officer considers is effective to—

(i) prevent police officers or protective services officers who are not performing functions for the entity from inspecting all or part of the register; or

(ii) restrict access to all or part of the register to only specified police officers or specified protective services officers who are performing functions for the entity.

Example for subsection (3)(c)(ii)—

The CCC chairperson may keep the CCC's register in a way that prevents police officers, other than those seconded to the CCC, inspecting the register.

679 Who must record information in register

(1) The police officer or protective services officer who does an enforcement act must ensure the information required under

the responsibilities code to be recorded in the register of enforcement acts is recorded.

(2) However, if 2 or more police officers or protective services officers do the enforcement act, the senior police officer or senior protective services officer involved in doing the act must ensure the information is recorded.

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

680 Which register to be used

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

(2) For subsection (1), the relevant register for an enforcement act is—

(a) for an act done by a police officer performing functions for CCC—CCC's register; or

(b) if paragraph (a) does not apply—the police service register.

(3) However, if a police officer does an enforcement act as part of an operation involving 2 or more entities, it is enough for subsection (2) if the information is recorded in the register kept by at least 1 of the entities participating in the operation.

(4) Further, if an entity does an enforcement act for a declared agency, other than the ACC or another entity, information about the act must be recorded in the register kept by the entity that did the enforcement act.

681 Persons to be given copy of information in register

(1) This section applies to information about a particular enforcement act recorded in a register of enforcement acts kept by the CCC or the police service.

(2) At any time within 3 years after the enforcement act is done, the person to whom the act was done may ask any police

Not authorised—indicative only

Not authorised—indicative only

officer who is entitled to inspect the register to give the person a copy or printout of the information recorded in the register about the act to the extent it describes the actions taken or information directly obtained while doing the enforcement act.

Examples for subsection (2)—

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

2 Information about the name of a complainant or informant or medical information obtained from a person other than the person to whom the enforcement act was done is not information that describes the actions taken by the person doing the enforcement act.

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

682 Restriction on disclosure of certain information

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

(a) it may prejudice or otherwise hinder an investigation to which the information may be relevant; or

(b) it may cause embarrassment to, or otherwise adversely affect, a person to whom the information relates or someone else associated with the person including, for example, a family member.

(2) Despite section 681, the chief executive officer may direct that the information be recorded in the entity's register in a way that restricts inspection of the information until the chief executive officer is satisfied it is no longer necessary to restrict its inspection.

(3) The chief executive officer must keep a written record of the reasons for the direction.

(4) However, if, within 3 years after the enforcement act was done, the person to whom the act was done asks the chief executive officer under section 681 for information to which this section applies that is the subject of a direction given under subsection (2), the chief executive officer must give the person a copy or printout of the information as soon as reasonably practicable.

Example for subsection (4)—

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

Division 4 Provisions about covert acts and enforcement acts done for the ACC

683 Application of div 4

This division applies only to covert acts and enforcement acts done by a police officer performing a function for the ACC.

684 Information to be given to ACC

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

(2) The information must be the same information as the police officer would cause to be recorded under section 666 or 679.

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

Not authorised—indicative only

Not authorised—indicative only

Division 5 General provisions

685 Correcting registers

(1) The failure of a police officer to ensure information under section 666, 668, 669, 670 or 679 is recorded in the appropriate register or give information to the ACC under section 684 does not affect anything done in relation to the act concerned, whether before or after the failure.

(2) However, as soon as possible after the police officer or someone else entitled to inspect the register becomes aware that the information is not recorded in the appropriate register, the person must take the steps reasonably necessary to ensure the information is—

(a) removed from the register in which it is recorded; and

(b) recorded in the appropriate register or given to the ACC.

Part 3 Dealing with things in the possession of police service

Division 1 Preliminary

686 Application of pt 3

(1) This part applies to a thing that is lawfully in the possession of the police service (***relevant thing***), whether before or after the commencement of this section, because—

(a) it was seized by a police officer or protective services officer; or

(b) it was found by someone other than a police officer or protective services officer who gave it to a police officer or protective services officer as apparently lost property; or

(c) it otherwise came into the possession of a police officer or protective services officer in the course of performing the officer's functions.

(2) However, this part does not apply to—

(a) a vehicle that is impounded or immobilised under chapter 4 or 22 or seized under section 124; or

(b) an animal seized under section 137; or

(c) a sample or other thing taken or collected from a person under chapter 17; or

(d) a blood or urine sample taken from a person under chapter 18; or

(e) a specimen of saliva, blood or urine taken from or provided by a person under chapter 18A or the Road Use Management Act, section 80; or

(f) a thing seized by a police officer under a property seizure order under the Confiscation Act; or

(g) a thing seized under the *Public Safety Preservation Act 1986*, part 3; or

(h) a prohibited item seized from restricted premises under the *Peace and Good Behaviour Act 1982*, section 49; or

(i) a prohibited item seized from premises the subject of a search warrant applied for under section 150(1)(e) in exercise of powers under section 157(1)(h); or

(j) fortification removed from fortified premises under the *Peace and Good Behaviour Act 1982*, section 65; or

(k) property in the possession of a protective services officer under a bailment of the property to the officer.

(3) However, to the extent this part imposes an obligation on a police officer or protective services officer to keep seized things in a safe place, this part does apply to a thing mentioned in subsection (2)(f) or (k) that is reasonably capable of being moved.

Not authorised—indicative only

Not authorised—indicative only

(4) Also, this part, apart from section 721, does not apply to something seized under chapter 19, part 5 if a coroner decides the death is a reportable death.

(5) Also, this part has effect in relation to a dangerous drug subject to the operation of part 4 in relation to the dangerous drug.

(6) In addition, this part, to the extent it deals with forfeited property, applies to property forfeited to the State under the *Public Safety Preservation Act 1986*, section 42 that is in the possession of the police service.

687 Object of pt 3

The object of this part is to ensure, as far as practicable, a relevant thing—

(a) is retained by the police service only for as long as is reasonably necessary; and

(b) is handled in an efficient, safe and accountable way.

688 Responsibilities of police officer or protective services officer taking possession of relevant thing

(1) A police officer who seizes or otherwise comes into possession of a relevant thing 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 reasonably practicable, unless—

(a) the thing is earlier returned, destroyed or disposed of under this part; or

(b) it is necessary to keep the thing for use during questioning or for an investigative procedure involving the thing.

(2) A protective services officer who seizes or otherwise comes into possession of a relevant thing 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 reasonably practicable, unless—

(a) the thing is earlier returned, destroyed or disposed of under this part; or

(b) the thing is given to a police officer.

(3) If a 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 reasonably practicable after the reason for keeping it ends.

(4) Until the thing is given or delivered under subsection (1) or (2), the police officer or protective services officer is responsible for the safe keeping of the thing.

(5) The commissioner must—

(a) ensure reasonable inquiries and reasonable efforts are made to locate anyone lawfully claiming to be entitled to possession of the thing; and

(b) facilitate its lawful disposal or its return to its owner or the person who had lawful possession of it before it came into the possession of the police service.

(6) What are reasonable inquiries and efforts, must be decided having regard to the nature, condition and value of the relevant thing.

(7) Subsection (5) does not apply to the thing if the commissioner is satisfied it is inappropriate to return it to its owner or the person who had lawful possession of it before it came into the possession of the police service.

Example for subsection (7)—

The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

Not authorised—indicative only

Not authorised—indicative only

689 Particular provision about handling animals in the possession of the police service

(1) This section applies to a relevant thing that is in the possession of the police service if the relevant thing is an animal.

(2) The police service must handle the animal in an efficient, safe and accountable way including by keeping the animal in a way that has appropriate regard to—

(a) the animal's welfare and the welfare of other animals in the possession of the police service at the place where the animal is kept; and

(b) relevant animal husbandry practices.

(3) In this section—

animal, includes offspring of an animal, born while the animal is in the possession of the police service.

690 Forfeiture in particular cases

If this part applies to a thing and the commissioner is satisfied the thing has no value, the thing is forfeited to the State.

Division 2 Return of relevant things

691 Return of relevant things

(1) Unless a justice otherwise orders, a police officer or protective services officer must return a relevant thing to the owner of the thing or the person who had lawful possession of the thing before it came into the possession of the police service if the police officer or protective services officer is satisfied—

(a) it is not required to be retained; and

(b) it is lawful for the person to have possession of the thing.

(2) If the thing is evidence of the commission of an offence and a police officer considers it appropriate, the police officer must

take the steps reasonably necessary to minimise the need to retain the thing as evidence by, as soon as reasonably practicable—

(a) photographing the thing or arranging for it to be photographed; or

(b) arranging for any necessary test or examination of the thing; or

(c) gathering any other available secondary evidence in relation to the thing.

(3) Despite subsection (1), if a police officer or protective services officer seized the relevant thing, a police officer or protective services officer may retain the thing for a reasonable time after it is seized if retention of the thing is necessary—

(a) to prevent a person using the thing to cause harm to himself, herself or someone else; or

(b) to prevent an offence or a breach of the peace happening; or

(c) to prevent the thing being used for domestic violence or associated domestic violence.

(4) This section does not apply to a relevant thing that the commissioner is satisfied is inappropriate to return to its owner or the person who had lawful possession of it before it was seized or came into the possession of the police service because of the nature or value of the thing or the circumstances of the offence to which it relates.

Examples for subsection (4)—

1 The commissioner may be satisfied it is not appropriate to return fibres taken from a carpet at a crime scene because the fibres have little or no value.

2 The commissioner may be satisfied it is inappropriate to return clothing worn by a victim at the time of a sexual assault because of the distress returning the clothing to the victim may cause.

Not authorised—indicative only

Not authorised—indicative only

692 Application by owner etc. for return of relevant thing

(1) This section applies to a relevant thing—

(a) that has been in the possession of the police service for at least 30 days and is not the subject of an application under section 693; or

(b) that is described in a notice given under section 719(4).

(2) A person who claims to have a legal or equitable interest in the relevant thing may apply in writing to the commissioner for the return of the thing to the person or for the delivery of the thing to someone else named in the application as the person to whom the thing may be delivered (the ***nominee***).

(3) The commissioner may require the applicant to give to the commissioner the additional information the commissioner considers reasonably necessary to enable the commissioner to properly consider the application.

(4) After considering the application and any additional information given to the commissioner under subsection (3), the commissioner may—

(a) return the thing to the applicant; or

(b) deliver the thing to the nominee as requested by the applicant; or

(c) refuse to return the thing.

(5) However, the commissioner may only return a thing under subsection (4) if the commissioner is satisfied—

(a) the applicant may lawfully possess the thing; and

(b) it is appropriate that the thing be delivered to the person.

(6) If the commissioner proposes to deliver the relevant thing to the applicant's nominee, the commissioner must also be satisfied that the nominee may lawfully possess the thing.

693 Application by owner etc. for court order for return of relevant thing

(1) This section applies to a relevant thing—

(a) that has been in the possession of the police service for 30 days and is not returned under section 692; or

(b) that is described in a notice given under section 719(4).

(2) However, this section does not apply to a relevant thing that is forfeited to the State under an Act.

(3) A person who claims to have a legal or equitable interest in the relevant thing may apply to a magistrate for an order that the thing be returned to the person or to someone else named in the application as the person to whom the thing may be delivered (the ***nominee***).

(4) The person 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 thing.

(5) The magistrate may order that the relevant thing be returned to a person on the conditions, if any, the magistrate considers appropriate if satisfied—

(a) the person may lawfully possess the thing; and

(b) it is appropriate that the thing be returned to the person.

(6) If the magistrate proposes to order that the relevant thing be delivered to the applicant's nominee, the magistrate must also be satisfied that the nominee may lawfully possess the thing.

(7) The magistrate must not order the return of a relevant thing to the person or the person's nominee if the magistrate is reasonably satisfied the thing—

(a) may be evidence in a proceeding started in relation to the thing; or

(b) is a thing used in or for manufacturing a dangerous drug; or

Not authorised—indicative only

Not authorised—indicative only

(c) may be subject to a forfeiture proceeding, including a forfeiture proceeding relating to an interstate serious offence under the Confiscation Act.

694 Application by police officer for order if ownership dispute

(1) This section applies if there is a dispute about the ownership of a relevant thing, whether the dispute is between—

(a) two or more persons, each of whom claims to be the owner of the thing; or

(b) a police officer and a person who claims to be the owner of the thing.

(2) A police officer may apply to a magistrate for an order declaring who is the owner of the thing.

(3) The police officer must give anyone the police officer reasonably believes has a legal or equitable interest in the thing a copy of the application and notice of the day, time and place fixed for hearing the application.

(4) The magistrate may make the order the magistrate considers appropriate.

(5) If the magistrate can not decide who owns the thing, the magistrate may make the orders the magistrate considers appropriate for the disposal of the thing.

695 Application for order in relation to seized things

(1) This section applies to a thing seized—

(a) as evidence of the commission of an offence; or

(b) to prevent a person using the thing to cause harm to himself, herself or someone else; or

(c) to prevent an offence or a breach of the peace happening.

(2) Within 30 days after a police officer seizes the thing, the police officer must apply to a justice of the peace (magistrates

court) or a magistrate (the ***issuer***) for an order under section 696 in relation to the thing, unless—

(a) a proceeding has been started in which the thing may be relevant; or

(b) consent to the continued keeping of the thing has been given by its owner or the person who had lawful possession of the thing before it was seized; or

(c) it has no intrinsic value; or

Example for subsection (2)(c)—

samples of hair or blood taken from a crime scene that may be forensic evidence

(d) it is perishable and will perish before it can be returned to its owner or the person who had lawful possession of the thing before it was seized; or

(e) it is a dangerous drug or a thing used in or for manufacturing a dangerous drug; or

(f) it is a weapon the person from whom it was seized may not lawfully possess; or

(g) it is given to a law enforcement agency of another State under section 722 or another agency under an arrangement under section 723; or

(h) it is returned under section 691, 692 or 693.

(3) An application for an order under section 696 must also be made within 30 days after either of the following happens—

(a) a proceeding started in relation to the thing seized is discontinued without any order being made in relation to the thing;

(b) the consent of the owner of the thing or the person who had lawful possession of the thing before it was seized is withdrawn.

(4) The application must be accompanied by any warrant under which the thing was seized.

Not authorised—indicative only

Not authorised—indicative only

(5) However, if no application is to be made because subsection (2)(a), (b), (c), (d), (e) or (f) applies to the thing, a police officer must deal with the thing in the way specified in the responsibilities code, unless this Act otherwise provides.

(6) Subsection (7) applies if—

(a) a proceeding started in relation to a thing seized is a proceeding against a child for an offence; and

(b) the child pleads guilty before the court; and

(c) the court dismisses the charge and refers the offence to the chief executive (communities) for a restorative justice process under the *Youth Justice Act 1992*, section 24A.

(7) For subsection (3)(a), the discontinuation of the proceeding is taken to happen on the day the child discharges his or her obligations under a restorative justice agreement made as a consequence of the referral.

(8) In this section—

restorative justice agreement see the *Youth Justice Act 1992*, schedule 4.

restorative justice process see the *Youth Justice Act 1992*, schedule 4.

696 Orders issuer may make in relation to seized thing

(1) After considering the application, the issuer under section 695 may, in relation to the seized thing, order—

(a) that it be kept in the possession of a police officer until the end of—

(i) any investigation in relation to which the thing may be relevant; or

(ii) any proceeding in which the thing may be relevant; or

(iii) any appeal against a decision in a proceeding in which the thing is relevant; or

(b) that it be photographed and returned to its owner or the person who had lawful possession of it before it was seized on condition that the owner or person undertakes to produce it before a court in any later proceeding involving the thing; or

(c) that it be returned to the person who the issuer under section 695 believes is lawfully entitled to possess it; or

(d) if the person entitled to possess the thing is unknown, that the thing be disposed of; or

(e) for a thing seized for a reason mentioned in section 695(1)(b) or (c), that it be dealt with in the way decided by the commissioner; or

(f) that it be disposed of or destroyed; or

(g) that it be dealt with by way of a proceeding under section 693 or 694 or a forfeiture proceeding.

(2) Also, if the seized thing is an animal, the issuer under section 695 may order—

(a) if the issuer is satisfied the animal is breeding stock—that the animal be held by a named person until the end of the proceeding for the charge of an offence in which the animal is evidence; or

(b) if the issuer is satisfied the animal is not breeding stock and the ownership of the animal can not be decided—that the animal be sold in the way directed by the issuer and the proceeds of the sale, after paying any costs of the sale, be paid to the consolidated fund.

(3) The issuer under section 695 may, in the order, impose any conditions the issuer considers appropriate, including, for subsection (1)(a), a condition limiting the time for which a police officer may keep possession of documents seized as evidence.

Not authorised—indicative only

Not authorised—indicative only

697 Cost recovery for animal held in possession of police service

(1) This section applies in relation to an animal seized by a police officer and held in the possession of the police service, whether or not under an order under section 696.

(2) If the person who appears to be the owner of the animal is known, the commissioner may, by letter of demand, require the person to pay to the commissioner within a stated reasonable time, of at least 28 days, the commissioner's stated reasonable costs of keeping the animal.

(3) The commissioner must not give the person the letter of demand unless the commissioner first gives the person written notice of the commissioner's intention to require the person to pay the costs and a reasonable time, of at least 14 days, to state why the person should not be required to pay the costs.

(4) If—

(a) after considering any representations made by the person, the commissioner gives the person the letter of demand; and

(b) the person fails to pay the amount stated in the letter of demand within the time stated in the letter of demand;

the amount payable becomes a debt payable to the State and may be recovered in a court having jurisdiction for the amount.

(5) The letter of demand must inform the person—

(a) of the consequences of failing to reply to the letter of demand; and

(b) that the person may appeal against the letter of demand to a Magistrates court.

(6) Nothing in this section stops the owner of an animal voluntarily surrendering ownership of the animal to the State under section 698.

(7) In this section—

animal, includes offspring of an animal, born while the animal is in the possession of the police service.

698 Voluntary surrender of animal to State

(1) A person who is given a letter of demand under section 697 may agree to surrender the animal to which the letter of demand relates to the State.

(2) The agreement must be written and witnessed by a person who may witness a statutory declaration.

(3) If the State agrees to the surrender of the animal—

(a) the animal becomes the property of the State; and

(b) the commissioner may sell or dispose of the animal in the way the commissioner considers appropriate.

(4) If the commissioner sells the animal, the proceeds of the sale after paying any costs of the sale must be applied as follows—

(a) in payment of the commissioner's costs of keeping the animal while in the possession of the police service;

(b) in payment of any balance to the consolidated fund.

699 Appeal if letter of demand given under s 697

(1) Within 28 days after being given a letter of demand under section 697, a person dissatisfied with the demand may appeal to a Magistrates Court against the demand.

(2) Subsection (1) applies whether or not the amount stated in the letter of demand is more than the maximum amount that may be recovered in a personal action in the civil jurisdiction of a Magistrates Court.

(3) The appeal must be started by—

(a) filing a written notice of appeal with the Magistrates Court; and

(b) serving a copy of the notice on the commissioner.

Not authorised—indicative only

Not authorised—indicative only

(4) On the filing of the notice of appeal, section 697(4) stops having effect.

700 Deciding appeal

(1) In deciding the appeal, the Magistrates Court—

(a) is not bound by the rules of evidence; and

(b) must comply with natural justice.

(2) The Magistrates Court may—

(a) confirm the commissioner's decision; or

(b) set aside the commissioner's decision; or

(c) set aside the commissioner's decision and substitute another decision the court considers appropriate.

(3) If the Magistrates Court confirms the commissioner's decision, section 697(4) has effect in relation to the confirmed decision as if the date for payment of the amount required to be paid under the letter of demand were a date that is 28 days after the date of the Magistrates Court's decision.

(4) If the Magistrates Court substitutes, for the commissioner's decision, another decision requiring the payment of an amount—

(a) the amount payable must be paid within 28 days of the decision; and

(b) if any part of the amount is not paid, section 697(4), to the extent it relates to the recovery of an unpaid amount, applies to the amount.

701 Disposal of seized things at end of proceeding

(1) At the end of a proceeding, a court, in relation to a seized thing, may make any of the following orders—

(a) an order for the return, forfeiture, destruction or disposal of the thing;

(b) an order that the thing be dealt with by way of a proceeding under section 693 or 694 or a forfeiture proceeding;

(c) an order that the police service retain the thing until it is dealt with according to law.

(2) A thing that is forfeited under an order under this Act becomes the property of the State.

702 Commissioner to decide way of destruction or disposal

(1) This section applies if an order is made for the disposal or destruction of a thing under section 694, 696 or 701.

(2) Subject to any direction in the order, the commissioner must decide how the thing is to be disposed of or destroyed.

(3) However, if the value of the thing is more than the amount prescribed under a regulation for this section, the commissioner must first obtain the Minister's approval to the proposed disposal or destruction.

Examples—

1 The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.

2 The commissioner may give stolen clothes to a charitable organisation whose charter is to assist the poor.

Division 3 Dealing with controlled drugs, dangerous drugs etc.

Subdivision 1 Preliminary

703 Application of div 3

This division applies if—

(a) a police officer seizes drug matter; or

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(b) drug matter otherwise comes into the possession of the police service.

704 Definition for div 3

In this division—

drug matter means—

(a) an S8 medicine under the *Medicines and Poisons Act 2019*; or

(b) a controlled substance under the *Drugs Misuse Act 1986*; or

(c) a dangerous drug; or

(d) a thing intended for use, or that was used, in the commission of a drug offence.

Subdivision 2 General provisions about destruction of drug matter

705 Destruction of drug matter soon after it is seized etc.

(1) A police officer may destroy drug matter where it is found or move it, or arrange for it to be moved, to another place where it can safely be destroyed if—

(a) a police officer is satisfied it is not reasonably practicable to take the drug matter to a property point or to keep it at a police station; and

(b) the police officer reasonably believes that unless the drug matter is destroyed there is a risk it may be used in the commission of an offence.

Example for paragraph (a)—

It may be necessary to destroy a large plantation of cannabis plants after taking samples of the plants because it is impractical to transport them to a property point for storage and leaving them where they are may lead to the commission of an offence.

(2) Also, a police officer may destroy drug matter where it is found, or move it, or arrange for it to be moved to another place where it can safely be destroyed if it may be dangerous to take it, or any part of it, to a property point or to keep it at a police station.

(3) This section applies even though—

(a) a proceeding for an offence in which the drug matter may be relevant has not been started or, if started, has not been decided; and

(b) any notice of the proposed destruction of the drug matter that is required to be given under section 710 has not been given.

705A Disposal of things used for administering etc. dangerous drugs

(1) Without limiting section 705, the commissioner may destroy drug matter that the commissioner is reasonably satisfied—

(a) is for use or has been used in the administration, consumption or smoking of a dangerous drug; and

(b) is no longer required as evidence in a proceeding.

(2) The commissioner may destroy the drug matter in a way that prevents it being used in the commission of an offence.

(3) Drug matter that is a hypodermic syringe or needle and is disposed of in a way required under the *Drugs Misuse Regulation 1987* is taken to have been destroyed.

(4) This section applies even though a proceeding for an offence in which the drug matter may be relevant has not been started or, if started, has not been decided.

706 Steps police officer must take before destroying drug matter under s 705

(1) Before destroying drug matter under section 705, a police officer must photograph the drug matter where it is found.

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(2) For drug matter other than a thing intended for use, or that was used, in the commission of a drug offence, the police officer must, if practicable—

(a) weigh the drug matter, or for plants, count the number of plants; and

(b) retain a representative sample of the drug matter.

(3) This section does not apply to drug matter if section 707 applies to the drug matter.

707 Alternative to destruction if drug matter is thing used in the commission of a drug offence

(1) This section applies despite section 705.

(2) If the commissioner is reasonably satisfied drug matter in the possession of the police service is a thing used or intended for use in the commission of a drug offence that may be destroyed under section 705, the commissioner may direct that the thing first be photographed and then disposed of in the way the commissioner considers appropriate instead of destroying it under section 705.

Example—

The commissioner may give a hydroponics system previously used for growing dangerous drugs to a school for use for an agricultural purpose.

(3) For subsection (2), the commissioner may consider it appropriate that—

(a) drug matter that is a batch of a dangerous drug be disposed of by giving the drug matter to the chief executive (corrective services) for training purposes under the *Corrective Services Act 2006*, chapter 6, part 13A; or

(b) drug matter be disposed of by giving the drug matter to the chief executive officer, however described, of any of the following entities for the purposes of an illicit drug profiling program or project, however described—

(i) the Australian Federal Police;

(ii) a police service of another State;

(iii) an entity established under the law of the Commonwealth or a State to investigate corruption or crime.

(4) Subsection (3) does not limit the ways that the commissioner may consider are appropriate for disposing of the drug matter.

Subdivision 3 Destruction of drug matter if notice required

708 Application of sdiv 3

This subdivision applies to drug matter that is not destroyed under subdivision 2.

709 Definitions for sdiv 3

In this subdivision—

analyst's certificate means a certificate of a kind mentioned in the *Drugs Misuse Act 1986*, section 128.

destruction notice see section 710.

drug matter does not include a thing intended for use, or that was used, in the commission of a drug offence.

independent analyst see section 711.

710 Destruction notice may be given to person

(1) A police officer may give a person the police officer reasonably suspects has committed an offence in which drug matter is involved a written notice under this section (***destruction notice***).

(2) A destruction notice given to a person whose name and location are known must be in the approved form.

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(3) However, if the person's name and location are not known or the person can not be located, the destruction notice may be given by making the information required to be stated in the approved form available on the police service website to the extent the information is known.

(4) A destruction notice given to a child under subsection (3) must not identify the child but must be given in a way that is enough for the child or the child's lawyer to identify the notice as relating to the child and the offence of which the drug matter is evidence.

(5) Also, a destruction notice given to a person under subsection (3) is taken to have been given to the person as soon as it may be viewed by a person using the internet, whether or not the person to whom the notice relates knows the notice has actually been made accessible.

711 What destruction notice must state

A destruction notice in relation to particular drug matter must state the following—

(a) that the commissioner possesses an analyst's certificate relating to the drug matter;

(b) what the analyst's certificate states the drug matter is;

(c) that within 30 days after the notice is given, the person may, by written notice (***analysis request***), require the commissioner to make a representative sample of the drug matter available to an appropriately qualified person (***independent analyst***) for analysis;

(d) that the analysis request must state the name, address and qualifications of the independent analyst;

(e) that if the person gives the commissioner an analysis request and the commissioner makes a representative sample of the drug matter available under section 712 for analysis by an independent analyst, the person must pay the costs of the independent analyst's analysis of the representative sample;

(f) that, if the person does not give the commissioner an analysis request within the 30 days, the commissioner may destroy the drug matter.

712 Making sample of drug matter available

(1) If, after receiving an analysis request, the commissioner is satisfied the independent analyst named in the analysis request has the qualifications necessary to analyse the drug matter, the commissioner may make a representative sample of the drug matter available to the independent analyst for analysis, within 5 business days, at a time and place decided by the commissioner and on the conditions the commissioner considers appropriate.

(2) However, if the commissioner is not satisfied the independent analyst has the qualifications necessary to analyse the drug matter, the commissioner may require the person who made the analysis request to name another independent analyst within 30 days.

(3) If, within the 30 days, the person names another independent analyst and the commissioner is satisfied the independent analyst has the qualifications necessary to analyse the drug matter, the commissioner may make a representative sample available to the independent analyst under subsection (1).

713 When drug matter may be destroyed

(1) The commissioner may destroy drug matter to which a destruction notice relates if the person given the destruction notice does not name an independent analyst to analyse a representative sample within the time stated in the destruction notice or under 712.

(2) Also, if the commissioner makes a representative sample of drug matter available to an independent analyst under section 712(1), the commissioner may destroy the drug matter from which the representative sample was made available at the end of 10 business days after the day the commissioner

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made the representative sample available to the independent analyst.

(3) However, if, within the 5 business days after the independent analyst completes the analysis, the person to whom the destruction notice is given gives to the commissioner a written notice disputing the analysis in the analyst's certificate, the commissioner must not destroy the drug matter until any proceeding for the offence to which the analyst's certificate relates is finally decided.

(4) This section does not limit section 707(3) or 733.

Division 4 Dealing with weapons

714 Disposal of weapons

(1) At any time after the appointed day, a police officer may deliver a relevant thing that is a weapon that has not been forfeited to the State—

(a) if a police officer is satisfied a person is the owner of the weapon, or would be lawfully entitled to possess it if that person complies with the *Weapons Act 1990*—

(i) to the owner or person lawfully entitled to possess it; or

(ii) if the owner or person lawfully entitled to possess it nominates another person to possess it, to that person; or

(b) if a court order is made for the delivery of the weapon to a person under section 696 or 701—to that person.

(2) However, a weapon may be delivered to a person mentioned in subsection (1) only if that person satisfies the police officer who holds or has custody of the weapon that the person may lawfully possess the weapon.

(3) If the weapon has not been delivered to any person under subsection (1) within 3 months after the appointed day or the

longer period the commissioner decides in a particular case, the weapon is forfeited to the State.

715 What is the appointed day for disposal of weapons under s 714

The ***appointed day*** for disposal of weapons is—

(a) for a weapon seized because of a contravention or suspected contravention of the *Weapons Act 1990*, the later of the following—

(i) the day all proceedings relating to the offence or suspected offence are finally decided;

(ii) the day 6 months after the day the weapon was seized; or

(b) for a weapon given to a police officer under the *Weapons Act 1990*, section 29B because a domestic violence order was made, a police protection notice was issued or release conditions were imposed—3 months after the day the order is made, the notice is issued or conditions are imposed; or

(c) otherwise, the day the weapon was seized.

Division 4AA Dealing with proscribed things

715AA Disposal of proscribed things

(1) At any time after the appointed day, a protective services officer may deliver a relevant thing that is a proscribed thing that has not been forfeited to the State—

(a) if a protective services officer is satisfied a person is the owner of the proscribed thing, or would be lawfully entitled to possess it if that person complies with the *Weapons Act 1990*—

(i) to the owner or person lawfully entitled to possess it; or

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Not authorised—indicative only

(ii) if the owner or person lawfully entitled to possess it nominates another person to possess it, to that person; or

(b) if a court order is made for the delivery of the proscribed thing to a person under section 701—to that person.

(2) However, a proscribed thing may be delivered to a person mentioned in subsection (1) only if that person satisfies the protective services officer who holds or has custody of the proscribed thing that the person may lawfully possess the proscribed thing.

(3) If the proscribed thing has not been delivered to any person under subsection (1) within 3 months after the appointed day or the longer period the commissioner decides in a particular case, the proscribed thing is forfeited to the State.

715AB What is the appointed day for disposal of proscribed thing under s 715AA

The appointed day for disposal of proscribed things is—

(a) for a proscribed thing seized because of a contravention or suspected contravention of the *Weapons Act 1990*, the later of the following—

(i) the day all proceedings relating to the offence or suspected offence are finally decided;

(ii) the day 6 months after the day the proscribed thing was seized; or

(b) otherwise, the day the proscribed thing was seized.

Division 4A Dealing with explosives

715A Commissioner may authorise police officers to destroy explosives

The commissioner may authorise a police officer to destroy relevant things that are explosives, if the police officer—

(a) has the necessary experience or expertise to be able to destroy explosives; or

(b) has satisfactorily completed a course of training about the destruction of explosives approved by the commissioner.

715B Destruction of explosives

(1) This section applies in relation to a relevant thing that is an explosive.

(2) An approved officer may destroy the explosive where it is found or move it, or arrange for it to be moved, to another place where it can safely be destroyed, if—

(a) the approved officer is satisfied it is not reasonably practicable to take the explosive to a property point or to keep it at a police station; or

(b) it may be dangerous to take the explosive to a property point or to keep it at a police station.

(3) Before destroying the explosive, a police officer must, if reasonably practicable, photograph the explosive where it is found.

(4) This section applies even though a proceeding for an offence in which the explosive may be relevant has not been started or, if started, has not been decided.

(5) However, this section does not apply if a declaration has been made under the *Public Safety Preservation Act 1986*, section 5, 8G or 12 in relation to the explosive.

Division 5 Dealing with other things

716 Perishable things

(1) This section applies to a relevant thing that is perishable if—

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Not authorised—indicative only

(a) the thing can not be returned to its owner or the person who had lawful possession of it before it came into the possession of the police service; or

(b) its owner or the person who had lawful possession of the thing before it came into the possession of the police service can not be contacted to obtain directions about how to deal with the thing.

(2) The commissioner may dispose of the thing in a way that—

(a) does not cause an actual or apparent conflict of interest in the commissioner or someone in a position to influence how the thing may be disposed of; and

Example for subsection (2)(a)—

A conflict of interest may be apparent if a friend, relative or business associate of a person in a position to influence how a thing may be disposed of may benefit from the disposal of the thing.

(b) benefits the community generally or a community group.

Example for subsection (2)(b)—

Vegetables that are suspected of being stolen may be given to a community organisation running a kitchen to feed the homeless.

(3) If the commissioner reasonably suspects the relevant thing is unfit for human consumption or it is impracticable to dispose of the thing in a way that satisfies subsection (2), the commissioner must dispose of it in a way that does not cause danger to anyone or the community generally.

Division 6 Forfeiture

717 Application of div 6

This division applies to a relevant thing that has not been forfeited to the State.

718 Order for forfeiture of particular relevant things

(1) The commissioner may order the forfeiture of a relevant thing, after it has been in the possession of the police service for at least 30 days, only if—

(a) the commissioner is satisfied—

(i) the owner of the thing can not be found after reasonable inquiries; or

(ii) having regard to the nature, condition and value of the thing, it is not reasonable to make inquiries about its owner; or

Examples for paragraph (a)—

1 The owner of the thing has migrated to another country.

2 The thing is a small amount of liquor that does not have a high value.

(b) the commissioner is unable, after making reasonable efforts, to return the thing to its owner.

Example for paragraph (b)—

The owner of the thing refuses to take possession of the thing.

(2) At least 30 days before the order for forfeiture is made, the commissioner must give the owner of the relevant thing a written notice stating that unless the thing is claimed, an order for its forfeiture to the State will be made under this section.

(3) If the owner of the relevant thing is not known, the notice may be published on the police service website.

(4) Subsections (2) and (3) do not apply if the cost of giving the notice is more than the value of the relevant thing.

(5) This section does not apply to a relevant thing mentioned in section 719.

719 Order for forfeiture of relevant things connected with offences

(1) This section applies to a relevant thing if the commissioner is satisfied—

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(a) the thing has been used in the commission of an offence; or

(b) it is necessary to retain the thing to prevent it being used in the commission of an offence; or

(c) possession of the thing is an offence unless authorised, justified or excused by law.

(2) The commissioner may order the forfeiture to the State of the relevant thing.

(3) However, the commissioner may order the forfeiture of the relevant thing only if the commissioner is satisfied reasonable steps have been taken to give, a notice under subsection (4).

(4) The notice—

(a) must be—

(i) given, in writing, to the owner of the thing, if the name and address of the owner is known; or

(ii) if the name and address of the owner is not known, given to the person who appeared to have possession of the thing before it was seized; or

(iii) otherwise, published on the police service website; and

(b) must describe the relevant thing and state—

(i) that the thing may be forfeited to the State; and

(ii) that an application may be made to a magistrate under section 693 for an order for the return of the thing; and

(iii) that, if an application is not made to a magistrate within 28 days after the notice is given, the commissioner may order that the thing be forfeited to the State.

(5) Subsection (3) does not apply if the cost of giving the notice is more than the value of the relevant thing.

(6) If the person applies under section 693 to a magistrate, the commissioner may not order the forfeiture of the relevant

thing, unless the magistrate refuses to order the delivery of the thing to the applicant or the application is withdrawn, whichever happens first.

Division 7 Dealing with forfeited things

720 Application of div 7

(1) This division applies to a thing in the possession of the police service that is forfeited, or ordered to be forfeited, to the State under this or any other Act.

(2) This division applies to a forfeited thing only after all proceedings relating to the offence or suspected offence for which the thing was forfeited are finally decided.

(3) However, the delay of the application of this division under subsection (2) does not apply to the following things—

(a) a dangerous attachment device forfeited under section 53AA;

(b) a thing forfeited under division 6.

721 Dealing with forfeited things

(1) On the forfeiture of a thing to the State, the thing becomes the property of the State and 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.

(2) Without limiting subsection (1), the commissioner may destroy or dispose of the thing.

(3) If the thing is sold, it must be sold by auction and the proceeds of the sale are to be paid—

(a) first, in meeting the expenses of the sale; and

(b) second, in meeting the expenses of the seizure and storage of the thing and doing anything necessary to prepare it for sale; and

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(c) third, to the consolidated fund or, if the proceeds relate to a thing forfeited under section 718, the unclaimed moneys fund kept under the *Public Trustee Act 1978*.

Example for paragraph (b)—

cleaning the hard drive of a seized computer

Division 8 Arrangements about relevant things

722 Ministerial arrangements for transmission and return of seized things

(1) The Minister may enter into arrangements with a Minister of State for another State responsible for the administration of a law declared by regulation to be a corresponding law for this section under which—

(a) a thing seized under this Act that may be relevant to the investigation of an offence, or a proceeding for an offence, against the law of the State in which the corresponding law is in force—

(i) is to be given to a law enforcement agency in that State for the investigation of or a proceeding for the offence; and

(ii) when no longer required for the investigation or proceeding, is to be returned to the law enforcement agency who seized it, unless disposed of by order or direction of a court; and

(b) a thing seized under the corresponding law that may be relevant to the investigation of an offence, or a proceeding for an offence, against the law of Queensland—

(i) is to be given to the commissioner; and

(ii) when no longer required for the investigation of an offence or a proceeding for an offence, is to be returned to the relevant law enforcement agency in

the State in which it was seized, unless disposed of by order or direction of a court.

(2) A thing returned to a law enforcement agency under an arrangement under subsection (1), unless it can lawfully be returned to its owner, is a thing for which an application may be made under section 695.

723 Commissioner may make arrangements

The commissioner may, under an arrangement between the commissioner and the chief executive of a department or the chief executive officer of another agency, transfer the possession of a relevant thing to the chief executive or chief executive officer if, in the circumstances, it would be appropriate for the thing to be dealt with under another Act.

Example—

It may be appropriate for the commissioner to transfer the possession of explosives to the chief executive of the department responsible for the administration of the *Explosives Act 1999* for safe keeping or destruction of the explosives.

Division 9 Evidentiary provisions

724 Evidentiary provision about particular things in the possession of the police service

(1) This section applies in relation to a running statement.

(2) A certificate signed by the commissioner and stating a document attached to the certificate is a copy of a running statement is evidence of what is stated.

(3) Also, the copy of the running statement is evidence of what is stated in the running statement.

(4) If, in a criminal proceeding, the prosecuting authority intends to rely on the certificate, it must, at least 14 business days before the hearing day, give a copy of the certificate to the defendant or the defendant's lawyer.

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Not authorised—indicative only

(5) If the defendant intends to challenge a matter stated in the certificate, the defendant must, at least 10 business days before the hearing day, give the prosecuting authority notice, in the approved form, of the matter to be challenged.

(6) If the defendant acts under subsection (5), the certificate stops being evidence of the matter challenged.

(7) In this section—

hearing day means the day the hearing of the criminal proceeding starts.

prosecuting authority means the entity responsible for prosecuting the criminal proceeding.

running statement means a document that identifies itself as a running statement relating to a relevant thing in the possession of the police service that is evidence of the commission of an offence sufficiently identified in the running statement to connect it to the proceedings in which the certificate is evidence and including the following—

(a) where and when the relevant thing was found;

(b) who found the relevant thing;

(c) the name of each person to whom the thing was given after it was found;

(d) before the relevant thing was given to each person who had possession of it, the relevant thing was kept secure from tampering;

(e) how the thing was dealt with by each person who had possession of it including, but not limited to, how, when and by whom it was transported from person to person or place to place.

724A Evidentiary provision about explosives

A certificate signed by the commissioner and stating that a stated police officer was on a stated day an approved officer is evidence of what it states, unless the contrary is proved.

Part 4 Use of dangerous drugs for training

Division 1 Preliminary

725 Object of pt 4

(1) The object of this part is to ensure training in the police service about dangerous drugs is realistic and effective.

(2) The object is to be achieved by putting in place arrangements—

(a) to allow the police service to have access to dangerous drugs for training purposes; and

(b) to ensure dangerous drugs in the possession of the police service for training purposes—

(i) are carefully handled to ensure their effectiveness for training purposes is not compromised; and

(ii) are subject to strict tracking and accountability requirements.

726 Definitions for pt 4

In this part—

agency arrangement means an arrangement, or series of arrangements, between the commissioner and the chief executive officer, by whatever name known, of a department or other agency of the State or the Commonwealth providing for the following—

(a) the transfer of possession of a batch of a dangerous drug from the possession of the department or agency into the possession of the police service;

(b) that the batch of the dangerous drug is to be used for training in the police service;

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Not authorised—indicative only

(c) the type and extent of the training for which the batch of the dangerous drug is to be used;

(d) what is to be done with the batch of the dangerous drug at the end of the training;

(e) anything else the parties to the arrangement consider appropriate.

Example of an agency arrangement made up of a series of arrangements—

A first arrangement between the commissioner and an agency could establish basic principles to govern the supply of dangerous drugs to the commissioner for training purposes. A second arrangement between the commissioner and the agency could establish particular procedures to be followed for transferring particular types of dangerous drugs between the commissioner and the agency, subject to the basic principles established in the first arrangement. A third arrangement between the commissioner and the agency could provide for the special circumstances applying to a batch of 1 of the particular types of dangerous drugs mentioned in the second arrangement. For the batch mentioned in the third arrangement, the agency arrangement may be ascertained from a reading of all 3 arrangements.

commissioner direction means a direction of the commissioner—

(a) authorising—

(i) the keeping of a batch of a dangerous drug; and

(ii) the use of the batch in training in the police service; and

(b) stating the conditions under which the keeping and use of the batch of the dangerous drug is authorised.

drug control officer means a person holding an appointment under division 2 as a drug control officer.

drug vault means a secure facility suitable for the storage of dangerous drugs in the possession of the police service for training purposes under the authority of a commissioner direction.

register of dangerous drugs for training means the register of dangerous drugs for training kept under section 737.

secure facility means a facility that is secure against unauthorised entry.

Division 2 Drug control officers

727 Appointment and qualifications

(1) The commissioner may appoint a public service officer or a police officer as a drug control officer.

(2) However, the commissioner may appoint a person as a drug control officer only if—

(a) the commissioner is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; or

(b) the person has satisfactorily finished training approved by the commissioner.

728 Appointment conditions

(1) A drug control officer holds office on any conditions stated in—

(a) the drug control officer's instrument of appointment; or

(b) a signed notice given to the drug control officer; or

(c) a regulation.

(2) The instrument of appointment, a signed notice given to the drug control officer or a regulation may limit the drug control officer's powers under this part.

(3) In this section—

signed notice means a notice signed by the commissioner.

729 Issue of identity card

(1) The commissioner must issue an identity card to each drug control officer.

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Not authorised—indicative only

(2) The identity card must—

(a) contain a recent photo of the drug control officer; and

(b) contain a copy of the drug control officer's signature; and

(c) identify the person as a drug control officer under this part; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and for other purposes.

730 Resignation

(1) A drug control officer may resign by signed notice given to the commissioner.

(2) However, if holding office as a drug control officer is a condition of the drug control officer holding another office, the drug control officer may not resign as a drug control officer without resigning from the other office.

731 Return of identity card

A person who ceases to be a drug control officer must return the person's identity card to the commissioner within 21 days after ceasing to be a drug control officer unless the person has a reasonable excuse.

Maximum penalty—40 penalty units.

732 Function and powers of drug control officer

(1) A drug control officer has the function of administering and controlling, as required under this part and the conditions on which the drug control officer holds office, the following—

(a) the receiving into the possession of the police service of batches of dangerous drugs to be used for training purposes (the ***batches***);

(b) the storage of the batches;

(c) the movement in and out of storage, for the purposes of training, of the batches or parts of the batches;

(d) how the batches leave the possession of the police service.

(2) A drug control officer has power, within the police service, to do all things necessary to be done for the performance of the drug control officer's function.

Division 3 Keeping and use of dangerous drugs for training

733 Keeping dangerous drug for use in police service training

A batch of a dangerous drug may lawfully be kept in the possession of the police service and used for training in the police service if—

(a) the keeping of the batch, and its use for training in the police service, is authorised under a commissioner direction; and

(b) the batch is kept, and used for training, in accordance with the conditions included in the commissioner direction.

734 Making commissioner direction

(1) The commissioner may make a commissioner direction for a batch of a dangerous drug.

(2) The commissioner may make a commissioner direction for a batch of a dangerous drug only if the batch—

(a) is in the possession of the police service—

(i) having been forfeited, or ordered to be forfeited, to the State under this or another Act; or

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Not authorised—indicative only

(ii) having been ordered under this Act to be disposed of or destroyed; or

(b) comes into the possession of the police service under an agency arrangement.

(3) The conditions included in the commissioner direction must include the following conditions—

(a) a condition that the batch must be used only for the training purposes stated in the condition;

Example of training purposes—

training police dogs to detect the presence of dangerous drugs in various situations

(b) a condition that the training for which the batch is used must be of the type, and of the extent, stated in the condition;

(c) a condition that the whole of the batch must at all times—

(i) be under the effective control of a drug control officer or 1 or more of the police officers identified in the condition; or

(ii) be kept securely in a way stated in the condition;

(d) a condition that, as soon as practicable after the batch is used for training purposes for the last time, the batch must be destroyed or disposed of in the way stated in the condition.

(4) Subsection (3) does not limit the conditions that may be included in the commissioner direction.

(5) The commissioner must ensure the police service complies with the conditions included in the commissioner direction.

735 Entering into agency arrangement

(1) The commissioner may enter into an agency arrangement.

(2) The commissioner may enter into an agency arrangement only if the department or other agency, whose chief executive

officer is the other party to the arrangement, is authorised to possess the batch of the dangerous drug the subject of the arrangement.

(3) The commissioner must ensure the police service complies with the agency arrangement.

736 Requirements for keeping of dangerous drugs for training purposes

(1) The following requirements apply for the police service's possession of dangerous drugs for training purposes—

(a) each batch of a dangerous drug must be stored in a drug vault;

(b) when a batch of a dangerous drug is received into a drug vault for storage for the first time, it must be accompanied by a document certifying, in a way approved by the commissioner, the weight and purity of the batch;

(c) a drug vault must not be used for storing a dangerous drug that is in the possession of the police service other than for training purposes;

(d) a drug vault must be designed and constructed for ensuring, to the greatest practicable extent, that each batch of a dangerous drug stored in it keeps its level of effectiveness for training purposes;

(e) a drug vault must include enough separate storage to ensure that no batch of a dangerous drug stored in the vault can be contaminated by another batch, or can otherwise be made ineffective or less effective for training purposes;

(f) the whole of a batch of a dangerous drug must be stored in a drug vault at all times, except to the extent the batch, or a part of the batch, is required to be held somewhere else for training purposes;

(g) when a batch of a dangerous drug leaves a drug vault for the last time—

Not authorised—indicative only

Not authorised—indicative only

(i) it must be accompanied by a document certifying, in a way approved by the commissioner, the weight and purity of the batch; and

(ii) a copy of the document mentioned in subparagraph (i) must be kept at the drug vault or at another place the commissioner directs.

(2) Also, an audit of each drug vault must be conducted at least once every 3 months by a police officer not otherwise directly associated with the keeping or use of dangerous drugs for training purposes.

(3) Without limiting the scope of an audit under subsection (2), the audit must include—

(a) weighing each batch of dangerous drugs in the drug vault to find out whether all quantities of dangerous drugs that should be in the drug vault at the time of the audit are in the vault; and

(b) finding out whether the drug vault is storing any dangerous drugs, or anything else, that should not be stored in the drug vault; and

(c) finding out whether, and to what extent, the purity of any batch of a dangerous drug stored at the drug vault has been adversely affected since it was received into the drug vault; and

(d) a review of the register of dangerous drugs for training.

(4) Without limiting the requirements for an audit under subsection (2), requirements for the audit include the following—

(a) the performance of the audit must be supervised by a police officer of at least the rank of inspector who is not otherwise directly associated with the keeping or use of dangerous drugs for training purposes;

(b) all batches of dangerous drugs stored in the drug vault must be the subject of analysis by an analyst under the *Drugs Misuse Act 1986*;

(c) the accuracy of the scales used in measuring the weights of batches of dangerous drugs stored in the drug vault must be certified in a way approved by the commissioner.

Division 4 Register of dangerous drugs for training

737 Register of dangerous drugs for training

(1) The police service must keep a register of dangerous drugs for training.

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

(3) The entity responsible for keeping the register under this section—

(a) must ensure the register is kept in a secure place; and

(b) subject to subsection (4), may keep the register in the way the commissioner considers appropriate.

Example for paragraph (b)—

The register may be kept on a computer or partly on a computer and partly in the form of paper records.

(4) The register of dangerous drugs for training must be kept in a way that, to the greatest practicable extent, enables a drug control officer, or a police officer performing a lawful function associated with the keeping of dangerous drugs in the possession of the police service under this Act, whether or not under this part, to comply with this Act's requirements.

(5) Unless the commissioner otherwise authorises, an entry in the register of dangerous drugs for training may only be made by a drug control officer who is authorised, under the conditions on which the drug control officer holds office, to make the entry.

(6) If the commissioner gives a direction under this division restricting access to information included in the register of

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dangerous drugs for training, a drug control officer authorised to record the information in the register must ensure the information is recorded in a way that, to the greatest practicable extent, stops disclosure of the information to a person not authorised to have access to it.

738 Information to be recorded in the register of dangerous drugs for training

(1) The following information must be recorded in the register of dangerous drugs for training about each batch of a dangerous drug coming into the possession of the police service to be used for training purposes—

(a) the name of the dangerous drug;

(b) a description of the batch;

(c) the weight, in grams, of the batch;

(d) a description of any container or packaging, and of any other item, used for conveying the batch into the possession of the police service;

(e) the weight, in grams, of any container or packaging, and of any other item, used for conveying the batch into the possession of the police service;

(f) when the batch was received into the possession of the police service;

(g) the purity of the batch, and details of the certification of the purity;

(h) a description of the circumstances in which the batch came into the possession of the police service.

(2) The following information must be recorded in the register of dangerous drugs for training about each batch of a dangerous drug in the possession of the police service for training purposes if the batch, or part of the batch, is taken from the drug vault where it is stored because it is to be used for training purposes—

(a) when the batch or part of the batch leaves the drug vault;

(b) the nature of the training for which the batch or part of the batch is to be used;

(c) the condition of any container or packaging in which the batch or part of the batch leaves the drug vault;

(d) the weight, in grams, of the batch or part of the batch when it leaves the drug vault;

(e) the condition of any container or packaging in which the batch or part of the batch is returned to the drug vault;

(f) the weight, in grams, of the batch or part of the batch when it is returned to the drug vault.

(3) The following information must be recorded in the register of dangerous drugs for training when a batch of a dangerous drug leaves a drug vault for the last time to be disposed of or to be returned to an entity under an agency arrangement—

(a) the weight, in grams, of the batch when it leaves the drug vault;

(b) the weight, in grams, of any container or packaging in which the batch leaves the drug vault.

(4) Recording under subsection (1), (2) or (3) must be performed as close as reasonably practicable to the happening of the event to which the recording relates.

739 Restriction on release of information from register of dangerous drugs for training

(1) The commissioner may give a direction restricting access to information recorded in the register of dangerous drugs for training to persons other than—

(a) a drug control officer who reasonably needs the information for the performance of the officer's function under this part; or

(b) a police officer who reasonably needs the information for conducting or supervising, under this part, an audit of a drug vault; or

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(c) another police officer, if the police officer is performing a function associated with the keeping of dangerous drugs in the possession of the police service under this Act, whether or not under this part, and reasonably needs the information for the performance of the officer's function; or

(d) a person stated in the direction.

(2) A direction under subsection (1) may restrict access to all information recorded in the register or only to information of a type stated in the direction.

(3) The commissioner must keep a written record of the reasons for giving a direction under subsection (1) in each particular case.

(4) The commissioner may give a direction under subsection (1), and keep the direction in place, only if the commissioner considers that a failure to give the direction, or to keep the direction in place, may prejudice—

(a) the security of a drug vault; or

(b) the safety of—

(i) a drug control officer; or

(ii) another person associated with keeping dangerous drugs in the possession of the police service for training purposes; or

(iii) a person associated with a person mentioned in subparagraph (i) or (ii).

Part 5 Public interest monitor

740 Public interest monitor

(1) The Governor in Council may appoint a person (the ***public interest monitor***) to monitor—

(a) applications for, and the use of, surveillance device warrants, retrieval warrants and covert search warrants; and

(b) applications for approvals of the use of surveillance devices under emergency authorisations; and

(c) the giving of official warnings for consorting; and

(d) the making of public safety orders by commissioned officers under the *Peace and Good Behaviour Act 1982*.

(2) The Governor in Council may also appoint as many deputy public interest monitors as the Minister considers necessary.

(3) The Governor in Council may, in the appointment, fix the terms and conditions of the appointment.

(4) The *Public Service Act 2008* does not apply to the appointment of a monitor.

(5) A monitor must not be a person who is, or who is a member of, or who is employed in or by or to help, any of the following—

(a) the director of public prosecutions;

(b) the office of the director of public prosecutions;

(c) CCC;

(d) the police service;

(e) the principal commissioner under the *Family and Child Commission Act 2014*.

741 Acting monitor

(1) The Governor in Council may appoint a person, who is qualified for appointment as the public interest monitor, to act as the public interest monitor—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when the public interest monitor is absent from duty or from the State or,

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for another reason, can not perform the duties of the office.

(2) The Governor in Council may appoint a person, who is qualified for appointment as a deputy public interest monitor, to act as a deputy public interest monitor—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when a deputy public interest monitor is absent from duty or from the State or, for another reason, can not perform the duties of the office.

742 Monitor's functions

(1) The public interest monitor has the functions mentioned in subsection (2) for surveillance device warrants, retrieval warrants, approvals of the use of surveillance devices under emergency authorisations, and covert search warrants.

(2) The functions are—

(a) to monitor compliance by police officers with chapter 9 in relation to matters concerning applications for covert search warrants; and

(b) to monitor compliance by law enforcement officers with chapter 13 in relation to matters concerning applications for surveillance device warrants, retrieval warrants and approvals of the use of surveillance devices under emergency authorisations; and

(c) to appear at any hearing of an application to a Supreme Court judge for a warrant or approval mentioned in paragraph (a) or (b), or to a magistrate for a warrant mentioned in paragraph (b), to test the validity of the application, and for that purpose at the hearing, to—

(i) present questions for the applicant to answer and examine or cross-examine any witness; and

(ii) make submissions on the appropriateness of granting the application; and

(d) to appear at a consideration of a report made to a Supreme Court judge or a magistrate or given to the monitor and referred to a judge or magistrate under section 357; and

(e) to gather statistical information about the use and effectiveness of covert search warrants and surveillance device warrants; and

(f) to report as required by this Act on any matter about which this Act expressly requires the public interest monitor to report; and

(g) whenever the public interest monitor considers it appropriate—

(i) to give to the commissioner a report on noncompliance by police officers with chapter 9; or

(ii) to give to the chief executive officer of a law enforcement agency a report on noncompliance by law enforcement officers of the law enforcement agency with chapter 13.

(2A) If a report under subsection (2) includes a report on noncompliance involving police officers who are also commission officers under the *Crime and Corruption Act 2001*, the monitor must also give a copy of the report to—

(a) the CCC; and

(b) the Parliamentary Crime and Corruption Committee of the Legislative Assembly.

(3) Subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (2)(a), (b), (c), (d) and (e).

(4) Also, the public interest monitor has the following functions—

(a) under the Criminal Code of the Commonwealth, to exercise the power conferred on the monitor under the following sections—

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- section 104.12 (Service, explanation and notification of an interim control order)
- section 104.14 (Confirming an interim control order)
- section 104.18 (Application by the person for a revocation or variation of a control order)
- section 104.19 (Application by the AFP Commissioner for a revocation or variation of a control order)
- section 104.23 (Application by the AFP Commissioner for addition of obligations, prohibitions or restrictions);

(b) under the *Terrorism (Preventative Detention) Act 2005*, to exercise the power conferred on the monitor under the following sections—

- section 14 (General provisions that apply if the PIM must be notified about an application to the issuing authority)
- section 73 (Supreme Court hearing and decision);

(c) to gather statistical information about the use and effectiveness of control orders and preventative detention orders under the Acts mentioned in paragraphs (a) and (b);

(d) whenever the public interest monitor considers it appropriate—to give to the commissioner a report on noncompliance by police officers with the *Terrorism (Preventative Detention) Act 2005*;

(e) to gather statistical information about the use and effectiveness of official warnings for consorting;

(f) to gather statistical information about the use and effectiveness of public safety orders made by commissioned officers under the *Peace and Good Behaviour Act 1982*.

(5) Also, subject to the direction of the public interest monitor, a deputy public interest monitor has the functions mentioned in subsection (4).

743 Monitor's annual report

(1) As soon as practicable after the end of each financial year, but within 4 months after the end of the financial year, the public interest monitor must prepare and give to the Minister a written report on the use of covert search warrants under this Act.

Note—

Under section 363, the monitor, as inspection entity for the police service under chapter 13, is also required to prepare reports on matters relating to surveillance device warrants and give the Minister a copy of the report.

(2) Also, a report relating to a year must include the following matters under the *Terrorism (Preventative Detention) Act 2005*—

(a) the number of initial orders made during the year;

(b) the number of final orders made during the year;

(c) whether a person was taken into custody under each of those orders and, if so, how long the person was detained for;

(d) particulars of any complaints about the detention of a person under a preventative detention order made or referred during the year to the ombudsman or the CCC;

(e) the number of prohibited contact orders made during the year;

(f) the use of preventative detention orders and prohibited contact orders generally.

(3) Also, a report relating to a year must include the following matters under the Criminal Code of the Commonwealth, division 104, in relation to matters involving the public interest monitor—

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(a) the number of control orders confirmed, declared void, revoked or varied during the year;

(b) the use of control orders generally.

(3A) Also, a report relating to a year must include the following matters relating to official warnings for consorting—

(a) the number of official warnings for consorting given during the year;

(b) the number of times the giving of an official warning for consorting led to a person committing an offence against section 790 or 791;

(c) the extent of compliance by the police service with chapter 2, part 6A;

(d) the use of official warnings for consorting generally.

(3B) Also, a report relating to a year must include the following matters relating to public safety orders made by commissioned officers under the *Peace and Good Behaviour Act 1982*—

(a) the number of public safety orders made by commissioned officers during the year;

(b) the extent of compliance by the police service with the *Peace and Good Behaviour Act 1982*, part 3, division 2;

(c) the use of public safety orders generally.

(3C) The public interest monitor must, within the period mentioned in subsection (1), give to the Minister responsible for administering the *Peace and Good Behaviour Act 1982* and the Minister responsible for administering the Criminal Code, a copy of any part of a report relating to a year that relates to a matter mentioned in subsection (3A) or (3B).

(4) The Minister must table a copy of the report in the Legislative Assembly within 14 sitting days after receiving the report.

(5) The annual report must not contain information that—

(a) discloses or may lead to the disclosure of the identity of any person who has been, is being, or is to be, investigated; or

(b) indicates a particular investigation has been, is being, or is to be conducted.

(6) The public interest monitor's report may form part of another annual report the monitor is required to prepare under another Act.

744 Secrecy

(1) A person who is or was a monitor must not record, use or disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(2) Subsection (1) does not apply to a person's recording, use or disclosure of information in the performance of his or her functions under this Act.

(3) A person who is or was a monitor is not in any proceeding compellable to disclose information obtained under this Act and that came to the person's knowledge because of the person's involvement in the administration of this Act.

745 Protection from liability

(1) A monitor 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 monitor, the liability attaches instead to the State.

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Chapter 22 Provisions about type 1 vehicle related offences

Part 1 Preliminary

Division 1 Purpose

746 Purpose of chapter

(1) The purpose of this chapter is to enhance community safety by—

(a) reducing the need for police officers to use a police service motor vehicle to pursue another motor vehicle if the driver fails to stop when directed; and

(b) helping police officers investigate type 1 vehicle related offences.

(2) The purpose is mainly achieved by—

(a) providing for an evasion offence; and

(b) providing a power to help police officers investigate type 1 vehicle related offences; and

(c) enabling a court to order the impoundment or forfeiture of a motor vehicle after the court finds the driver of the motor vehicle guilty of an evasion offence.

Division 2 Interpretation

747 Definitions for chapter

In this chapter—

alarm includes a horn, a siren and another audible warning device.

corresponding law, in relation to a transport Act, means a corresponding law under the Road Use Management Act.

forfeiture order see section 759.

impounding order see section 758.

nominated person, in relation to a type 1 vehicle related offence, means the person nominated by either of the following as the driver of the motor vehicle involved in the type 1 vehicle related offence when the offence was committed—

(a) the owner of the motor vehicle;

(b) a person nominated in a statutory declaration made under section 755 as any of the following—

(i) the person believed to be driving the motor vehicle when the type 1 vehicle related offence happened;

(ii) the person to whom the motor vehicle was sold;

(iii) the person from whom the motor vehicle was purchased.

owner, of a motor vehicle—

(a) generally, means a person in whose name the motor vehicle is registered under a transport Act or corresponding law; or

(b) for a proceeding for an impounding order or a forfeiture order, includes a holder of a security interest registered for the motor vehicle under the *Personal Property Securities Act 2009* (Cwlth).

prescribed period, in relation to an application for a forfeiture order, means the relevant period and any period from the end of the relevant period to and including the day on which the application is heard and decided.

relevant court, in relation to an application for an impounding order or a forfeiture order under this chapter, means—

(a) the Magistrates Court for the Magistrates Court district, or division of the district, nearest the place where the

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evasion offence to which the application relates happened; or

(b) if the driver of the motor vehicle is a child—a Childrens Court constituted by a magistrate sitting in the Magistrates Court district, or division of the district, nearest the place where the evasion offence to which the application relates happened.

relevant period, in relation to an evasion offence to which an application for an impounding order or a forfeiture order relates, means the period of 3 years before the commission of the evasion offence giving rise to the application for the impounding order or forfeiture order.

stop, when used in relation to a direction given to a driver of a motor vehicle under this chapter, includes remain at the place where the driver stops the motor vehicle until the driver is allowed to proceed or is otherwise dealt with according to law.

warning light see section 749.

748 Giving a direction for ch 22

(1) For this chapter, a police officer gives a direction to the driver of another motor vehicle if—

(a) the police officer is in or on a police service motor vehicle that is being used to attempt to intercept the motor vehicle the driver is driving; and

(b) the driver of the police service motor vehicle brings that motor vehicle to a position in relation to the other motor vehicle where the driver or another police officer in or on the police service motor vehicle can give the driver of the other motor vehicle a direction to stop the other motor vehicle; and

(c) the police officer signals to the driver of the other motor vehicle to stop the motor vehicle—

(i) by giving a physical or audible signal; or

(ii) by displaying a warning light or warning lights and sounding an alarm.

(2) For subsection (1), a police officer gives a direction to the driver of a motor vehicle when whichever of the following first happens—

(a) the police officer gives a physical or audible signal to the driver of the motor vehicle;

(b) the police officer displays the warning lights and sounds an alarm fitted to the police service motor vehicle being used to attempt to intercept the motor vehicle.

749 What is a *warning light* for ch 22

A ***warning light*** is any of the following displayed by a police officer while using a police service motor vehicle to attempt to intercept another motor vehicle—

(a) flashing blue and red lights;

(b) a flashing blue light;

(c) another flashing light, including alternately flashing headlights and alternately flashing tail-lights.

750 When a person is charged for this chapter in relation to an evasion offence if proceeding for the offence is started by notice to appear or arrest

(1) This section applies for this chapter if a proceeding for an evasion offence is started against a person by notice to appear or arrest.

(2) If the proceeding is started by notice to appear, the person is taken to be charged with having committed the offence when the notice to appear is issued and served on the person.

(3) If the proceeding is started by arrest, the person is taken to be charged with having committed the offence when the person is arrested.

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751 Impounding or forfeiture of motor vehicle is in addition to other punishment

The impounding or forfeiture of a motor vehicle under this chapter arising out of the commission of an evasion offence is in addition to any other penalty that may be imposed on the person for the evasion offence.

752 Interaction between ch 4 and this chapter

(1) This section applies if the driver of a motor vehicle commits an evasion offence.

(2) An application for an impounding order or a forfeiture order may be made under this chapter whether or not the motor vehicle may be impounded or immobilised under chapter 4.

(3) A motor vehicle may be impounded or immobilised under chapter 4 whether or not an application for an impounding order or a forfeiture order may be made under this chapter.

Division 3 Relationship with National Credit Code

753 Relationship with National Credit Code

Nothing in this chapter affects the right of a credit provider to repossess a motor vehicle under the National Credit Code and sell it.

Part 2 Offences and related provisions

Division 1 Offences

754 Evasion offence

(1) This section applies if, in the exercise of a power under an Act, a police officer using a police service motor vehicle gives the driver of another motor vehicle a direction to stop the motor vehicle the driver is driving.

(2) The driver of the motor vehicle must stop the motor vehicle as soon as reasonably practicable if a reasonable person would stop the motor vehicle in the circumstances.

Minimum penalty—50 penalty units or 50 days imprisonment served wholly in a corrective services facility.

Maximum penalty—200 penalty units or 3 years imprisonment.

(3) If a court convicts a person of an offence against subsection (2), the court, whether or not any other sentence is imposed, must disqualify the person from holding or obtaining a Queensland driver licence for 2 years.

(4) For subsection (2), it is sufficient evidence of the commission of the offence if the evidence is that the driver, in failing to stop, took action to avoid being intercepted by a police officer.

(5) Also, for subsection (2) it is immaterial that the driver had a mistaken belief that the motor vehicle from which the police officer was giving the direction was an emergency vehicle unless the driver proves, on the balance of probabilities, that a reasonable person in the circumstances would have believed the motor vehicle was an emergency vehicle.

(6) This section does not limit section 60.

(7) In this section—

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emergency vehicle means a motor vehicle driven by a person performing functions as an ambulance officer or fire officer who drives the motor vehicle in the course of his or her duties as an ambulance officer or fire officer for any of the following—

(a) the Queensland Ambulance Service;

(b) an ambulance service of another State;

(c) the Queensland Fire and Emergency Service;

(d) a fire brigade or service of another State.

sentence see the *Penalties and Sentences Act 1992*, section 4.

Division 2 Matters about investigation of type 1 vehicle related offence

755 When type 1 vehicle related offence notice may be given to owner of motor vehicle involved in offence

(1) This section applies if, on the investigation of a type 1 vehicle related offence, it appears to a police officer investigating the offence that giving the owner of the motor vehicle involved in the offence a notice under this section may help in the investigation.

(2) The police officer may, by written notice (a ***type 1 vehicle related offence notice***) given to the owner, require the owner to—

(a) make a statutory declaration complying with section 755A; and

(b) give the statutory declaration to either of the following officers within 14 business days after being given the notice—

(i) the police officer named in the notice;

(ii) the officer in charge of a stated police station or police establishment.

(3) The type 1 vehicle related offence notice must identify the motor vehicle involved in the type 1 vehicle related offence and state all of the following—

(a) when and where the offence was committed;

(b) the name and address of the person in whose name the motor vehicle was registered, when the offence was committed, under a transport Act or a corresponding law;

(c) that the owner must comply with the requirement within the 14 business days unless the owner has a reasonable excuse;

(d) the consequences if the owner does not comply with the requirement within the 14 business days, including an explanation of the application of section 756 to the owner in any proceeding for the offence;

(e) the nature of the information the owner must include in the statutory declaration;

(f) that, if the owner is a corporation, the statutory declaration must be signed by an executive officer of the corporation.

(4) If the owner is an individual, the police officer must—

(a) personally give the type 1 vehicle related offence notice to the owner; and

(b) when giving the type 1 vehicle related offence notice to the owner, explain to the owner—

(i) what the notice requires the owner to do; and

(ii) the consequences of not complying with the notice, including the application of section 756 to the owner in any proceeding for the offence.

(5) The owner must comply with the requirement to the extent it requires the owner to give a statutory declaration under subsection (2)(b) unless the owner has a reasonable excuse.

Maximum penalty—100 penalty units.

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(6) A conviction of the owner for the offence against subsection (5) does not prevent the following—

(a) a proceeding for the type 1 vehicle related offence being started against the owner, including being started because of section 756;

(b) a punishment being imposed on the owner if convicted of the type 1 vehicle related offence.

(7) This section applies to a nominated person in the same way as it applies to an owner.

755A Information to be stated in statutory declaration responding to type 1 vehicle related offence notice

(1) This section prescribes the information that must be included in a statutory declaration required, under a type 1 vehicle related offence notice, to be made by the owner of a motor vehicle involved in a type 1 vehicle related offence.

(2) The statutory declaration must state the name and address of the person the owner believes was driving the motor vehicle when the type 1 vehicle related offence happened.

(3) However, if the owner does not believe he or she knows who was driving the motor vehicle when the type 1 vehicle related offence happened, the statutory declaration must state all of the following information to the extent it is known by the owner—

(a) where the owner was when the type 1 vehicle related offence happened;

(b) the usual location of the vehicle when it is not being used;

(c) the name and address of each person (a ***potential driver***) known by the owner to have access to drive the vehicle when the type 1 vehicle related offence happened;

(d) the way each potential driver has access to drive the vehicle;

Example—

A potential driver possesses a key for the vehicle and has access to where the vehicle is kept.

(e) how frequently each potential driver normally uses the vehicle and for how long each potential driver normally uses the vehicle;

(f) whether each potential driver uses the vehicle in connection with a business or for private use;

(g) whether the vehicle was reported as stolen, or otherwise being used without consent, when the type 1 vehicle related offence happened;

(h) the nature of the inquiries made by the owner to find out who was driving the vehicle when the type 1 vehicle related offence happened.

(4) Despite subsections (2) and (3)—

(a) if the owner sold the motor vehicle before the type 1 vehicle related offence happened, the statutory declaration need only state—

(i) the name and address of the person to whom the vehicle was sold; and

(ii) when the vehicle was sold; or

(b) if the owner purchased the motor vehicle after the type 1 vehicle related offence happened, the statutory declaration need only state—

(i) the name and address of the person from whom the vehicle was purchased; and

(ii) when the vehicle was purchased; or

(c) if the owner believes the motor vehicle was stolen when the type 1 vehicle related offence happened, the statutory declaration need only state that belief.

(5) This section applies to a nominated person in the same way as it applies to an owner.

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756 Who may be prosecuted for type 1 vehicle related offence if no response to type 1 vehicle related offence notice

(1) This section applies only if—

(a) a police officer gives a type 1 vehicle related offence notice to a person under section 755; and

(b) the person given the notice does not give a statutory declaration as required under that section within the time required under that section.

Note—

Under section 755, a statutory declaration must comply with section 755A.

(2) The person is taken to have been the driver of the motor vehicle involved in the relevant type 1 vehicle related offence even though the actual offender may have been someone else.

(3) If the actual offender is someone else, subsection (2) does not affect the liability of the actual offender, but the person and the actual offender can not both be punished for the offence.

(4) In a proceeding for the relevant type 1 vehicle related offence, started against the person because of this section, it is a defence for the person to prove, on the balance of probabilities that the person was not the driver of the motor vehicle involved in the offence when the offence happened.

(5) However, the person may not rely on evidence in the defence that is information the person was required to include in the statutory declaration under section 755A unless—

(a) the person gives the prosecuting authority a notice of the person's intention to seek leave to rely on the evidence at least 21 business days before the day the hearing of the proceeding starts; and

(b) the court grants the person leave to rely on the evidence.

(6) The notice under subsection (5)(a) must—

(a) be in the approved form; and

(b) state the grounds on which the person intends to rely to seek leave; and

(c) be accompanied by a statutory declaration that includes the information the person was required to include in the statutory declaration under section 755A.

(7) The court may grant the person leave under subsection (5)(b) only if the court is satisfied—

(a) the person had a reasonable excuse for not giving the statutory declaration as required under section 755(2)(b); or

(b) the evidence came to the person's knowledge more than 14 business days after the person was given the type 1 vehicle related offence notice; or

(c) the interests of justice require that the person be able to rely on the evidence.

(8) Subsection (9) applies for a proceeding mentioned in subsection (4) for a type 1 vehicle related offence that is an offence against the Criminal Code, section 328A.

(9) The court may grant leave to the person to rely on evidence in the defence that is information the person was required to include in a statutory declaration under section 755A, even if the person has not complied with subsection (5)(a), if the interests of justice require that the person be able to rely on the evidence.

(10) Subsection (11) applies if a statutory declaration, accompanying a notice given to the prosecuting authority under subsection (5)(a), includes information that enables the identification of another person as the actual offender.

(11) The period of limitation within which a proceeding for the relevant type 1 vehicle related offence may be started against the actual offender starts on the day the prosecuting authority receives the statutory declaration.

(12) Subsection (11) provides some other time limit for making complaint for the purposes of the *Justices Act 1886*, section 52.

(13) In this section—

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Not authorised—indicative only

prosecuting authority, for a proceeding, means the entity responsible for prosecuting the proceeding.

relevant type 1 vehicle related offence means the type 1 vehicle related offence to which the type 1 vehicle related offence notice relates.

Division 3 Evidentiary provisions

757 Evidentiary provision

(1) In a proceeding for a type 1 vehicle related offence, a certificate signed by the commissioner and stating any of the following matters is evidence of what it states—

(a) that a stated person was the owner of a stated motor vehicle on a stated day;

(b) that a stated police officer gave a stated person a type 1 vehicle related offence notice on a stated day;

(c) that a stated person gave a stated police officer a statutory declaration under section 755 on a stated day.

(2) Also, an allegation or statement in a notice to appear or complaint alleging or stating any of the following is evidence of what it alleges or states—

(a) that a person is or is not or was or was not at any time or date mentioned in the notice to appear or complaint the owner of a stated motor vehicle;

(b) that a person is or is not or was or was not at any time or date mentioned in the notice to appear or complaint of, or under, or over a stated age;

(c) that a thing is or was a motor vehicle or of a particular class or description of motor vehicle.

(3) In addition, in a proceeding, it is not necessary for the entity responsible for prosecuting the type 1 vehicle related offence to call as a witness for the prosecution a person who made a statutory declaration under section 755 that named a person

other than the defendant as the driver of the motor vehicle involved in the offence.

(4) In a proceeding for a type 1 vehicle related offence, the defendant may not challenge a matter mentioned in subsection (1)(b) or (c) unless the defendant gives the entity responsible for prosecuting the proceeding written notice of intention to challenge the matter at least 10 business days before the day the hearing of the proceeding starts.

Part 3 Obtaining impounding and forfeiture orders

Division 1 Application provisions

758 Application for impounding order for evasion offence

(1) This section applies if a person who has not previously been found guilty of an evasion offence committed within the relevant period is charged with an evasion offence and an application under section 759 can not be made for a forfeiture order for the motor vehicle involved in the offence.

(2) A police officer may apply to the relevant court in the approved form for an order that the motor vehicle involved in the offence be impounded and held at a holding yard for a period of not more than 3 months (***impounding order***).

(3) Subsection (2) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

759 Application for forfeiture order for evasion offence

(1) This section applies if—

(a) a person is charged with an evasion offence; and

(b) the person—

Not authorised—indicative only

Not authorised—indicative only

(i) has previously been found guilty of 1 evasion offence committed on a previous occasion within the relevant period; or

(ii) has previously been charged with an evasion offence committed within the relevant period and the charge of that offence has not been decided.

(2) A police officer may apply to the relevant court in the approved form for an order that the motor vehicle involved in the offence be forfeited to the State (***forfeiture order***).

(3) Subsection (2) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

Division 2 Orders if offence not decided

760 Orders on application for impounding order if evasion offence not decided

(1) This section applies if—

(a) an application is made to a relevant court for an impounding order in relation to a motor vehicle involved in an evasion offence; and

(b) the proceeding on the charge of the evasion offence in relation to which the application is made has not been decided.

(2) The court must adjourn the application until the person to whom the application relates has been found guilty of the offence.

761 Orders on application for forfeiture order if evasion offence not decided

(1) This section applies if—

(a) an application is made to a relevant court for a forfeiture order for a motor vehicle involved in an evasion offence; and

(b) any proceeding on a charge of an evasion offence or evasion offences in relation to which the application is made has not been decided.

(2) If the person to whom the application relates has not been found guilty of evasion offences committed on 2 occasions within the relevant period, the court must adjourn the application until the person has been found guilty of evasion offences committed on at least 2 occasions within the prescribed period.

Division 3 Advice of date of hearing

762 Advice to owner of date of hearing

(1) As soon as reasonably practicable after a date is set for the hearing of an application for an impounding order or a forfeiture order in relation to a motor vehicle, a police officer must give the person to whom the application relates and each owner of the motor vehicle written notice of the date, time and place of the hearing.

(2) If the person to whom the application relates or the owner is a child and it is reasonably practicable to do so, notice must also be given to the child's parent or guardian.

Not authorised—indicative only

Not authorised—indicative only

Part 4 Deciding applications

Division 1 Where and when application may be heard

763 Where application is to be decided

An application for an impounding order or a forfeiture order must be heard and decided by the relevant court.

764 When application to be heard

(1) An application for an impounding order in relation to an evasion offence must be heard and decided as soon as possible after the person to whom the application relates is found guilty of 1 evasion offence.

(2) An application for a forfeiture order in relation to an evasion offence must be heard and decided as soon as possible after the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.

(3) However, if, after an application for a forfeiture order is made—

(a) the person to whom the application relates is found not guilty of 1 of the evasion offences or the proceeding for 1 of the offences is discontinued; and

(b) no motor vehicle has previously been impounded for an evasion offence on an application made in relation to that person for an offence to which the application for the forfeiture order relates;

the relevant court may hear and decide the application for the forfeiture order as if it were an application for an impounding order.

(4) An application for a forfeiture order to which subsection (3) applies is taken, for divisions 2 and 3, to be an application for an impounding order.

Division 2 Consideration of applications

765 Consideration of application for impounding order

(1) On the hearing of an application for an impounding order for an evasion offence, the relevant court may order that the motor vehicle be impounded for a stated period, of not more than 3 months if the person to whom the application relates has been found guilty of 1 evasion offence.

Note—

Section 775 makes provision for enforcing the order.

(2) Despite subsection (1), the relevant court may make an order under section 767 for the performance by the person of community service as decided by the court.

(3) If the person was a child when the evasion offence was committed, the relevant court must consider whether to make a costs order under section 768.

766 Consideration of application for forfeiture order

(1) On the hearing of an application for a forfeiture order for an evasion offence, the relevant court may order that the motor vehicle be forfeited to the State or impounded for the period, of not more than 3 months, fixed by the court if the person to whom the application relates has been found guilty of 2 evasion offences committed within the prescribed period.

(2) If—

(a) under subsection (1), the relevant court orders the impounding of the motor vehicle to which the application relates; and

(b) a relevant court has previously made an impounding order under section 765 for an evasion offence

Not authorised—indicative only

Not authorised—indicative only

committed within the relevant period and forming the basis of the application;

the motor vehicle is impounded under subsection (1) for the evasion offence giving rise to the application for the forfeiture order and not for the evasion offence to which the impounding order under section 765 relates.

(3) Despite subsection (1), the relevant court may make an order under section 767 for the performance by the person to whom the application relates of community service as decided by the court.

(4) On the making of a forfeiture order for a motor vehicle—

(a) the vehicle becomes the property of the State; and

(b) any right of a person to enforce a security interest under the *Personal Property Securities Act 2009* (Cwlth) against a person other than the State by taking possession of the vehicle is extinguished.

Division 3 Other provisions about applications and orders

Subdivision 1 Community service orders

767 Community service instead of impounding or forfeiture order

(1) This section applies if—

(a) the relevant court is satisfied impounding or forfeiting a motor vehicle will cause severe financial hardship to an owner or usual driver of the motor vehicle; and

(b) the person to whom the application relates was an adult when he or she committed the offence, or the last offence, to which the application relates.

(2) The court may, instead of ordering the impounding or forfeiture of the motor vehicle, order the person to perform not more than 240 hours community service.

(3) An order made under subsection (2)—

(a) is taken to be an order under the *Penalties and Sentences Act 1992* for the performance of community service under a fine option order under that Act; and

(b) is taken to have been made in the proceeding for the evasion offence giving rise to the application for the impounding order or forfeiture order.

Subdivision 2 Costs orders if child found guilty of evasion offence

768 Costs order if child found guilty of evasion offence

(1) This section applies if the relevant court makes an impounding order and the person to whom the application relates was a child when he or she committed the evasion offence in relation to which the order is made.

(2) The relevant court must consider whether the child has the capacity to pay the costs of removing and keeping the motor vehicle and, if the court considers the child has the capacity to pay those costs, may order the child to pay the costs of removing and keeping the motor vehicle.

(3) If, after considering any submissions made by the child or the child's parent, the relevant court considers the child does not have the capacity to pay the costs of removing and keeping the motor vehicle, the relevant court may call on the child's parent under applied section 258 to show cause under applied section 259, as directed by the court, why the parent should not pay the costs of removing and keeping the motor vehicle.

(4) The relevant court may, under applied section 259, order the child's parent to pay the costs of removing and keeping the motor vehicle.

Not authorised—indicative only

Not authorised—indicative only

(5) In this section—

applied section 258 means the *Youth Justice Act 1992*, section 258, as applied by section 769.

applied section 259 means the *Youth Justice Act 1992*, section 259, as applied by section 769.

parent includes a guardian other than the chief executive (child safety).

769 Application of applied sections for s 768

(1) This section states how applied sections 258 and 259 apply for section 768.

(2) Applied section 258 applies as if—

(a) subsections (1) and (9) were omitted; and

(b) a reference in the applied section—

(i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and

(ii) to the prosecution were a reference to the applicant for the impounding order or forfeiture order.

(3) Applied section 259 applies as if—

(a) a reference in the applied section—

(i) to compensation were a reference to the costs of removing and keeping a motor vehicle impounded under this chapter; and

(ii) to the prosecution were a reference to the applicant for the impounding order; and

(b) a reference in applied section 259(4) to a show cause hearing is a reference to the hearing and determination of the issue of whether a parent should be ordered, under applied section 259(5), to pay the costs of removing and keeping a motor vehicle impounded under this chapter; and

(c) applied section 259(4), to the extent it mentions the director of public prosecutions, does not apply; and

(d) the expression in applied section 259(5) 'of the matters mentioned in section 258(1)(a), (b) and (c)' read instead as 'that the parent should be ordered to pay the costs of removing and keeping a motor vehicle impounded under the *Police Powers and Responsibilities Act 2000*, chapter 22'.

(4) Also, in relation to an order made under applied section 259(5)—

(a) the *Youth Justice Act 1992*, section 260 does not apply to that order; and

(b) the order is taken instead to be an order fining a person for an offence for the purposes of the *State Penalties Enforcement Act 1999*, section 34.

Subdivision 3 Offences

770 Motor vehicle not to be sold etc. before application is decided

(1) This section applies in relation to a motor vehicle that is the subject of an application for an impounding order or a forfeiture order.

(2) The owner of the motor vehicle must not modify or sell or otherwise dispose of the motor vehicle until the application for the impounding order or forfeiture order is decided or otherwise ends.

Maximum penalty—40 penalty units.

(3) In this section—

modify, a motor vehicle, includes remove the engine or gearbox from the motor vehicle.

Not authorised—indicative only

Not authorised—indicative only

771 Offence to remove motor vehicle impounded under court order

A person must not unlawfully remove a motor vehicle impounded under an impounding order under this chapter from a holding yard.

Maximum penalty—40 penalty units.

Subdivision 4 General

772 Defence

In a proceeding for an impounding order or a forfeiture order under this chapter, it is a defence for an owner of the vehicle to prove that the evasion offence happened without the knowledge and consent of the owner.

Example—

A parent lends a motor vehicle to his or her child to visit friends and the child commits an evasion offence in the vehicle. If the relevant court is satisfied, on evidence tendered or submissions made by the parent, that the child committed the offence without the knowledge and consent of the parent, the court may refuse to order the impounding or forfeiture of the motor vehicle.

773 Counting the occasions

(1) For sections 759, 761, 764(2) and 766, for an occasion of the commission of an offence to be counted in addition to another occasion counted, an occasion must be a separate occasion, that is, an event or series of events that happened on an occasion separate to the event or series of events making up the other occasion.

(2) In section 759, a reference to an evasion offence committed on a previous occasion is a reference to an evasion offence committed on an occasion before the occasion of the evasion offence giving rise to the application for the forfeiture order.

(3) Subject to subsections (1) and (2), for a decision under section 759, 761, 764(2) or 766 of whether or not a person

has, or has previously, been charged with, or found guilty of, an evasion offence committed on a previous occasion or any occasion or occasions, the following do not matter—

(a) whether or not any finding of guilt relied on relates to a charge heard and decided together with another charge or other charges relating to another or other findings of guilt being relied on;

(b) whether or not findings of guilt relied on relate to charges that were heard and decided in the order in which the occasions of the commission of offences to which they related happened;

(c) whether or not any occasion of the commission of an offence, or any charge or any finding of guilt, relied on happened before or after any occasion of the commission of an offence, charge or finding of guilt also relied on.

Example—

An offender commits evasion offences on 1 January (offence 1) and 1 May (offence 2). The offender is charged with offence 1 on 15 January and offence 2 on 14 May. The offender is convicted of offence 2 on 15 June and offence 1 on 1 October. When a court considers the application for impoundment or forfeiture on 1 December, for the purpose of counting the occasions mentioned in subsection (1), there are 2 occasions the court may rely on to make an order.

(4) For a decision under section 765 or 766, the following do not matter—

(a) whether or not any finding of guilt relied on is for an offence in relation to which the application was originally started;

Example for paragraph (a)—

An application may relate to particular evasion offences but before the application is decided, the driver is found guilty of another evasion offence. The court may rely on the latter finding of guilt when making an order under the sections mentioned.

(b) whether or not any finding of guilt relied on in an application relates to an offence committed before or after the application was started.

Not authorised—indicative only

Not authorised—indicative only

774 Appeal

(1) An order made against a person under section 767 for the performance of community service may be appealed against as a sentence imposed on the person.

(2) A person may appeal against any other order of a relevant court to the District Court within 28 days after the order is made.

775 Powers for enforcing court order

(1) This section applies if a relevant court, on an application under this chapter for an impounding order or forfeiture order for a motor vehicle, makes an impounding order or a forfeiture order for the motor vehicle.

(2) For giving effect to an impounding order or a forfeiture order, the court may, in the order, authorise a police officer, without warrant, to enter any place the police officer reasonably suspects is a place where the motor vehicle may be found, and—

(a) for an impounding order—search for and impound the motor vehicle; or

(b) for a forfeiture order—search for and take possession of the motor vehicle for the State.

(3) If an impounding order or forfeiture order authorises a police officer to enter a place for giving effect to the order as mentioned in subsection (2), power to enter the place under the order includes power to re-enter the place as often as is reasonably necessary for the purpose.

(4) For impounding or taking possession of a motor vehicle under an order of a court, a police officer may—

(a) stop the motor vehicle if it is moving, whether or not the motor vehicle is on a road; or

(b) require the driver of the motor vehicle if it is stationary to remain at the place where it is stopped for the time reasonably necessary; or

(c) direct the person who has the key necessary to move the motor vehicle—

(i) to give the key to a police officer; or

(ii) if the motor vehicle is in a dwelling, to move the motor vehicle out of the dwelling and give the key to a police officer; or

(d) if it is necessary to enter the motor vehicle to impound or take possession of it, enter the motor vehicle to impound or take possession of it; or

(e) enter a place, other than the part of a place that is a dwelling, and stay for a reasonable time at the place; or

(f) do anything else reasonably necessary to impound or take possession of the motor vehicle.

(5) A police officer may exercise a power under subsection (4)(a) or (b) before or after a police officer seizes or takes possession of the motor vehicle.

776 Duties of police officer after impounding or seizing motor vehicle

(1) After impounding a motor vehicle under an impounding order or taking possession of a motor vehicle under a forfeiture order, a police officer must move the motor vehicle, or arrange for the motor vehicle to be moved, to a holding yard in the way the police officer considers appropriate.

(2) If the motor vehicle is impounded, the police officer must give the owner of the motor vehicle a notice stating—

(a) how the owner of the motor vehicle may recover the motor vehicle; and

(b) that, before the motor vehicle may be recovered, the owner may be required to produce satisfactory evidence of ownership of the motor vehicle; and

(c) that if the owner was the driver of the motor vehicle when the offence for which the motor vehicle was impounded happened, the owner will be required to pay

Not authorised—indicative only

Not authorised—indicative only

the costs of removing and keeping the motor vehicle; and

(d) that if the owner was not the driver of the motor vehicle when the offence for which the motor vehicle was impounded happened, the driver will be required to pay the costs of removing and keeping the motor vehicle; and

(e) the penalty for unlawfully removing the motor vehicle from the place where it is held.

777 Police officer may authorise tow

(1) This section applies if a police officer arranges for a motor vehicle impounded or forfeited to the State under division 2 to be moved to a holding yard.

(2) A police officer may sign a towing authority for the motor vehicle.

(3) The driver of a tow truck towing the motor vehicle under a towing authority must tow the motor vehicle to—

(a) if the police officer directs the driver to tow the motor vehicle to a particular holding yard—the holding yard; or

(b) if paragraph (a) does not apply—the holding yard to which the driver ordinarily tows motor vehicles.

(4) In this section—

towing authority means—

(a) a towing authority under the *Tow Truck Act 1973*; or

(b) another document authorising a person to tow a motor vehicle.

Part 5 Other provisions

Division 1 Liability for costs of impounding

778 Liability to pay costs of impounding—adult driver

(1) This section applies in relation to a motor vehicle impounded for an evasion offence.

(2) If the motor vehicle was impounded because an adult driver was found guilty of an evasion offence and the driver was not the owner of the motor vehicle, the driver is liable to pay the costs of removing and keeping the motor vehicle.

(3) If the motor vehicle was impounded because the owner was found guilty of an evasion offence, the owner is liable to pay the costs of removing and keeping the motor vehicle.

779 Liability to pay costs—child driver

(1) This section applies in relation to a motor vehicle impounded for an evasion offence if the driver or owner of the motor vehicle was a child when he or she committed the offence for which it was impounded.

(2) The child is liable to pay the costs of removing and keeping the motor vehicle if the relevant court orders under section 768 that the child pay the costs.

(3) However, if the relevant court orders, under section 768, the child's parent to pay the costs of removing and keeping the motor vehicle, the child's parent is liable to pay the costs of removing and keeping the motor vehicle.

780 Payment of costs if motor vehicle not recovered

(1) This section applies if a person who is entitled to recover a motor vehicle after a period of impoundment ends fails to recover the motor vehicle after the period ends.

Not authorised—indicative only

Not authorised—indicative only

(2) The driver is liable to pay the costs of keeping the motor vehicle for each day after the period of impounding ends.

781 Registration of costs under State Penalties Enforcement Act 1999

(1) If an adult who is liable to pay costs under this division fails to pay the costs, the commissioner may give particulars of the costs to the registrar under the *State Penalties Enforcement Act 1999* for registration under that Act as if—

(a) the commissioner were the registrar of a court; and

(b) the particulars were particulars of a fine imposed by a court and the amount of the fine were unpaid after the time allowed by the court for payment.

(2) The registrar must register the particulars under the *State Penalties Enforcement Act 1999*, section 34.

(3) For this section, the adult who fails to pay the costs under this division fails to pay the costs if—

(a) the commissioner obtains an order for payment of costs against the person; and

(b) the commissioner gives the person a copy of the order and a letter of demand for payment of the costs; and

(c) the person fails to pay the costs within 28 days after receiving the copy of the order and the letter of demand or the longer period agreed to by the commissioner.

Division 2 Release of impounded motor vehicle

782 Release of motor vehicle impounded under court order

(1) This section applies if a motor vehicle is impounded under a court order under part 4, division 2.

(2) When the period for which the motor vehicle is impounded ends, the owner of the motor vehicle is entitled to recover the motor vehicle from the holding yard at which it is kept.

(3) At the request of the owner, the person holding the motor vehicle must release the motor vehicle to the owner, or a person appointed in writing by the owner, at the first reasonably practicable opportunity, during business hours on a business day, after the request is made.

(4) In this section—

business hours means 8a.m. to 5p.m.

Division 3 Sale, transfer or disposal of impounded or forfeited motor vehicle

783 Sale of motor vehicle if not recovered after impounding ends

(1) If, within 2 months after a period of impounding of a motor vehicle ends, the owner of the motor vehicle does not recover it, the commissioner may sell the motor vehicle and anything in or on it by public auction or dispose of it in the way the commissioner considers appropriate.

(2) Notice of the proposed sale or disposal must be published on the police service website.

(3) Also, the commissioner must give written notice of the proposed sale or disposal of the motor vehicle to the owner.

784 Voluntary transfer of ownership of motor vehicle to State

(1) This section applies despite section 770.

Note—

Under section 770 it is an offence for the owner of a motor vehicle that is the subject of an impounding order or forfeiture order application to modify, sell or otherwise dispose of the vehicle before the application is decided.

Not authorised—indicative only

Not authorised—indicative only

(2) The owner of a motor vehicle to which section 770 applies may agree to transfer ownership of the vehicle to the State.

(3) The agreement must be written and witnessed by a person who may witness a statutory declaration.

(4) If the commissioner agrees in writing to the transfer of the motor vehicle—

(a) the motor vehicle becomes the property of the State; and

(b) the commissioner may sell or dispose of the motor vehicle and anything in or on it in the way the commissioner considers appropriate.

785 Disposal of forfeited motor vehicle

The commissioner may dispose of a motor vehicle forfeited to the State under this chapter in the way the commissioner considers appropriate, including by selling it.

786 Application of proceeds of sale

(1) This section applies if the commissioner decides to sell a motor vehicle under section 783 or 785.

(2) The proceeds of the sale are to be applied in the following order—

(a) in payment of the expenses of the sale;

(b) in payment of the costs of removing and keeping the motor vehicle and for searching registers for giving notice of the motor vehicle's impounding;

(c) if there is an amount owing to a person under a security interest registered for the motor vehicle under the *Personal Property Securities Act 2009* (Cwlth)—in payment of the amount owing to the holder of the security interest;

(d) if the motor vehicle is sold under section 783—in payment of any balance to the owner;

(e) if the motor vehicle is sold under section 785—in payment to the consolidated fund.

Division 4 Other provisions

787 Protection from liability

(1) A police officer acting in good faith and without negligence is not liable for any damage, loss or depreciation to a motor vehicle during the impounding of the motor vehicle.

(2) If subsection (1) prevents liability attaching to a police officer, liability attaches instead to the State.

(3) Also, if a police officer signs a towing authority under section 777 for the motor vehicle, the State is not liable for any damage, loss or depreciation to the motor vehicle while it is being moved under the towing authority and while it is impounded in the holding yard of the person authorised under the towing authority to tow the motor vehicle.

788 Third party protection from forfeiture order

(1) A person, other than the defendant, who did not appear at the hearing of an application for a forfeiture order and has an interest in the motor vehicle forfeited to the State under the order may apply to the relevant court for an order under subsection (6).

(2) Subsection (1) applies even though the value of the motor vehicle may be more than the maximum amount that may be claimed in a personal action in the civil jurisdiction of a Magistrates Court.

(3) Unless the relevant court gives leave, the application must be made before the end of the period of 6 months starting on the day the forfeiture order was made.

(4) The relevant court may give leave for a later application if it is satisfied that the delay in applying was not because of the applicant's neglect.

Not authorised—indicative only

Not authorised—indicative only

(5) Unless the relevant court gives leave, a person who was given notice of the application for the forfeiture order can not apply to the court for an order under subsection (6).

(6) On an application, an order may be made—

(a) declaring the nature, extent and, if necessary for the order, the value (when the declaration is made) of the applicant's interest in the motor vehicle; and

(b) directing the State—

(i) if the motor vehicle is still vested in the State—to transfer the motor vehicle to the applicant; or

(ii) if the motor vehicle is no longer vested in the State—to pay to the applicant the value of the applicant's interest in the motor vehicle after taking into account any amount paid to the holder of a registered security interest under section 786(2)(c).

(7) The relevant court must, and may only, make the order if it is satisfied—

(a) the applicant has or, apart from the forfeiture, would have a genuine interest in the motor vehicle; and

(b) the relevant evasion offence happened without the knowledge and consent of the applicant.

(8) For all applications, including applications for leave to apply—

(a) the applicant must give notice of the making of the application to the commissioner; and

(b) the party given notice is a party to the application.

(9) In this section—

defendant means the person found guilty of the evasion offence because of which the forfeiture order was made.

relevant court means the relevant court to which the application for the forfeiture order was made.

relevant evasion offence means the evasion offence because of which the forfeiture order was made.

789 Review

(1) The CCC must review the use by police officers of powers under this chapter and prepare a report on the review.

(2) The review must be started as soon as practicable after 30 June 2009.

(3) The conduct of the review and the preparation of the report is a function of the CCC for the *Crime and Corruption Act 2001*.

(4) In the course of preparing the report, the CCC must consult with the Minister.

(5) The CCC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

Chapter 22A Forced muster orders

789AA Application for forced muster order

(1) The owner of stock may apply to a Magistrates Court for an order (a ***forced muster order***) for the mustering and removal of stock from a place managed or controlled by a person other than the owner.

(2) The applicant must, at least 28 days before the hearing of the application, give a copy of the application to—

(a) the commissioner by registered post; and

(b) the person managing or controlling the place, unless it is impracticable to do so.

(3) The person managing or controlling the place is a party to the application.

Not authorised—indicative only

Not authorised—indicative only

789AB Affidavit to accompany application

An application for a forced muster order must be accompanied by 1 or more affidavits that—

(a) describe the stock; and

(b) state the name of—

(i) the applicant; and

(ii) the place; and

(iii) the person managing or controlling the place; and

(c) state the applicant's information and belief as to the grounds on which the applicant believes the stock is at a place managed or controlled by another person (the ***other person***); and

(d) state the applicant's information and belief as to the grounds on which the applicant believes either of the following—

(i) it is impracticable for the applicant to seek permission from the other person to enter the place and remove the stock from it;

(ii) the other person unreasonably refuses to permit the applicant to enter the place to search for, locate and remove the stock; and

(e) evidence who owns the stock; and

(f) evidence of the applicant's compliance with section 789AA(2).

789AC Police officer wishing to give evidence at hearing

(1) This section applies if a police officer wishes to give evidence at the hearing of an application for a forced muster order.

(2) At least 5 days before the hearing, the police officer must ensure—

(a) an affidavit by the police officer containing information the police officer considers relevant to the application is filed; and

(b) a copy of the affidavit is given to the applicant and the person managing or controlling the place.

(3) The affidavit may state the police officer's information and belief as to particular matters.

(4) A police officer who complies with subsection (2) may give evidence at the hearing and be cross-examined.

(5) A police officer acting under this section does not become a party to the proceedings.

789AD When order may be made

The court may make a forced muster order if it is satisfied that—

(a) the applicant has reasonable grounds for believing that the applicant's stock is at a place managed or controlled by a person other than the applicant; and

(b) either—

(i) the person managing or controlling the place unreasonably refuses to permit the applicant to enter the place to search for, locate and remove the stock; or

(ii) it is impracticable for the applicant to seek permission from the person managing or controlling the place to enter the place and remove the stock from it; and

(c) the applicant complied with section 789AA(2) for the application.

789AE Content of order

(1) A forced muster order must—

Not authorised—indicative only

Not authorised—indicative only

(a) identify the stock to be searched for by a stated brand or other stated identifying mark; and

(b) state the applicant's name; and

(c) state the applicant may enter a stated place, including the airspace above the place, to conduct, under the direction and supervision of a police officer, a muster of the stock identified in the order to locate and remove the stock; and

(d) state a police officer may direct and supervise the muster and enter the place, including the airspace above the place, to direct and supervise the muster; and

(e) state that for conducting the muster the applicant may—

(i) search for and take possession of stock found at the place matching the description of the stock identified in the order; and

(ii) draft, cut out, and take any other action necessary to identify and separate the stock from other stock; and

(iii) bring onto the place any agent, assistant, horse, dog, vehicle or equipment reasonably necessary for the search or taking possession; and

(f) state a police officer may bring onto the place any horse, dog, vehicle or equipment that is reasonably necessary for directing and supervising the muster; and

(g) state the order is not effective unless the applicant gives a copy of the order to—

(i) the commissioner by registered post; and

(ii) the person managing or controlling the place stated in the order; and

(h) state that the order lapses 6 months after it is made.

(2) Subsection (1)(d) and (f) do not limit any other powers of a police officer.

Not authorised—indicative only

789AF Costs

(1) A court that makes a forced muster order may—

(a) order the payment of costs in relation to the application for the order; or

(b) reserve costs in relation to the application.

Example for paragraph (b)—

reserve costs of the application until the court is informed by affidavit of the result of any muster conducted under the order

(2) Without limiting subsection (1)(a), if the court is satisfied by the result of any muster conducted under the forced muster order that it was inappropriate to apply for the order, the court may order the applicant to pay the costs of the application.

789AG Facilities at place of muster to be made available

(1) This section applies if the applicant gives a copy of a forced muster order to the person managing or controlling the place stated in the order.

(2) The person must make available relevant stock facilities at all reasonable times for the use of any of the following persons acting under the order—

(a) the applicant;

(b) the applicant's assistants or agents;

(c) a police officer.

Maximum penalty—50 penalty units or 6 months imprisonment.

(3) In this section—

relevant stock facilities means cut out camps, stockyards, dips, dams, ramps, troughs or other facilities at the place that are reasonably needed to be used in the management of stock.

Not authorised—indicative only

789AH Compensation for damage

(1) This section applies if a fence, rail, stockyard, dip, dam, ramp, trough or other facility at the place stated in a forced muster order is damaged because of action taken under the order.

(2) The owner of the facility is entitled to compensation from the applicant—

(a) as agreed between the applicant and the owner; or

(b) as assessed and ordered by the court.

789AI Frustrating order or obstructing person acting under order

A person who has knowledge of a forced muster order must not—

(a) do an act or make an omission with intent to frustrate action under the order; or

(b) obstruct a person acting under the order.

Maximum penalty—50 penalty units or 6 months imprisonment.

Chapter 23 General

Part 1A Provisions for employment-screening laws

789A Power to demand production of working with children card

(1) This section applies if a police officer knows or reasonably suspects—

(a) a person is the holder of a working with children card; and

(b) any of the following apply to the person—

(i) the person has been charged with a serious offence or disqualifying offence;

(ii) the person is a relevant disqualified person.

(2) The police officer may require the person to immediately give the working with children card to the police officer.

(3) The person must comply with the requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) A police officer who is given a person's working with children card under subsection (2) must give the person a receipt for the card.

(5) A police officer must give the working with children card to the chief executive (employment screening).

(6) A police officer may retain the working with children card until it is given to the chief executive (employment screening) under subsection (5).

(7) For exercising a power under subsection (2), the police officer is taken to be investigating a matter as mentioned in section 19.

(8) In this section—

chief executive (employment screening) means the chief executive of the department in which the Working with Children Act is administered.

disqualifying offence means a disqualifying offence within the meaning of the Working with Children Act.

relevant disqualified person means a relevant disqualified person within the meaning of the Working with Children Act.

serious offence means a serious offence within the meaning of the Working with Children Act.

Not authorised—indicative only

Not authorised—indicative only

Working with Children Act means the *Working with Children (Risk Management and Screening) Act 2000*.

working with children card see the Working with Children Act, schedule 7.

789B Power to demand production of disability worker clearance card

(1) This section applies if a police officer knows or reasonably suspects—

(a) a person holds a disability worker clearance card; and

(b) the person—

(i) has been charged with a disqualifying offence within the meaning of the *Disability Services Act 2006*; or

(ii) is a disqualified person within the meaning of the *Disability Services Act 2006*.

(2) The police officer may require the person to immediately give the person's disability worker clearance card to the police officer.

(3) The person must comply with the requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(4) A police officer who is given a person's disability worker clearance card must give the person a receipt for the card.

(5) A police officer must give the disability worker clearance card to the chief executive (disability services).

(6) A police officer may retain the disability worker clearance card until it is given to the chief executive (disability services).

(7) For exercising a power under subsection (2), the police officer is taken to be investigating a matter as mentioned in section 19.

(8) In this section—

chief executive (disability services) means the chief executive of the department in which the *Disability Services Act 2006*, part 5 is administered.

disability worker clearance card means—

(a) a clearance card under the *Disability Services Act 2006*; or

(b) a card or other document that corresponds to a clearance card mentioned in paragraph (a) issued under a law of another State.

Part 1 Offences

Division 1 Police officers

790 Offence to assault or obstruct police officer

(1) A person must not—

(a) assault a police officer in the performance of the officer's duties; or

(b) obstruct a police officer in the performance of the officer's duties.

Maximum penalty—

(a) if the assault or obstruction happens within licensed premises, or in the vicinity of licensed premises—60 penalty units or 12 months imprisonment; or

(b) otherwise—40 penalty units or 6 months imprisonment.

(2) For subsection (1), a person who obstructs a police dog or police horse under the control of a police officer in the performance of the police officer's duties is taken to obstruct the police officer.

(2A) The *Penalties and Sentences Act 1992*, section 108B also states a circumstance of aggravation for an offence against this section.

Not authorised—indicative only

Not authorised—indicative only

(3) In this section—

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

obstruct includes hinder, resist and attempt to obstruct.

791 Offence to contravene direction or requirement of police officer

(1) This section applies if a person is given a requirement or direction under this Act and no other penalty is expressly provided for a contravention of the requirement or direction.

(2) A person must not contravene a requirement or direction given by a police officer, including a requirement or direction contained in a notice given by a police officer, under this Act, unless the person has a reasonable excuse.

Maximum penalty—

(a) for contravening a direction given under section 48—

(i) within licensed premises, or in a regulated place located in the vicinity of licensed premises; or

(ii) in a public place located in a safe night precinct—60 penalty units; or

(b) for contravening another requirement or direction relating to a relevant law for which the penalty for a contravention of a similar requirement or direction made by a public official under the relevant law is more than 40 penalty units—the maximum penalty under the relevant law for the offence; or

(c) otherwise—40 penalty units.

(3) However, for a contravention of a requirement made by a police officer under section 17 or 18, the person may be prosecuted for a contravention of the relevant authorising law or subsection (2), but not both.

(4) Unless otherwise expressly provided, it is a reasonable excuse for a person not to comply with a requirement or direction to

give information if giving the information would tend to incriminate the person.

(5) It is not a reasonable excuse for a person not to comply with a requirement or direction given by a police officer under chapter 17 that complying with the requirement or direction would tend to incriminate the person.

Division 2 Protective services officers

791A Offence to assault or obstruct protective services officer

(1) A person must not—

(a) assault a protective services officer in the performance of the officer's duties at, or in connection with, a state building; or

(b) obstruct a protective services officer in the performance of the officer's duties at, or in connection with, a state building.

Maximum penalty—40 penalty units or 6 months imprisonment.

(2) In this section—

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

obstruct includes hinder, resist and attempt to obstruct.

791B Offence to contravene direction or requirement of protective services officer

(1) This section applies if a person is given a requirement or direction under chapter 19, part 1 by a protective services officer and no other penalty is expressly provided for a contravention of the requirement or direction.

(2) A person must not contravene a requirement or direction given by a protective services officer, including a requirement or direction contained in a notice given by a protective

Not authorised—indicative only

Not authorised—indicative only

services officer, under this Act, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Part 2 Other general provisions

792 Performance of duty—police officers

A police officer performing a function of the police service is performing a duty of a police officer even if the function could be performed by someone other than a police officer.

Example—

An occupier of a place who may remove a trespasser from the place asks a police officer to remove the trespasser. The police officer, when removing the trespasser at the occupier's request is performing a function of the police service.

792A Performance of duty—protective services officers

A protective services officer performing a function of the police service is performing a duty of a protective services officer even if the function could be performed by someone other than a protective services officer.

793 Helping at fire or hazardous materials emergency

(1) It is the duty of a police officer who is present at a fire or hazardous materials emergency to give a fire officer who is performing functions and exercising powers under the *Fire and Emergency Services Act 1990* reasonably necessary help.

(2) In this section—

fire officer has the meaning given by the *Fire and Emergency Services Act 1990*, schedule 6.

hazardous materials emergency has the meaning given by the *Fire and Emergency Services Act 1990*, schedule 6.

794 Helping coroner investigate a death

(1) It is the duty of police officers to help coroners in the performance of a function, or exercise of a power, under the *Coroners Act 2003*, including—

(a) the investigation of deaths; and

(b) the conduct of inquests.

(2) Without limiting subsection (1), it is the duty of police officers to comply with every reasonable and lawful request, or direction, of a coroner.

795 Disposal of clothing of deceased person

(1) This section applies in relation to the clothing of a deceased person if a police officer is present when the clothing is removed from the deceased person's body.

(2) If a police officer considers it would be inappropriate to give the clothing to a relative of the deceased person, for example, because it is damaged, soiled or stained, the police officer may dispose of the clothing, including by destroying it.

(3) Clothing disposed of under subsection (2) is taken to have been forfeited to the State immediately before its disposal.

796 Helping courts, etc.

(1) This section applies if, under another Act or law, a tribunal has power—

(a) to lawfully order the apprehension or detention of a person, including under a warrant; or

(b) to order the exclusion or removal of a person from the place where the tribunal is sitting; or

(c) to give any other order or direction for which the help of a police officer may be reasonably necessary.

(2) It is the duty of a police officer to comply with any lawful direction, request, or order of the tribunal and any reasonable

Not authorised—indicative only

Not authorised—indicative only

request the judge or other presiding officer may lawfully make.

(3) Also, it is the duty of a watch-house officer to comply with any lawful direction, request, or order of the tribunal and any reasonable request the judge or other presiding officer may lawfully make that relates to the presence or conduct of a person transferred under section 640 from a watch-house to a court cell who is present before the tribunal.

(4) In this section—

tribunal means a court, inquest, inquiry, tribunal or other deliberative entity.

797 Helping during declaration of emergency under Corrective Services Act 2006

(1) This section applies if a police officer is authorised by the chief executive (corrective services) to perform a function or exercise a power of a corrective services officer under the *Corrective Services Act 2006* while a corrective services emergency declaration is in force.

(2) It is the duty of the police officer to perform the function or exercise the power while the corrective services emergency declaration is in force.

(3) The police officer must perform the function or exercise the power under the direction of the senior police officer present at the prison for which the corrective services emergency declaration is in force.

(4) In this section—

corrective services emergency declaration means a declaration made under the *Corrective Services Act 2006*, section 268.

798 Service and enforcement of process

A police officer may serve or enforce a warrant, summons, order or command of any court, judge, magistrate or justice—

(a) even though the warrant, summons, order or command is not addressed to the police officer; and

(b) despite the requirements of any other Act or law, or rule having the force of law, about who may enforce the warrant, summons, order or command.

799 Provisions restricting starting of proceeding

(1) This section applies if a provision of another Act prescribed under a regulation for this section restricts or prevents a police officer starting a proceeding against a person for an offence against that Act.

(2) Despite the other Act, a police officer may start a proceeding against the person for the offence.

(3) However, as soon as reasonably practicable after starting the proceeding, a police officer must inform the chief executive of the department within which the Act is administered of the starting of the proceeding.

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

(1) This section applies if under this Act, a police officer or law enforcement officer may obtain a warrant, approval, production notice, production order, an order under section 85(6), 85A(6), 86(5), 90(6), 90A(6), 91(6), a noise abatement order or another authority (a ***prescribed authority***).

(2) A police officer or law enforcement officer may apply for a prescribed authority by phone, fax, radio, email or another similar facility if the police officer or law enforcement officer considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the police officer's or law enforcement officer's remote location.

Not authorised—indicative only

Not authorised—indicative only

(3) Before applying for the prescribed authority, the police officer or law enforcement officer must prepare an application stating the grounds on which the prescribed authority is sought.

(4) If, apart from this section, the application is required to be sworn, the police officer or law enforcement officer may apply for the prescribed authority before the application is sworn.

(5) If transmission by fax is available, the person applying must transmit a copy of the application to the person who is to decide the application.

(6) Subsection (1) applies to a forensic procedure order only if the person to whom the application for the order relates is not entitled to be given notice of the application under section 460(2) or the person is dead.

801 Steps after issue of prescribed authority

(1) After issuing the prescribed authority, the issuer must—

(a) if it is reasonably practicable to give a copy of the prescribed authority to the police officer or law enforcement officer by electronic communication—immediately give the copy to the police officer or law enforcement officer by electronic communication; and

(b) for a prescribed authority issued on a remote application made under chapter 13—immediately record the details mentioned in subsection (2)(a)(i) and (ii) in a register kept by the issuer for the purpose.

(2) If it is not reasonably practicable to give a copy of the prescribed authority to the police officer or law enforcement officer by electronic communication—

(a) the issuer must tell the police officer or law enforcement officer—

(i) what the terms of the prescribed authority are; and

(ii) the day and time the prescribed authority was issued; and

(b) the police officer or law enforcement officer must complete a form of prescribed authority (a ***prescribed authority form***) and write on it—

(i) the issuer's name; and

(ii) the day and time the issuer issued the prescribed authority; and

(iii) the terms of the prescribed authority.

(3) To remove doubt, it is declared that the copy of the prescribed authority given under subsection (1)(a), or the prescribed authority form properly completed by the police officer or law enforcement officer—

(a) is, and is taken always to have been, of the same effect as the prescribed authority signed by the issuer; and

(b) authorises the entry and the exercise of the other powers stated in the prescribed authority issued by the issuer.

(4) The police officer or law enforcement officer must send to the issuer—

(a) if section 800(4) applies in relation to the application for the prescribed authority—

(i) for an application that is electronically sworn—a copy of the sworn application; or

(ii) otherwise—the sworn application; and

(b) if the police officer or law enforcement officer completed it—the completed prescribed authority form.

(5) The police officer or law enforcement officer must send the documents mentioned in subsection (4) to the issuer—

(a) generally—at the first reasonable opportunity; or

(b) for a remote application made under chapter 13—within 72 hours.

Not authorised—indicative only

Not authorised—indicative only

(6) On receiving the documents, the issuer must attach them to the prescribed authority.

(7) In this section—

electronically sworn, in relation to an application for a prescribed authority, means the affidavit, that forms part of the application, is made and signed under the *Oaths Act 1867*, section 16C(2) or 31F.

802 Presumption about exercise of powers under prescribed authority

A court must find the exercise of a power by a police officer or law enforcement officer was not authorised by a prescribed authority if—

(a) an issue arises in a proceeding before the court whether the exercise of the power was authorised by a prescribed authority; and

(b) the authority is not produced in evidence; and

(c) it is not proved by the police officer or law enforcement officer relying on the lawfulness of the exercise of the power that a police officer or law enforcement officer obtained the prescribed authority.

803 Protection of methodologies

(1) In a proceeding, a police officer or staff member can not be required to disclose information mentioned in subsection (2), unless the court is satisfied disclosure of the information is necessary—

(a) for the fair trial of the defendant; or

(b) to find out whether the scope of a law enforcement investigation has exceeded the limits imposed by law; or

(c) in the public interest.

(2) The information is information that could, if disclosed, reasonably be expected—

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

(b) to enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained; or

(c) to endanger a person's life or physical safety; or

(d) to prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law; or

(e) to prejudice the maintenance or enforcement of a lawful method or procedure for protecting public safety; or

(f) to facilitate a person's escape from lawful custody.

(3) Subsection (1) does not affect a provision of another Act under which a police officer can not be compelled to disclose information or make statements in relation to the information.

Example for subsection (3)—

Drugs Misuse Act 1986, section 120

(4) In this section—

police officer includes a police officer of another State or the Australian Federal Police.

proceeding does not include—

(a) a hearing under the *Crime and Corruption Act 2001*; or

(b) another proceeding of the CCC in which a police officer is being examined; or

(c) a commission of inquiry under the *Commissions of Inquiry Act 1950*; or

(d) an examination under the *Australian Crime Commission (Queensland) Act 2003*, part 3.

Note—

For provisions about the protection of surveillance device technologies and methods under chapter 13, see section 355.

Not authorised—indicative only

Not authorised—indicative only

804 Compensation

(1) This section applies if a person suffers loss because—

(a) a police officer exercises powers under this Act; or

(b) a protective services officer exercises powers under chapter 19, part 1; or

(c) an assistant exercises powers under this Act in accordance with a request of a police officer or protective services officer given under section 612.

(2) Compensation is payable by the State to the person whose property is damaged.

(3) However, compensation is not payable to a person if the person is found guilty of the commission of an indictable offence because of the exercise of the powers.

(4) Also, compensation is not payable for the lawful seizure of a thing under this Act.

(5) The Minister is to decide the amount of the compensation.

(6) A person who is dissatisfied with the Minister's decision under subsection (5) may apply to a court, within 28 days, for compensation under this section.

(7) If the person applies under subsection (6), the court may decide the amount of the compensation.

806 Approved forms

The commissioner may approve forms for use under this Act.

807 Review of Act

(1) The Minister must ensure the operation of this Act is regularly reviewed.

(2) The first review must start no sooner than 6 months after the commencement of this section and be completed within 3 years.

808A Annual report about use of device inspection powers

(1) As soon as practicable after the end of each financial year, the commissioner must prepare and give to the Minister a report about the use by police officers of powers under section 21B during the financial year.

(2) The report must include—

(a) for each reportable offender in relation to whom an inspection was carried out—the number of inspections carried out for the reportable offender; and

(b) for each inspection—

(i) whether it was carried out under section 21B(1)(a), (b) or (c); and

(ii) the date and time it was carried out; and

(iii) the action taken in relation to the reportable offender as a result of the inspection.

(3) For subsection (2)(a), each occasion on which a police officer inspects 1 or more digital devices counts as 1 inspection.

(4) The report must not include any information identifying, or that is likely to lead to the identification of, a reportable offender.

(5) Within 14 sitting days after receiving the report, the Minister must table a copy of the report in the Legislative Assembly.

808B Annual report about dangerous attachment devices

(1) As soon as practicable after the end of each financial year, the commissioner must prepare and give to the Minister a report about the use by police officers of particular powers relating to dangerous attachment devices.

(2) The report must include the following information for the financial year to which it relates—

(a) when and where a person was searched under section 29 in the circumstances mentioned in section 30(1)(k);

Not authorised—indicative only

Not authorised—indicative only

(b) when and where a vehicle was searched under section 31 in the circumstances mentioned in section 32(1)(p);

(c) if any thing was seized in a search mentioned in paragraph (a) or (b)—

(i) when and where the thing was seized; and

(ii) a description of the thing; and

(iii) whether the thing was returned, disposed of or destroyed.

(3) The report must not include any information identifying, or that is likely to lead to the identification of, a person who was the subject of an exercise of a power mentioned in subsection (2).

(4) Within 14 sitting days after receiving the report, the Minister must table a copy of the report in the Legislative Assembly.

809 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may make provision about—

(a) the responsibilities of the following persons under this Act—

(i) police officers;

(ii) protective services officers and protective services officers (in training);

(iii) support persons; or

(b) the way a police officer may give directions under chapter 3, 4, 5 or 6; or

(c) notice requirements for impounding or immobilising motor vehicles under chapter 4.

(3) A regulation made for subsection (2) may include operational guidelines for police officers.

(4) However, operational guidelines are not part of the regulation.

810 Renumbering of Act

(1) On the commencement of this section, the provisions of this Act are amended by numbering and renumbering them in the same way as a reprint may be numbered and renumbered under the *Reprints Act 1992*, section 43.

(2) Subsection (1) applies to a provision of this Act enacted or otherwise affected (a ***relevant provision***) by a provision of an amending Act enacted but uncommenced when subsection (1) is commenced (the ***uncommenced provision***), with the following intent for the relevant provision—

(a) if the number of the relevant provision would have changed under subsection (1) had the uncommenced provision commenced—

(i) a number is allocated to the relevant provision as if the uncommenced provision had commenced; and

(ii) when the uncommenced provision commences, the number of the relevant provision is amended by omitting it and inserting the number allocated to it under subparagraph (i);

(b) if the relevant provision would have been omitted or relocated had the uncommenced provision commenced, its number remains the same as it was before the commencement of subsection (1) until the omission or relocation takes effect.

(4) This section expires when the *Cross-Border Law Enforcement Legislation Amendment Act 2005* expires or is repealed.

(5) In this section—

amending Act means an Act that amends this Act.

Not authorised—indicative only

Not authorised—indicative only

Chapter 24 Repeals and transitional provisions

Part 1 Acts repealed

811 Acts repealed

(1) Each of the following Acts is repealed—

(a) the *Criminal Investigation (Extraterritorial Offences) Act 1985*;

(b) the *Police Powers and Responsibilities Act 1997*.

(2) The *Gaming Act 1850* (NSW) as it applies in Queensland ceases to have effect.

Part 2 Transitional provisions for Police Powers and Responsibilities Act 2000

Division 1 Transitional provisions commencing at a later date

812 Definitions for div 1

In this part—

amended Act means an Act amended by this Act.

repealed Act means the following—

(a) an Act repealed by this Act;

(b) the *Gaming Act 1850* (NSW).

813 Transitional provision about warrants, orders and notices

(1) This section applies if a warrant, notice or order under a provision of an amended Act or under a repealed Act is in force immediately before the amendment or repeal of the relevant Act.

(2) The warrant, notice or order continues to have effect until it ends according to its terms.

(3) This Act applies to anything done under the warrant, notice or order after the commencement of this section, with necessary changes.

814 Transitional provision about noise abatement

(1) A complaint made under the *Environmental Protection Act* 1994, section 149 that is not investigated before the commencement of this section or that is being investigated on the commencement of this section is taken to be a complaint made under section 577 of this Act.

(2) A noise abatement direction made under the *Environmental Protection Act 1994*, section 150 before the commencement of this section may be enforced after the commencement of this section as if it were a noise abatement direction under this Act.

815 Transitional provision about nuisance in moveable dwelling parks

(1) This section applies if a police officer gives a person an initial nuisance direction under the *Residential Tenancies Act 1994* before the commencement of this section.

(2) For section 595 of this Act, the direction is taken to be an initial nuisance direction given under this Act.

Not authorised—indicative only

Not authorised—indicative only

816 Transitional provisions about registers of covert and enforcement acts

(1) A register of covert acts kept under the repealed Act is taken to be a register of covert acts for this Act.

(2) A register of enforcement acts kept under the repealed Act is taken to be a register of enforcement acts for this Act.

(3) This section applies to a register kept under the repealed Act by the commissioner, the CJC or QCC.

817 Transitional provision about entries in registers

A failure, before the commencement of this section, to keep or record information in the way required by this Act before the commencement does not and never did affect anything done in relation to the act concerned before or after the failure.

818 Transitional provision about public interest monitor

(1) This section applies to a person who, immediately before the commencement of this section—

(a) held office under the old Act as—

(i) the public interest monitor; or

(ii) a deputy public interest monitor; or

(b) was appointed under section 79A of the old Act to act as—

(i) the public interest monitor; or

(ii) a deputy public interest monitor.

(2) On the commencement of this section—

(a) the public interest monitor under the old Act is taken to have been appointed as the public interest monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and

(b) a deputy public interest monitor under the old Act is taken to have been appointed as a deputy public interest

monitor under this Act on the conditions, and for the balance of the term of the appointment, decided under the old Act; and

(c) a person appointed to act as the public interest monitor or a deputy public interest monitor is taken to have been appointed to act as the public interest monitor or a deputy public monitor under this Act on the conditions decided under the old Act.

(3) In this section—

old Act means the *Police Powers and Responsibilities Act 1997*.

Part 3 Transitional provisions for Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003

819 Definitions for pt 3

In this part—

amending Act means the *Police Powers and Responsibilities (Forensic Procedures) Amendment Act 2003*.

commencement means the commencement of the provision in which the term is used.

pre-amended Act means this Act or a provision of this Act as in force before its amendment by the amending Act and includes another provision relevant to the provision.

820 Identifying particulars

(1) Something—

Not authorised—indicative only

Not authorised—indicative only

(a) started under the pre-amended Act, chapter 8, part 2, and not finished before the commencement may be continued under chapter 17, part 4, of this Act; or

(b) done under the pre-amended Act, chapter 8, part 2, has effect as if it was done under chapter 17, part 4, of this Act.

(2) Without limiting subsection (1)—

(a) an identifying particulars notice given to a person under the pre-amended Act, section 272 has effect as an identifying particulars notice properly given under chapter 17, part 4 of this Act; and

(b) a court order made under the pre-amended Act, section 273, has effect as a court order made under section 471 of this Act.

821 Medical and dental procedures

(1) This section applies if, immediately before the commencement, there is in force—

(a) a consent to the performance of a medical or dental procedure given under the pre-amended Act, section 285; or

(b) an order of a magistrate authorising the performance of a medical or dental procedure made under the pre-amended Act, section 290.

(2) The pre-amended Act, chapter 8, part 3, continues to apply for performing the medical or dental procedure as if the amending Act had not been enacted.

(3) Anything obtained under the consent or order may be dealt with or used as if it were obtained under a forensic procedure consent or forensic procedure order.

822 DNA procedures

(1) Subsection (2) applies if, immediately before the commencement, there is in force—

(a) a consent to the taking of a DNA sample given under the pre-amended Act, chapter 8, part 4, division 3; or

(b) an approval of a commissioned officer given under the pre-amended Act, section 307 for the detention of a person for the time reasonably necessary to take a DNA sample from the person; or

(c) a DNA sample notice under the pre-amended Act, section 308; or

(d) an order of a court made under the pre-amended Act, section 309(2)(b), 310(2)(b) or 312.

(2) The pre-amended Act, chapter 8, part 4, continues to apply in relation to the consent, approval, notice or order as if the amending Act had not been enacted.

(3) An application made to the Childrens Court under the pre-amended Act, section 312 that has not been decided by the court before the commencement has effect and may be dealt with as an application made to the court under section 488 of this Act.

823 Police officers authorised to take DNA samples

A police officer who, immediately before the commencement, is a police officer authorised under the pre-amended Act, section 297(3), by the commissioner to take DNA samples is taken to be authorised by the commissioner under section 476 of this Act.

824 Taking of certain DNA samples

(1) This section applies in relation to the pre-amended Act, sections 310, 311 and 316.

(2) Despite the omission of the sections by the amending Act—

(a) the declarations in the pre-amended Act, sections 310(4), 311(4) and 316(5) continue to have effect in relation to the offences to which they applied immediately before the commencement; and

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(b) a DNA sample taken as mentioned in the pre-amended Act, section 310(5) or 311(5) continues not to have been unlawfully taken merely because the indictable offence of which the person from whom it was taken was found guilty was dealt with summarily.

825 QDNA

(1) A database approved by the commissioner under the pre-amended Act, section 317 (***section 317 database***) is taken to be approved under section 491 of this Act.

(2) Anything lawfully stored in a section 317 database immediately before the commencement may continue to be stored in QDNA or the CrimTrac database and may be used under this Act.

826 Certain arrangements made by Minister

(1) This section applies if, before the commencement of section 533, the Minister lawfully made an arrangement with a declared agency or a responsible Minister of another jurisdiction relating to a matter mentioned in section 533(1) and the arrangement is of a type that could, after that commencement, be entered into under that section.

(2) After the commencement of section 533, the arrangement entered into is taken to have been entered into under that section.

(3) In this section—

responsible Minister has the same meaning as it has in section 533.

827 Provision for ch 11, pt 3

(1) This section applies to a sample or other thing to which the pre-amended Act, section 420(2)(b), (c) or (d) applied before the commencement.

(2) From the commencement—

(a) if the pre-amended Act, section 420(2)(b) or (c) applied, the sample or other thing is taken to have been taken or collected under chapter 17 of this Act; and

(b) if the pre-amended Act, section 420(2)(d) applied, the sample is taken to have been taken under chapter 18 of this Act.

Part 4 Transitional provision for Summary Offences Act 2005

828 Vagrants, Gaming and Other Offences Act 1931

Despite the repeal of the *Vagrants, Gaming and Other Offences Act 1931*, an offence against that Act continues to be an identifying particulars offence for this Act.

Part 5 Transitional provisions for Cross-Border Law Enforcement Legislation Amendment Act 2005

Division 1 Preliminary

829 Definitions for pt 5

In this part—

amendment Act means the *Cross-Border Law Enforcement Legislation Amendment Act 2005*.

commencement day means the day on which section 12 of the amendment Act commences.

former, of a provision mentioned in this part, means the provision mentioned is a provision of the pre-amended Act.

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new, of a provision mentioned in this part, means the provision mentioned is a provision of the post-amended Act.

post-amended Act means this Act as in force from the commencement day.

pre-amended Act means this Act as in force immediately before the commencement day.

Division 2 Controlled activities

830 Transitional provision for controlled activities

(1) A controlled activity authorised under former section 190 but not completed before the commencement day continues in force as a controlled activity authorised under new section 224.

(2) New sections 225, 226 and 227 apply in relation to a controlled activity continued in force under subsection (1).

Division 3 Controlled operations

Subdivision 1 Definitions

831 Definitions for div 3

In this division—

CMC officer means—

(a) a commission officer; or

(b) an officer or employee of a declared agency engaged by the CMC for a particular controlled operation.

existing CMC approving officer means an approving officer for the CMC mentioned in former section 173(2)(b).

existing CMC civilian covert operative means a person other than a CMC officer or a police officer who is named in an

existing CMC controlled operation approval or an existing CMC controlled operation urgent approval as a covert operative for the existing CMC controlled operation.

existing CMC controlled operation approval means an approval given by an existing CMC approving officer under former section 177 for a controlled operation in relation to a serious indictable offence or organised crime.

existing CMC controlled operation urgent approval means an approval given by an existing CMC approving officer under former section 175 or 176 for a controlled operation in relation to a serious indictable offence or organised crime.

existing CMC covert operative means a CMC officer or police officer named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval as a covert operative for the existing CMC controlled operation.

existing police service approving officer means an approving officer for the police service mentioned in former section 173(2)(a).

existing police service civilian covert operative means a person who is not a police officer and is named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval as a covert operative for the controlled operation to which the approval relates.

existing police service controlled operation approval means an approval for a controlled operation given under former section 177 by an existing police service approving officer.

existing police service controlled operation urgent approval means an approval for a controlled operation given under former section 176 by an existing police service approving officer.

existing police service covert operative means a police officer who is named in an existing police service controlled operation approval or an existing police service controlled

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Not authorised—indicative only

operation urgent approval as a covert operative for the controlled operation to which the approval relates.

Subdivision 2 Controlled operations committee

832 Transitional provisions about committee membership

(1) A person who held office as a member of the committee under former section 167(2)(b), whether as the chief executive officer of an entity or as the chief executive officer's nominee, continues to hold office as a member of the committee under new section 232(2)(b).

(2) The independent member of the committee under former section 168 continues to be the independent member under new section 233 without further appointment.

(3) An acting independent member of the committee under former section 169 continues to be an acting independent member under new section 234 without further appointment.

833 Transitional provisions about committee business

(1) A matter referred to the committee by an approving officer under former chapter 5, part 2, division 3, but not decided before the commencement day, may continue to be considered by the committee under new chapter 11, part 2, division 2.

(2) If, after the commencement day, the period of the first annual report required to be prepared under new section 269 includes any period before the commencement day, the annual report prepared under new section 269 must include the matter required to be included under that section in relation to the committee's activities before the commencement day.

Subdivision 3 Controlled operation approvals

834 Transitional provisions for police service controlled operation approvals

(1) An existing police service controlled operation approval that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a formal authority given under new section 245.

(2) An existing police service controlled operation urgent approval that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an urgent authority given under new section 245.

835 Transitional provisions for CMC controlled operation approvals

(1) An existing CMC controlled operation approval that was in force immediately before the commencement day and relates to a serious indictable offence or suspected organised crime continues in force from that day in accordance with its terms as if it were a formal authority given under new section 245 in relation to a relevant offence that is major crime as defined under the *Crime and Misconduct Act 2001*.

(2) An existing CMC controlled operation urgent approval that was in force immediately before the commencement day and relates to a serious indictable offence or suspected organised crime continues in force from that day in accordance with its terms as if it were an urgent authority given under new section 245 in relation to a relevant offence that is major crime as defined under the *Crime and Misconduct Act 2001*.

836 Transitional provision for pre-commencement day recommendations

A recommendation made by the committee under former section 172 continues in force from the commencement day

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as if it were a recommendation made by the committee under new section 237.

Subdivision 4 Covert operatives

837 Transitional provisions for police service covert operatives

(1) An existing police service civilian covert operative named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval continued in force under section 834 as a formal authority or an urgent authority is taken, from the commencement day, to be a civilian participant.

(2) An existing police service covert operative named in an existing police service controlled operation approval or an existing police service controlled operation urgent approval continued in force under section 834 as a formal authority or an urgent authority is taken, from the commencement day, to be an authorised participant.

838 Transitional provisions for CMC covert operatives

(1) An existing CMC civilian covert operative named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval continued in force under section 835 as a formal authority or an urgent authority is taken, from the commencement day, to be a civilian participant.

(2) An existing CMC covert operative named in an existing CMC controlled operation approval or an existing CMC controlled operation urgent approval continued in force under section 835 as a formal authority or an urgent authority is taken, from the commencement day, to be an authorised participant.

Division 4 Assumed identities

839 Authorities for identity documents that are birth certificates

(1) An authority given under former section 186 or 187 to create a birth certificate to help conceal the identity of a covert operative for an existing CMC controlled operation or an existing police service controlled operation continues in force as a birth certificate approval given under new section 288.

(2) A birth certificate created in accordance with an authority continued in force under subsection (1) continues in force as if it were a birth certificate created under new section 290 and may continue to be used for the purpose for which it was created.

(3) If, under new section 286, the chief executive officer cancels an authority mentioned in subsection (1), new section 291 applies to a birth certificate created under former section 186 or 187 in the same way as it applies to a birth certificate created under new section 290.

840 Identity documents other than birth certificates

(1) An identity document created in accordance with former section 189—

(a) continues in force as evidence of identity produced under a request under new section 294; and

(b) is taken to have been issued under an authority given under new section 283; and

(c) may, if the purpose for which the identity document was created has not ended, continue to be used for the purpose.

(2) If, under new section 286, the chief executive officer of the law enforcement agency for whom the identity document is produced cancels an authority mentioned in subsection (1)(b),

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the chief executive officer must direct the issuing agency to cancel the evidence of identity under new section 297.

(3) This section applies to an identity document created for the CMC under former section 189 to the extent to which continued use of the document relates to a controlled operation under a controlled operation approval continued in force under section 835.

(4) In this section—

identity document means a document, other than a birth certificate, created under former section 189.

Division 5 Surveillance devices

Subdivision 1 Definitions

841 Definitions for div 5

In this division—

existing CMC emergency authorisation means an authorisation given under the *Crime and Misconduct Act 2001*, section 130 as in force immediately before the commencement day, in relation to major crime as defined under that Act.

existing CMC surveillance warrant means a warrant issued under the *Crime and Misconduct Act 2001*, section 124 as in force immediately before the commencement day, in relation to major crime as defined under that Act.

existing police service emergency authorisation means an authorisation given under former section 132.

existing police service surveillance warrant means a warrant issued under former section 127.

Subdivision 2 Transitional provisions for police service surveillance devices

842 Transitional provisions for existing police service surveillance devices

(1) An existing police service surveillance warrant that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a surveillance device warrant issued under new section 330 to a police officer under new chapter 13.

(2) An existing police service emergency authorisation that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an emergency authorisation given under new section 343 to a police officer or member of the police service performing duties under new chapter 13.

(3) New sections 344 to 348 apply to an authorisation mentioned in subsection (2).

(4) A warrant or emergency authorisation may be issued or given under this Act as in force from the commencement day in relation to an offence that was committed before the commencement day.

843 Transitional provisions for protection of records

(1) New section 355(1) and (2) apply to a relevant proceeding within the meaning of former section 145 in relation to an existing police service surveillance warrant or an existing police service emergency authorisation as if the proceeding were a proceeding under new chapter 13.

(2) New section 356 applies to information in the custody of a court in relation to a relevant proceeding within the meaning of former section 145 as if the information were protected information.

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Not authorised—indicative only

844 Transitional provision for use and disclosure of information obtained from using surveillance devices

New section 353 applies to information obtained before the commencement day from using a surveillance device under an existing police service surveillance warrant or an existing police service emergency authorisation that could have been disclosed under former section 146 as if the information were protected information under new chapter 13.

Subdivision 3 Transitional provisions for CMC surveillance devices

845 Transitional provisions for existing CMC surveillance devices

(1) An existing CMC surveillance warrant that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were a surveillance device warrant issued under new section 330 to an authorised commission officer.

(2) An existing CMC emergency authorisation that was in force immediately before the commencement day continues in force from that day in accordance with its terms as if it were an emergency authorisation given under new section 343 to an authorised commission officer.

(3) New sections 344 to 348 apply to an authorisation mentioned in subsection (2).

(4) A warrant or emergency authorisation may be issued or given under this Act as in force from the commencement day in relation to a misconduct offence that was committed before the commencement day.

846 Transitional provisions for protection of records

(1) New section 355(1) and (2) apply to a relevant proceeding within the meaning of former section 145 in relation to an existing CMC surveillance device or an existing CMC

emergency authorisation as if the proceeding were a proceeding under new chapter 13.

(2) New section 356 applies to information in the custody of a court in relation to a relevant proceeding within the meaning of former section 145 as if the information were protected information.

847 Transitional provisions for use and disclosure of information obtained from using surveillance devices

New section 353 applies to information obtained from using a surveillance device under an existing CMC surveillance warrant or an existing CMC emergency authorisation that could have been disclosed under former section 146 as if the information were protected information under new chapter 13.

Part 6 Transitional provisions for Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005

849 Definitions for pt 6

In this part—

amendment Act means the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*.

commencement means the commencement of the amendment Act.

post-amended Act means this Act as in force from the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

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850 Existing proceedings

(1) An application for an impounding order made, but not decided, before the commencement is taken to be an application for an impounding order made under the post-amended Act.

(2) An application for a forfeiture order made, but not decided, before the commencement is taken to be an application for a forfeiture order made under the post-amended Act.

(3) Anything done in a proceeding mentioned in subsection (1) or (2), including any order made when adjourning the application, is taken to have been done under the post-amended Act.

(4) The provisions of the post-amended Act apply in relation to any application taken by this section to be made under the post-amended Act.

851 Existing impoundments

(1) A vehicle impounded under the pre-amended Act for which the period of the impoundment has not ended before the commencement is taken to have been impounded under the post-amended Act.

(2) A reference to a provision of the pre-amended Act in a notice given in relation to a vehicle impounded before the commencement for which the period of the impoundment has not ended before the commencement is taken, for the post-amended Act, to be a reference to a provision of the post-amended Act dealing with the same subject matter.

(3) A notice required to be given in relation to an impounded vehicle that has not been given immediately before the commencement may be given after the commencement as if the vehicle had been impounded after the commencement.

(4) However, for deciding the period of the impoundment, periods before and after the commencement are to be counted as a single period.

(5) The provisions of the post-amended Act apply in relation to any impoundment taken under this section to be an impoundment under the post-amended Act.

852 Existing orders

(1) An impounding order made under the pre-amended Act and in force immediately before the commencement continues to have effect according to its terms as if it were an impounding order issued under the post-amended Act and the provisions of that Act apply.

(2) A forfeiture order made under the pre-amended Act that has not been enforced immediately before the commencement continues to have effect as if it were a forfeiture order made under the post-amended Act and may be enforced under section 110 of the post-amended Act.

853 Existing references

(1) This section applies to a notice or other document issued for a purpose under the pre-amended Act if the purpose for issuing the notice or document has not ended or the proceeding to which it relates has not been finally decided.

(2) A reference to a prescribed offence in the notice or document is taken, from the commencement, to be a reference to a vehicle related offence.

Part 7 Transitional and other provisions for Police Powers and Responsibilities and Other Acts Amendment Act 2006

854 Particular evidentiary certificates under s 318ZZB

(1) This section applies if a prosecuting authority gives a defendant a certificate under section 318ZZB(2), as in force

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immediately before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 48, and the time for challenging a matter stated in the certificate has not ended.

(2) Section 318ZZB(3), as in force immediately before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 48, continues to apply to the certificate.

855 Effect of declaration under s 608

(1) To remove doubt, it is declared that the *Police Powers and Responsibilities Amendment Regulation (No. 1) 2005* SL No. 84 is, and always was, effective to extend the end of the period for expiry of sections 604 to 607.

(2) Also, sections 604 to 608 are taken never to have expired.

(3) In addition, anything done under sections 604 to 607 after the date on which, apart from this section, the sections would otherwise have expired is as valid and effective as it would have been if the *Police Powers and Responsibilities Amendment Regulation (No. 1) 2005* SL No. 84 had been made and notified before the end of the period for expiry of the sections.

(4) Further, if a regulation (***extension regulation***) is made before the commencement of this section to further extend the period for expiry of sections 604 to 607, the extension regulation is as valid and effective as if this section had commenced before the commencement of the extension regulation.

(5) Anything else done under the extension regulation has effect.

856 Transitional provision for former s 432

Section 432, as in force immediately before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 74, continues to apply in relation to a drug destruction notice given under section 705 as if the *Police Powers and Responsibilities and*

Other Acts Amendment Act 2006, section 74 had not been enacted.

857 Controlled activities

(1) To remove any doubt, it is declared that a controlled activity that was purportedly authorised under section 190, as in force immediately before the commencement of the *Cross-Border Law Enforcement Legislation Amendment Act 2005*, section 12 for an offence other than a serious indictable offence is and always has been as validly authorised as it would have been had the offence for which the controlled activity was authorised been a serious indictable offence.

(2) Also, to remove any doubt, it is declared that anything done because of a purported authorisation of a controlled activity mentioned in subsection (1) that would have been lawfully done if the thing had been done under a validly authorised controlled activity in relation to a serious indictable offence is taken to have been lawfully done.

859 Declaratory provision about renumbering

(1) To remove any doubt, it is declared that in any instrument, document or order made or issued during the transitional period, it was always lawful and sufficient for all purposes to refer to a provision of this Act by a number it had immediately before the transitional period, or by any number it had during the transitional period, even though the provision had been renumbered, with or without amendment, before the issuing or making of the instrument, document or order.

(2) In this section—

transitional period means the period between 20 July 2006 and the commencement of this section.

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Part 8 Transitional provisions for Summary Offences and Other Acts Amendment Act 2007

860 References to provisions in s 861

A reference in section 861 to a provision of the *Police Powers and Responsibilities Act 2000*, whether or not the provision had commenced, is a reference to the provision as numbered before the commencement of the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 84.

861 Effect of particular amendments

It is declared that the amendment of the following provisions of the *Police Powers and Responsibilities Act 2000* had effect, and always had effect, as if—

(a) for section 361(2)—the words 'to 'direction.' ' had appeared after ' 'relates' ' in the *Police Powers and Responsibilities (Motorbike Noise) Amendment Act 2005*, section 20(2);

(b) for section 204—the word 'After' did not appear before the word 'section' in the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 39;

(c) for section 371AB(4)—the word '*omit,*' did not appear before the word '*insert*' in the *Police Powers and Responsibilities and Other Acts Amendment Act 2006*, section 49(1).

Part 9 Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2006

862 Costs of impoundment

Sections 111 to 116, as in force immediately before 1 July 2007, continue to apply in relation to a motor vehicle impounded before 1 July 2007 but not released to its owner before that date as if those sections had not been amended by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2006*.

863 Existing references

(1) This section applies to a notice, order or other document issued or made under a provision of chapter 4, as in force immediately before the commencement of this section if—

(a) the provision is amended by the *Police Powers and Responsibilities and Other Legislation Amendment Act 2006*; and

(b) the purpose for issuing the document or making the order has not ended or the proceeding to which it relates has not ended before that commencement.

(2) A reference in the notice, order or document to a vehicle related office is taken to be a reference to a type 1 vehicle related offence.

Not authorised—indicative only

Not authorised—indicative only

Part 10 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

865 Reference to particular offences

Schedules 3 and 5 apply as if a reference to the *Summary Offences Act 2005*, section 25 included a reference to the Criminal Code, section 426 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Part 13 Transitional provisions for Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013

870 Definitions for pt 13

In this part—

commencement means the commencement of this part.

post-amended Act means this Act as in force from the commencement.

pre-amended Act means this Act as in force immediately before the commencement.

871 Two type 1 vehicle related offences committed before commencement

(1) This section applies if before the commencement, the driver of a motor vehicle—

(a) either—

(i) has been charged with having committed a type 1 vehicle related offence on at least 1 previous occasion and the charge has not been decided; or

(ii) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion; and

(b) is charged with having committed a second or subsequent type 1 vehicle related offence and the charge has not been decided.

(2) Chapter 4 of the pre-amended Act continues to apply in relation to the charges as if the *Police Powers and Responsibilities (Motor Vehicle Impoundment) and Other Legislation Amendment Act 2013* had not been enacted.

872 One type 1 vehicle related offence committed before commencement and another type 1 vehicle related offence committed after commencement

(1) This section applies if—

(a) before the commencement, and within the relevant period, the driver of a motor vehicle—

(i) has been charged with having committed a type 1 vehicle related offence on at least 1 previous occasion and the charge has not been decided; or

(ii) has been found guilty of a type 1 vehicle related offence committed on 1 previous occasion; and

(b) after the commencement, the driver is charged with having committed a type 1 vehicle related offence.

(2) A police officer may not impound the motor vehicle under section 74A of the post-amended Act on the basis that the driver has been charged with, or found guilty of, having committed a type 1 vehicle related offence mentioned in subsection (1)(a).

(3) In this section—

relevant period, for a person who has been charged with, or found guilty of, having committed a type 1 vehicle related

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Not authorised—indicative only

offence before the commencement, means the period of not more than 3 years before a type 1 vehicle related offence the person is charged with having committed after the commencement.

873 Different kinds of type 2 vehicle related offences committed before and after commencement

(1) This section applies if—

(a) before the commencement, and within the relevant period, the driver of a motor vehicle—

(i) has been charged with having committed type 2 vehicle related offences of different kinds on 1 or more previous occasions within the relevant period; and

(ii) for each of the charges mentioned in subparagraph (i)—

(A) the charge has not been decided; or

(B) the driver has been found guilty; and

(b) after the commencement, the driver is charged with having committed a type 2 vehicle related offence of a different kind from a type 2 vehicle related offence mentioned in paragraph (a)(i).

(2) A police officer may not impound a motor vehicle under section 74C, 74D or 74E of the post-amended Act on the basis that the driver has been charged with, or found guilty of, having committed a type 2 offence mentioned in subsection (1)(a)(i).

(3) For this section, a type 2 vehicle related offence is of a different kind to another type 2 vehicle related offence if each offence is described in a different paragraph of the definition of *type 2 vehicle related offence* in section 69A(2).

(4) In this section—

relevant period, for a person who has been charged with, or found guilty of, having committed a type 2 vehicle related

offence before the commencement, means the period of not more than 3 years before a type 2 vehicle related offence the person is charged with having committed after the commencement.

874 Type 2 vehicle related offences of same kind committed before and after commencement

(1) This section applies if—

(a) before the commencement, and within the relevant period, the driver of a motor vehicle—

(i) has been charged with having committed a type 2 vehicle related offence or type 2 vehicle related offences of the same kind on 2 or more previous occasions; and

(ii) for each of the charges mentioned in subparagraph (i)—

(A) the charge has not been decided; or

(B) the driver has been found guilty; and

(b) after the commencement, the driver is charged with having committed a type 2 vehicle related offence of the same kind as a type 2 vehicle related offence mentioned in paragraph (a)(i).

(2) To remove any doubt, it is declared that the provisions of the post-amended Act about the impoundment and forfeiture of a motor vehicle apply in relation to the type 2 offences committed before and after the commencement.

(3) For this section, a type 2 vehicle related offence is the same kind as another type 2 vehicle related offence if both offences are within the description of an offence covered by a paragraph of the definition of *type 2 vehicle related offence* in section 69A(2) of the pre-amended Act.

(4) In this section—

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Not authorised—indicative only

relevant period, for a person who has been charged with, or found guilty of, having committed a type 2 vehicle related offence before the commencement, means the period of—

(a) not more than 5 years before a type 2 vehicle related offence of the same kind that the person is charged with having committed after the commencement; but

(b) not more than 3 years before the commencement.

875 Existing applications for impounding order applications

(1) This section applies to an application under section 85 or 85A of the pre-amended Act for an impounding order that had not been decided immediately before the commencement.

(2) The application must be decided as if the following provisions of the pre-amended Act were still in force—

(a) chapter 4, part 3, divisions 1 to 3;

(b) chapter 4, part 5, divisions 1 to 2A and division 4.

876 Existing applications for forfeiture order applications

(1) This section applies to an application under section 90 or 90A of the pre-amended Act for a forfeiture order that had not been decided immediately before the commencement.

(2) The application must be decided as if the following provisions of the pre-amended Act were still in force—

(a) chapter 4, part 4, divisions 1 to 3;

(b) chapter 4, part 5, divisions 1 to 2A and division 4.

Part 14 Transitional provision for Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offender Confiscation Order) Amendment Act 2013

877 Application of amendments about confiscation related evidence etc.

(1) This section applies if, before the commencement—

(a) an application for a relevant order is made but has not been decided; or

(b) a relevant order has been made.

(2) This Act, as in force immediately before the commencement, continues to apply in relation to the application or order.

(3) In this section—

commencement means the commencement of this section.

relevant order means—

(a) a search warrant under section 150; or

(b) a production notice under section 181; or

(c) a production order under section 192.

Not authorised—indicative only

Not authorised—indicative only

Part 15 Transitional provision for Australian Crime Commission (Queensland) and Other Legislation Amendment Act 2016

878 ACC database

(1) If the context permits, a reference to the CrimTrac database in a document may be taken to be a reference to the ACC database.

(2) Anything lawfully included under this Act or another Act, before the commencement, in the CrimTrac database is taken to be lawfully included in the ACC database and may be used under this Act or another Act.

Part 16 Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2018

879 Review relating to high-risk missing persons

(1) The CCC must, as soon as practicable after the end of 5 years after the insertion of chapter 7, part 3A, review the effectiveness of that part and give a report on the review under the *Crime and Corruption Act 2001*.

(2) The conduct of the review and the preparation of the report is taken to be a research function of the CCC for the *Crime and Corruption Act 2001*.

(3) In the course of preparing the report, the CCC must consult with the Minister.

(4) The CCC must give a copy of the report to the Speaker for tabling in the Legislative Assembly.

880 Evasion offence notices given before commencement

(1) This section applies if—

(a) before the commencement, a police officer gave the owner of a motor vehicle an evasion offence notice under former section 755; and

(b) the 4 business days within which the owner may give a declaration under former section 755 had not yet ended at the commencement.

(2) Despite the commencement of the amendment Act, the former provisions of this Act continue to apply in relation to the notice and the person to whom the notice was given.

(3) In this section—

amendment Act means the *Police Powers and Responsibilities and Other Legislation Amendment Act 2018*.

former provision, of this Act, means the provision as in force immediately before it was amended under the amendment Act.

Part 17 Transitional provisions for Youth Justice and Other Legislation Amendment Act 2019

881 Definitions for part

In this part—

amending Act means the *Youth Justice and Other Legislation Amendment Act 2019*.

Not authorised—indicative only

Not authorised—indicative only

former, in relation to a provision of this Act, means as in force from time to time before the commencement of the provision in which the term is used.

882 Contraventions of bail conditions before commencement

(1) This section applies in relation to a contravention of a condition of an undertaking on which a person was granted bail if the contravention happened before the commencement.

(2) Former section 367 continues to apply in relation to the contravention as if the amending Act had not been enacted.

(3) In this section—

undertaking see the *Bail Act 1980*, section 6.

883 Children arrested or served with notices to appear before commencement

Former section 392 continues to apply in relation to a child who was arrested, or served with a notice to appear, before the commencement as if the amending Act had not been enacted.

Part 18 Transitional provisions for Police Powers and Responsibilities and Other Legislation Amendment Act 2020

884 Definitions for part

In this part—

amending Act means the *Police Powers and Responsibilities and Other Legislation Amendment Act 2020*.

former, in relation to a provision, means as in force from time to time before the provision was amended by part 6 of the amending Act.

885 Particular applications or orders made before commencement

(1) This section applies in relation to—

(a) an application for an order under former section 21B, 154, 154A or 178A that was made but not decided before the commencement; or

(b) an order made before the commencement under former section 21B, 154, 154A or 178A to the extent a power under the order was not exercised before the commencement.

(2) Each of the following may happen under the former section as if part 6 of the amending Act had not commenced—

(a) a proceeding relating to the application or order may be continued or decided;

(b) a power under the order mentioned in subsection (1)(b) may be exercised.

886 Declaratory provision about effect of amending Act

(1) This section applies for deciding, after the commencement, a matter to which any of the following provisions applies—

(a) former section 21B;

(b) former chapter 7, part 1;

(c) former chapter 7, part 3, division 3.

(2) The amendment of the former provision by the amending Act is to be disregarded.

Not authorised—indicative only

Not authorised—indicative only

887 Saving of operation of s 390P

The repeal of former section 390P does not affect the protection from liability for a health care professional under the provision for an act done, or omission made, by the professional before the commencement.

Part 20 Transitional provision for Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020

889 Continuation of particular matters after expiry of ch 18B

(1) This section applies immediately after the expiry day if—

(a) immediately before the expiry day, an application made under former section 548J had not been decided; or

(b) immediately before the expiry day, the period for appealing a COVID-19 test order under former section 548N had not ended; or

(c) immediately before the expiry day, an appeal filed under former section 548N had not been decided; or

(d) immediately before the expiry day, a respiratory tract sample authorised to be taken under a COVID-19 test order made under former section 548L had not been taken; or

(e) immediately before the expiry day, a respiratory tract sample taken from a person under former section 548O had not been tested for COVID-19.

(2) Former chapter 18B continues to apply to a matter mentioned in subsection (1) as if the chapter had not expired.

(3) In this section—

expiry day means the day on which former chapter 18B expires.

former, for a provision, means the provision as in force from time to time before its expiry.

Part 21 Transitional provision for Criminal Code (Consent and Mistake of Fact) and Other Legislation Amendment Act 2021

890 Existing police banning notices

(1) The following provisions continue to apply in relation to a police banning notice in effect immediately before the commencement—

(a) former section 602D;

(b) former section 602N.

(2) In this section—

former, for a provision of this Act, means the provision as in force from time to time before the commencement.

Part 22 Transitional provision for Youth Justice and Other Legislation Amendment Act 2021

891 Investigation of type 1 vehicle related offence alleged to have been committed before commencement

Chapter 22, part 2, divisions 2 and 3, as amended by the *Youth Justice and Other Legislation Amendment Act 2021*, applies in relation to the investigation of a type 1 vehicle related offence

Not authorised—indicative only

Not authorised—indicative only

only if the offence was allegedly committed after the commencement.

Part 23 Transitional provision for Police Service Administration and Other Legislation Amendment Act 2022

892 Proceedings for offences against repealed Act

(1) This section applies in relation to an offence against a former provision of the repealed Act committed by a person before the commencement.

(2) Without limiting the *Acts Interpretation Act 1954*, section 20, a proceeding for the offence may be continued or started, and the person may be convicted of and punished for the offence, as if the *Police Service Administration and Other Legislation Amendment Act 2022* had not commenced.

(3) Subsection (2) applies despite the Criminal Code, section 11.

(4) In this section—

former, for a provision of the repealed Act, means the provision as in force from time to time before the commencement.

repealed Act means the repealed *State Buildings Protective Security Act 1983* as in force from time to time before the commencement.

Schedule 1 Acts not affected by this Act

section 12

Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984

Australian Crime Commission (Queensland) Act 2003

Bail Act 1980

Child Protection Act 1999

Commonwealth Games Arrangements Act 2011, chapter 3

Coroners Act 2003

Corrective Services Act 2006

Crime and Corruption Act 2001

Disaster Management Act 2003

Domestic and Family Violence Protection Act 2012

Forensic Disability Act 2011

Liquid Fuel Supply Act 1984, section 41

Major Events Act 2014

Mental Health Act 2016

Parliament of Queensland Act 2001, section 44

Prisoners International Transfer (Queensland) Act 1997

Prisoners (Interstate Transfer) Act 1982

Public Health Act 2005, chapter 4A

Public Safety Preservation Act 1986

Transport Operations (Road Use Management) Act 1995, section 80

Young Offenders (Interstate Transfer) Act 1987

Not authorised—indicative only

Youth Justice Act 1992, other than to the extent to which section 365(2) and chapter 15 of this Act apply to children

Not authorised—indicative only

Schedule 2 Relevant offences for controlled operations and surveillance device warrants

section 221, definition *controlled activity offence*, section 229, definition *relevant offence* and section 323

1AA Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

An offence against the following provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*—

- section 50 (Failure to comply with reporting obligations)
- section 67FA (Failing to comply with offender prohibition order)
- section 67FD (False or misleading information).

1 Classification of Computer Games and Images Act 1995

An offence against the following provisions of the *Classification of Computer Games and Images Act 1995* involving a child abuse computer game as defined under that Act—

- section 26(3) (Possession of objectionable computer game)
- section 27(3) (Making objectionable computer game)
- section 27(4) (Making objectionable computer game)
- section 28 (Obtaining minor for objectionable computer game).

Not authorised—indicative only

Not authorised—indicative only

2 Classification of Films Act 1991

An offence against the following provisions of the *Classification of Films Act 1991*—

- section 41(3) (Possession of objectionable film)
- section 42(3) and (4) (Making objectionable film)
- section 43 (Procurement of minor for objectionable film).

3 Classification of Publications Act 1991

An offence against the following provisions of the *Classification of Publications Act 1991*—

- section 12 (Sale etc. of prohibited publication) to the extent it applies to a child abuse publication
- section 13 (Possession of prohibited publication) to the extent it applies to a child abuse publication
- section 14 (Possession of child abuse publication)
- section 15 (Exhibition or display of prohibited publication) to the extent it applies to a child abuse publication
- section 16 (Leaving prohibited publication in or on public place) to the extent it applies to a child abuse publication
- section 17(1) and (2) (Producing prohibited publication) to the extent the subsections apply to a child abuse publication
- section 17(3) and (4) (Producing prohibited publication)
- section 18 (Procurement of minor for RC publication)
- section 20 (Leaving prohibited publication in or on private premises) to the extent it applies to a child abuse publication.

4 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 77B (Habitually consorting with recognised offenders)
- section 218A (Using internet etc. to procure children under 16)
- section 218B (Grooming child under 16 years or parent or carer of child under 16 years)
- section 223 (Distributing intimate images)
- section 228(1), if the penalty in section 228(2)(a)applies (Obscene publications and exhibitions)
- section 228D (Possessing child exploitation material)
- section 229H (Knowingly participating in provision of prostitution) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 229I (Persons found in places reasonably suspected of being used for prostitution etc.) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 229K (Having an interest in premises used for the purposes of prostitution etc.) if, in the circumstances, the maximum penalty for the offence is less than 7 years imprisonment
- section 324 (Failure to supply necessaries)
- section 328 (Negligent acts causing harm).
- section 408C (Fraud)
- section 408D (Obtaining or dealing with identification information)
- section 408E (Computer hacking and misuse)

Not authorised—indicative only

Not authorised—indicative only

5 Prostitution Act 1999

An offence against the following provisions of the *Prostitution Act 1999*—

- section 78(1) (Brothel offences)
- section 79(1) (Operating licensed brothel other than in a building)
- section 81(1) (Licensee not to operate brothel in partnership or in association with unlicensed person)
- section 82 (Person not to have interest in more than 1 licensed brothel).

5A Racing Integrity Act 2016

An offence against the following provisions of the *Racing Integrity Act 2016*—

- section 221 (Unlawful bookmaking other than by racing bookmakers etc.)
- section 223 (Prohibition on opening, keeping, using or promoting an illegal betting place).

6 Weapons Act 1990

An offence against the following provisions of the *Weapons Act 1990*—

- section 50B(1) (Unlawful supply of weapons), if paragraph (c)(iii) of the penalty applies
- section 69(1A) (Armourers to be licensed), to the extent it relates to a category A, B or M weapon.

Schedule 3 Relevant offences for chapter 13 disclosure of information provisions

section 351, definition *relevant offence*

1 Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004

An offence against the following provisions of the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*—

- section 50(1) (Failure to comply with reporting obligations)
- section 51(1) (False or misleading information).

2 Classification of Computer Games and Images Act 1995

An offence against the *Classification of Computer Games and Images Act 1995*, section 26(3) (Possession of objectionable computer game).

3 Classification of Films Act 1991

An offence against the *Classification of Films Act 1991*, section 41(3) (Possession of objectionable film).

4 Classification of Publications Act 1991

An offence against the following provisions of the *Classification of Publications Act 1991*—

- section 12 (Sale etc. of prohibited publication) to the extent it applies to a child abuse publication
- section 13 (Possession of prohibited publication) to the extent it applies to a child abuse publication
- section 14 (Possession of child abuse publication)

Not authorised—indicative only

Not authorised—indicative only

- section 15 (Exhibition or display of prohibited publication) to the extent it applies to a child abuse publication
- section 16 (Leaving prohibited publication in or on public place) to the extent it applies to a child abuse publication
- section 20 (Leaving prohibited publication in or on private premises) to the extent it applies to a child abuse publication.

5 Corrective Services Act 2006

An offence against the following provisions of the *Corrective Services Act 2006*—

- section 124 (Other offences)
- section 126(1) (Helping prisoner at large)
- section 128(1) (Taking prohibited thing into corrective services facility or giving prohibited thing to prisoner)
- section 129(1) (Removing things from corrective services facility)
- section 130 (Unlawful entry)
- section 133 (Interfering with records)
- section 134(1) (False or misleading information).

6 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 69(1) (Going armed so as to cause fear)
- section 72 (Affray)
- section 75(1) (Threatening violence)
- section 130 (Preventing witnesses from attending)
- section 144 (Harbouring escaped prisoners etc.)

- section 328(1) (Negligent acts causing harm)
- section 329 (Endangering safety of persons travelling by railway)
- section 408E(1) (Computer hacking and misuse)
- section 470A(1) (Unlawful deposition of explosive or noxious substances)
- section 477 (Obstructing railways)
- section 544(1) (Accessories after the fact to offences)
- section 544(2) or (3) (Accessories after the fact to offences) if the maximum penalty for the offence is less than 3 years imprisonment.

7 Criminal Proceeds Confiscation Act 2002

An offence against the following provisions of the *Criminal Proceeds Confiscation Act 2002*—

- section 41 (Offence to contravene examination order)
- section 93ZD (Offence to contravene examination order)
- section 252(1) (Possession etc. of property suspected of being tainted property).

8 Explosives Act 1999

An offence against the following provisions of the *Explosives Act 1999*—

- section 34(1) (Authority required to possess explosives)
- section 36 (Bringing or sending certain explosives into and out of the State)
- section 38(1) (Explosive to be manufactured under authority)
- section 39(1) or (2) (Offences relating to entry of factories)
- section 41 (Authority needed to sell explosives)

Not authorised—indicative only

Not authorised—indicative only

- section 42 (Unauthorised sales of explosives)
- section 44 (Authority needed to store explosives)
- section 45(1) (Where explosives may be stored)
- section 47(1) or (2) (Offences relating to entry of magazines)
- section 50(1) or (2) (Transporting explosives)
- section 51 (Explosives too dangerous to transport)
- section 53(1) (Authority needed to use explosives)
- section 54(1) or (2) (Using explosives under conditions endangering life etc.).

9 Summary Offences Act 2005

An offence against the *Summary Offences Act 2005*, section 25 (Use of vehicles).

10 Terrorism (Preventative Detention) Act 2005

An offence against the following provisions of the *Terrorism (Preventative Detention) Act 2005*—

- section 64 (Lawyer)
- section 65(1) (Parent/guardian)
- section 66 (Interpreter)
- section 67 (Disclosure recipient)
- section 68 (Persons who monitor).

11 Weapons Act 1990

An offence against the following provisions of the *Weapons Act 1990*—

- section 25A(2) (Authorised officer may require information about licensed dealer's associates)
- section 34(1) (Contravention of licence condition)

- section 35(1), (2) or (5) (Acquisition of weapons)
- section 36(1) or (2) (Sale or disposal of weapons)
- section 38(1) (Issue etc. of permits to acquire)
- section 50(1) (Possession of weapons) if the penalty in paragraph (c)(iii) applies
- section 50A(1) (Possession of unregistered firearms)
- section 56(2) or (3) (Discharge of weapon on private land without owner's consent prohibited)
- section 57(2), (3) or (4) (Particular conduct involving a weapon in a public place prohibited)
- section 58(2) (Dangerous conduct with weapon prohibited generally)
- section 59(2) (Possession or use of weapon under the influence of liquor or a drug prohibited)
- section 60(1) or (2) (Secure storage of weapons)
- section 61 (Shortening firearms)
- section 62 (Modifying construction or action of firearms)
- section 63 (Altering identification marks of weapons)
- section 64 (Obtaining weapons by deceit)
- section 66 (Dispatch of weapons)
- section 67(1) (Possessing and acquiring restricted items)
- section 68(1) (Dealers to be licensed)
- section 69(1) (Armourers to be licensed)
- section 71(1), (2), (3), (4), (5) or (6) (Licensed dealers and armourers to keep register)
- section 72 (Annual returns by licensed dealers)
- section 73 (Dealer etc. to require information)
- section 75 (Collector to be licensed)
- section 78 (Weapons not to be discharged or operated)

Not authorised—indicative only

Not authorised—indicative only

- section 81(1), (2) or (3) (Collectors to keep register)
- section 82(1), (3) or (4) (Removal of register and weapons)
- section 137(3) or (4) (Notice to dispose)
- section 151B(2) (Protection of informers)
- section 157(1) (Fraud and unlawful possession of licence etc.)
- section 158(1) (False or misleading statements).

12 Youth Justice Act 1992

An offence against the following provisions of the *Youth Justice Act 1992*—

- section 278 (Escape)
- section 279(1) (Offences relating to detention centres).

Schedule 5 Additional controlled activity offences

section 221

Part 1 Indictable offences

1 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 398 (Punishment of stealing) if the offence does not involve punishment as a special case
- section 406 (Bringing stolen goods into Queensland)
- section 408C(1) (Fraud) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence
- section 408E (Computer hacking and misuse) if, in the circumstances of the offence, the offence is a crime but is not a seven year imprisonment offence
- section 444A (Killing animals with intent to steal)
- section 444B (Using registered brands with criminal intention)
- section 445 (Unlawfully using stock)
- section 446 (Suspicion of stealing stock)
- section 447 (Illegal branding)
- section 448 (Defacing brands) if the offence does not involve punishment as a special case
- section 448A (Having in possession stock with defaced brand)
- section 469 (Wilful damage) if the offence does not involve punishment as a special case

Not authorised—indicative only

Not authorised—indicative only

- section 488 (Forgery and uttering)
- section 514(1) (Personation in general)
- section 541 (Conspiracy to commit crime) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence
- section 542 (Conspiracy to commit other offences)
- section 544(1) (Accessories after the fact to offences)
- section 544(2) or (3) (Accessories after the fact to offences) if, in the circumstances of the offence, the offence is not a seven year imprisonment offence.

2 Drugs Misuse Act 1986

An offence against the following provisions of the *Drugs Misuse Act 1986*—

- section 10(1) (Possessing things) if the offence involves possession of a thing for use, or that has been used, in connection with the commission of a crime relating to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1, part 2
- section 11(1) (Permitting use of place) if the offence involves permitting the use of a place for the commission of a crime in relation to a dangerous drug that is a thing specified in the *Drugs Misuse Regulation 1987*, schedule 1, part 2.

3 Weapons Act 1990

An offence against the *Weapons Act 1990*, section 50(1) (Possession of weapons) involving circumstances to which paragraph (c)(ii) of the penalty applies.

Part 2 Simple offences

4 Animal Care and Protection Act 2001

An offence against the following provisions of the *Animal Care and Protection Act 2001*—

- section 21 (Participation in prohibited event)
- section 22 (Presence at prohibited event).

5 Criminal Code

An offence against the following provisions of the Criminal Code—

- section 408E (Computer hacking and misuse) if, in the circumstances of the offence, the offence is not a crime.

6 Criminal Proceeds Confiscation Act 2002

An offence against the *Criminal Proceeds Confiscation Act 2002*, section 252 (Possession etc. of property suspected of being tainted property).

7 Drugs Misuse Act 1986

An offence against the *Drugs Misuse Act 1986*, section 10A (Possessing suspected property).

8 Explosives Act 1999

An offence against the following provisions of the *Explosives Act 1999*—

- section 11 (Offence in relation to unauthorised and prohibited explosives)
- section 34 (Authority required to possess explosives)
- section 36 (Bringing or sending certain explosives into and out of the State)

Not authorised—indicative only

Not authorised—indicative only

- section 38 (Explosive to be manufactured under authority)
- section 42 (Unauthorised sales of explosives)
- section 44 (Authority needed to store explosives).

9 Prostitution Act 1999

An offence against the *Prostitution Act 1999*, section 73 (Public soliciting for purposes of prostitution).

9AA Racing Integrity Act 2016

An offence against the *Racing Integrity Act 2016*, section 225 (Using an illegal betting place).

9A Summary Offences Act 2005

An offence against the *Summary Offences Act 2005*, section 25 (Use of vehicles).

10 Weapons Act 1990

An offence against the following provisions of the *Weapons Act 1990*—

- section 35 (Acquisition of weapons)
- section 36 (Sale or disposal of weapons)
- section 50 (Possession of weapons) involving circumstances to which paragraph (c)(iii) of the penalty for subsection (1) applies)
- section 61 (Shortening firearms)
- section 62 (Modifying construction or action of firearms)
- section 64 (Obtaining weapons by deceit)
- section 66 (Dispatch of weapons).

Schedule 6 Dictionary

section 3

abate, for noise, includes prevent, reduce, eliminate and control the noise.

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

ACC database means a database kept by the ACC containing information about the results of DNA analyses.

access information, for a digital device, for chapter 7, see section 149A.

account, for chapter 7, part 7, see section 197A.

acquire, for chapter 12, see section 280.

agency, for chapter 12, see section 280.

agency arrangement, for chapter 21, part 4, see section 726.

alarm, for chapter 22, see section 747.

ancillary conduct, for an authorised controlled activity, for chapter 10, see section 221A.

animal, for chapter 6, part 2, see the Road Use Management Act, schedule 4.

Animal Care and Protection Act means the *Animal Care and Protection Act 2001*.

animal welfare direction see section 143(1).

animal welfare offence—

1 An *animal welfare offence* means an offence against—

(a) the Animal Care and Protection Act, other than chapter 6, part 2, divisions 2, 3, 4 and 7 and chapter 8, part 1; or

(b) the Criminal Code, section 468.

Not authorised—indicative only

Not authorised—indicative only

2 However, an offence by an executive officer of a corporation against the Animal Care and Protection Act, section 209(2) is only an animal welfare offence if the relevant offence by the corporation is an animal welfare offence.

antique firearm means an antique firearm under the *Weapons Act 1990*.

appropriate person for chapter 17, part 9, see section 522.

approved ID scanning system, for chapter 19, part 5B, see section 602R.

approved officer means a police officer authorised under section 715A to destroy explosives.

approved operator, for chapter 19, part 5B, see section 602R.

arrest warrant see section 370.

assistance period, for chapter 15, part 2, division 3A, see section 411F.

assistant see section 612.

associated, with an event, for chapter 2, part 7, see section 53BD.

associated domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 9.

at a place, includes in or on the place.

attend, a police station or police establishment under a direction, order or requirement, includes stay at the police station or police establishment for the time reasonably necessary for the purpose for which the attendance is directed, ordered or required.

authorisation period, for a tracking device authorisation, see section 348A(1).

authorised assistant means an assistant authorised under the responsibilities code for this Act.

authorised civilian, for chapter 12, see section 280.

authorised commission officer means an authorised commission officer as defined under the *Crime and Corruption Act 2001*, section 272.

authorised controlled activity, for chapter 10, see section 221A.

authorised examiner means a police officer authorised by the commissioner under section 497.

authorised officer, for chapter 12, see section 280.

authorised operation, for chapter 11, see section 229.

authorised person, for chapter 12, see section 280.

authorised police officer, for chapter 17, part 6, see section 496.

authority—

(a) for chapter 11, see section 229; or

(b) for chapter 12, see section 280.

banning order, for chapter 19, part 5B, see section 602R.

belongings, of an entrant to a state building or a watch-house, includes each of the following things even if the entrant does not own or have a right to use the thing—

(a) an article worn by the entrant;

(b) an article carried by the entrant, including, for example, an article in a pocket of the entrant's clothing;

(c) an article pushed or pulled by the entrant;

(d) a vehicle driven by the entrant or another vehicle towed by a vehicle driven by the entrant;

(e) the contents of an article or vehicle mentioned in any of paragraphs (a) to (d).

birth certificate approval, for chapter 12, see section 280.

boat includes a ship or other vessel of any size or type and however propelled or moved, including, for example, a rowing boat, hovercraft and a submersible vessel.

Not authorised—indicative only

Not authorised—indicative only

body art tattooing business, for chapter 2, part 3, see section 34.

breath test see the Road Use Management Act, section 80.

Broadbeach CBD safe night precinct, for chapter 2, part 3A, see section 39A.

burn out, for chapter 4, see section 69.

cannabis means *Cannabis sativa*.

cash dealer means a cash dealer under the *Financial Transaction Reports Act 1988* (Cwlth).

CCC means the Crime and Corruption Commission.

CCC senior executive officer means a senior executive officer under the *Crime and Corruption Act 2001*.

chapter 8 application means an application under chapter 8 for a monitoring order or a suspension order.

chapter 9 application means an application under chapter 9 for a covert search warrant or an extension of a covert search warrant.

chapter 11 application means an application under chapter 11 for an authority for a controlled operation or a variation of an authority for a controlled operation.

chapter 13 application means an application under chapter 13 for—

(a) a surveillance device warrant; or

(b) a variation or extension of a surveillance device warrant; or

(c) a retrieval warrant; or

(d) an emergency authorisation; or

(e) approval of the use of a surveillance device under an emergency authorisation.

chapter 18 offences see section 538.

chief executive (child safety) means the chief executive of the department within which the *Child Protection Act 1999* is administered.

chief executive (communities) means the chief executive of the department within which the *Youth Justice Act 1992* is administered.

chief executive (health) means the chief executive of the health department.

chief executive officer means—

(a) for the CCC—the CCC chairperson; or

(b) for the police service—the commissioner; or

(c) for the ACC, but only for chapter 13—the chief executive officer of the ACC; or

(d) for an issuing agency under chapter 12—the chief executive officer, however described, of the issuing agency; or

(e) for a law enforcement agency under a corresponding law, for chapter 12—see section 280; or

(f) for an intelligence agency, for chapter 12—see section 280.

civilian participant—

(a) for chapter 10—see section 221A; or

(b) for chapter 11—see section 229.

commencement, for chapter 23, part 13, see section 870.

commissioned officer, for chapter 7, part 3A, see section 179A.

commissioner means the commissioner of the police service.

commissioner direction, for chapter 21, part 4, see section 726.

commissioner's reasonable costs, for chapter 2, part 7, see section 53BD.

Not authorised—indicative only

Not authorised—indicative only

commission officer means a commission officer as defined under the *Crime and Corruption Act 2001*.

committee, for chapter 11, see section 229.

communication network means a network—

(a) capable of electronic communication; and

(b) designed to enable a user of the network to communicate with a specific person or a group of people.

Examples—

a telephone network or computer network

community government area is the local government area of an indigenous local government, that is not an indigenous regional council, under the *Local Government Act 2009*.

community police officer means a community police officer under the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*.

computer, for chapter 13, see section 322.

conduct—

(a) for chapter 10, see section 221A; or

(b) for chapter 11, see section 229; or

(c) for chapter 12, see section 280.

Confiscation Act means the *Criminal Proceeds Confiscation Act 2002*.

confiscation offence means either of the following under the Confiscation Act—

(a) a confiscation offence;

(b) an interstate confiscation offence.

confiscation order means a confiscation order or special forfeiture order under the Confiscation Act.

confiscation related activity means an activity for which a confiscation order may be sought under the Confiscation Act other than chapter 2A.

confiscation related evidence—

1 *Confiscation related evidence* means a thing or evidence of an activity that may be or provide evidence of something for which a proceeding for a confiscation order may be started under the Confiscation Act, chapter 2, chapter 3 or chapter 4 and includes—

(a) a thing in which a person has an interest that is serious crime derived property; and

(b) a thing in which a person has an interest that is illegally acquired property of a person reasonably suspected of having engaged in a serious crime related activity; and

(c) evidence of a serious crime related activity; and

(d) evidence of illegal activity of a person reasonably suspected of having engaged in a serious crime related activity; and

(e) evidence of a contract—

(i) about a depiction of a confiscation offence or alleged confiscation offence; and

(ii) from which a person convicted of the offence, or someone else for that person, derives benefits; and

(f) evidence of a contract—

(i) about the expression of thoughts, opinions or emotions about a confiscation offence of a person who has been convicted of the offence; and

(ii) from which that person, or someone else for that person, derives benefits; and

(g) property that is restrained under a restraining order under the Confiscation Act.

2 The term also includes SDOCO related evidence.

consort see section 53BAA.

controlled activity see section 224.

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Not authorised—indicative only

controlled activity offence, for chapter 10, see section 221A.

controlled conduct, for chapter 11, see section 229.

controlled operation, for chapter 11, see section 229.

controlled operations committee means the controlled operations committee established under section 232.

control order property, for chapter 7, see section 149A.

coroner means a coroner under the *Coroners Act 2003*.

corrective services facility see the *Corrective Services Act 2006*, schedule 4.

corresponding authorised operation, for chapter 11, see section 229.

corresponding authority—

(a) for chapter 11, see section 229; or

(b) for chapter 12, see section 280.

corresponding emergency authorisation, for chapter 13, see section 322.

corresponding forensic procedure orders see section 523.

corresponding law—

(a) for chapter 22—see section 747; or

(b) generally—means a law of another State or the Commonwealth, declared under a regulation to be a law corresponding with this Act or a stated provision of it, whether that provision relates to—

(i) forensic procedures; or

(ii) the acquisition or use of assumed identities; or

(iii) the conduct of controlled operations; or

(iv) the use of surveillance devices; or

(v) another matter for which this Act expressly authorises the doing of something in relation to a jurisdiction for which there is a corresponding law for the purpose.

corresponding participant, for chapter 11, see section 229.

corresponding warrant, for chapter 13, see section 322.

costs of removing and keeping a motor vehicle impounded under this Act, means the amounts prescribed under a regulation under the *Tow Truck Act 1973*, section 43(2)(r) for this Act.

court includes anyone conducting a committal proceeding.

court cell means a place attached to or near a court that is used for detaining prisoners of the court and other persons.

covert act means—

(a) the making of a chapter 8, chapter 9, chapter 11 or chapter 13 application; or

(b) the exercise of powers under this Act under—

(i) a monitoring order; or

(ii) a suspension order; or

(iii) a surveillance device warrant; or

(iv) a retrieval warrant; or

(v) a covert search warrant; or

(vi) an authorisation for a controlled operation; or

(vii) an emergency authorisation; or

(viii) a tracking device authorisation; or

(c) the disclosure of information to a declared agency; or

(d) the revocation of a surveillance device warrant or retrieval warrant.

covert search powers means powers a police officer may exercise under section 219.

covert search warrant see section 212.

crime scene see section 163B.

crime scene powers means powers a police officer may exercise under a crime scene warrant or in a public place.

Not authorised—indicative only

Not authorised—indicative only

crime scene threshold offence, for chapter 7, see section 149A.

crime scene warrant see section 170.

criminal activity—

(a) for chapter 11, see section 229; or

(b) for chapter 12, see section 280; or

(c) for chapter 15, part 2, division 3A, see section 411A.

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

dangerous attachment device see the *Summary Offences Act 2005*, section 14B.

dangerous drug see the *Drugs Misuse Act 1986*, section 4.

dangerous goods see the Road Use Management Act, schedule 4.

data includes the whole or part of a computer program within the meaning of the *Copyright Act 1968* (Cwlth).

data surveillance device, for chapter 13, see section 322.

declared agency means an entity prescribed under a regulation as a declared agency for this Act.

default certificate see the *State Penalties Enforcement Act 1999*, schedule 2.

designated offence means—

(a) an offence against any of the following provisions of the Criminal Code—

  (i) section 300;

  (ii) section 306;

  (iii) section 309; or

(b) another offence for which a person is liable, on conviction, to be sentenced to imprisonment for life if the circumstances of the offence involve—

  (i) a serious risk to, or actual loss of, a person's life; or

(ii) a serious risk of, or actual, serious injury to a person.

destroy, an image, for chapter 19, part 5B, see section 602R.

detection dog, for chapter 2, part 3, see section 34.

detention centre see the *Youth Justice Act 1992*, schedule 4.

detention order see the *Youth Justice Act 1992*, schedule 4.

detention period has the meaning given under section 403(4) and includes any period for which detention is extended under section 406.

device, for chapter 13, see section 322.

device information, from a digital device, for chapter 7, see section 149A.

digital device see section 149A.

disciplinary proceeding, for chapter 13, see section 322.

disease test order see section 540.

disorderly activity see the *Peace and Good Behaviour Act 1982*, section 33.

distribute, an imaged order, for chapter 19, part 5B, see section 602R.

DNA arrangement see section 488B(1).

DNA sample means—

(a) a sample of a person's hair, including roots of the hair, other than hair from—

(i) the genital or anal area; or

(ii) the buttocks; or

(iii) if the person is a female—the breasts; or

(b) a sample obtained by swabbing a person's mouth.

DNA sample notice see section 482(2).

DNA sampler means—

(a) a police officer authorised under section 476 to take DNA samples; or

Not authorised—indicative only

Not authorised—indicative only

(b) a watch-house officer authorised under section 651 to take DNA samples; or

(c) a doctor; or

(d) a nurse.

doing, for chapter 12, see section 280.

domestic violence see the *Domestic and Family Violence Protection Act 2012*, section 8.

domestic violence order see the *Domestic and Family Violence Protection Act 2012*, section 23(2).

driver see the Road Use Management Act, schedule 4.

driver licence see the Road Use Management Act, schedule 4.

drug control officer, for chapter 21, part 4, see section 726.

drug detection, for chapter 2, part 3, see section 34.

drug detection dog, for chapter 2, part 3, see section 34.

drug diversion assessment program means a drug diversion assessment program provided by, or conducted with the approval of, the chief executive (health).

drug vault, for chapter 21, part 4, see section 726.

dwelling—

1 A *dwelling* includes a building or other structure, or part of a building or other structure, kept by the owner or occupier (the ***owner***) as a residence for the owner, a member of the owner's family or an employee of the owner.

2 In deciding whether a building or other structure is a dwelling, it is immaterial that the building or other structure is from time to time uninhabited.

3 A building or other structure adjacent to, and occupied with, a dwelling is part of the dwelling if it is connected to the dwelling, whether directly or by a covered and enclosed passage leading from the one to the other, but not otherwise.

4 A *dwelling* also includes a boat (other than an external deck of the boat) used or kept as a residence for the owner, a member of the owner's family or an employee of the owner.

electronically recorded means audio recorded or video recorded.

electronic communication means—

(a) a communication of information in the form of data, text or images by guided or unguided electromagnetic energy, including, for example, by email, multimedia message or SMS message; or

(b) a communication of information in the form of sound by guided or unguided electromagnetic energy, if the sound is processed at its destination by an automated voice recognition system.

electronic screening, of a person or a person's belongings, means, for section 550, using an electronic screening device, in relation to the person or belongings.

eligible person, for chapter 4, part 2, division 2, see section 79.

emergency authorisation means an emergency authorisation given under section 343.

employee, for chapter 7, see section 149A.

enforcement act means any of the following acts—

(a) the search of a person, other than—

(i) by using a drug detection dog to carry out drug detection under chapter 2, part 3; or

(ii) by using a firearms and explosives detection dog to carry out explosives detection under chapter 2, part 3; or

(iia) by requiring the person to do either of the following—

Not authorised—indicative only

Not authorised—indicative only

(A) stop and submit, or resubmit, to the use of a hand held scanner in relation to the person under chapter 2, part 3A;

(B) produce a thing that may be causing a hand held scanner to indicate the presence or likely presence of metal under chapter 2, part 3A; or

(iii) under the *Major Events Act 2014*;

(b) the search of a vehicle, other than—

(i) at a roadblock; or

(ii) by using a drug detection dog to carry out drug detection under chapter 2, part 3; or

(iii) by using a firearms and explosives detection dog to carry out explosives detection under chapter 2, part 3;

(c) the search of premises, other than—

(i) a vehicle or a public place; or

(ii) by using a drug detection dog to carry out drug detection under chapter 2, part 3; or

(iii) by using a firearms and explosives detection dog to carry out explosives detection under chapter 2, part 3;

(d) the taking or seizing of a thing, other than under section 443(3);

(e) the arrest of a person;

(f) the detention of a person for investigations or questioning under chapter 15;

(fa) the custody of a person under a police assistance removal order;

(g) the questioning of a person to whom chapter 15, part 3 applies;

(h) the exercise of powers under this Act relating to a search warrant, production order or production notice;

(i) the giving of a direction under section 48;

(j) the giving of a noise abatement direction;

(k) the discontinuance of an arrest for a minor drugs offence under section 379;

(l) the entry of a place to find out whether domestic violence is occurring, or has occurred, at the place;

(la) the detention of a person under the *Domestic and Family Violence Protection Act 2012*, part 4, division 3;

(lb) the giving of a direction to a person to move to and remain at another location under the *Domestic and Family Violence Protection Act 2012*, part 4, division 5;

(m) the entry of a place under section 596 to find out whether someone in the place is dead or in need of urgent medical treatment;

(n) the detention of a person under section 604;

(o) the exclusion from questioning, under chapter 15, part 3, division 4 or 5, of a relative, friend or support person;

(p) the exercise of out-of-control event powers under section 53BG;

(q) the taking, under section 41A, of identifying particulars of a person;

(r) the giving, under section 53BAC, of an official warning for consorting;

(s) the exercise of a power under the *Peace and Good Behaviour Act 1982*, section 31(2), 49(1) or 65(2);

(t) the seizing of a prohibited item under the *Peace and Good Behaviour Act 1982*, section 49(1)(c)(i) or the removal or modification of a fortification under the *Peace and Good Behaviour Act 1982*, section 65;

(u) the giving of a stop and desist notice;

(v) the giving of a direction under section 554;

Not authorised—indicative only

Not authorised—indicative only

(w) the removal of an entrant to a state building under section 557;

(x) the detention of an entrant to a state building under section 558.

enhancement equipment, for chapter 13, see section 322.

enter a place, includes re-enter the place.

entrant, to a state building or a watch-house, means a person who is about to enter or is at the building, site or watch-house.

environmental nuisance see the *Environmental Protection Act 1994*, section 15.

evasion offence means an offence against section 754(2).

event—

(a) for chapter 2, part 3, see section 34; or

(b) for chapter 2, part 7, see section 53BB(1)(a).

event authorisation, for chapter 2, part 7, see section 53BE(1).

evidence, for chapter 12, see section 280.

evidence of the commission of an offence includes—

(a) a thing or activity that may provide evidence of an offence or suspected offence; and

(b) a thing that will, itself or by or on scientific examination, provide evidence of the commission of an offence or suspected offence; and

(c) a thing that is to be used for committing an offence or suspected offence; and

(d) a thing that may be liable to forfeiture or is forfeited; and

(e) a thing that may be used in evidence for a forfeiture proceeding; and

(f) a property tracking document.

exercise a power, under this or another Act, includes exercise a power under a warrant, order or another authority issued under this or another Act.

explosive—

(a) generally, has the meaning given in the *Explosives Act 1999*, schedule 2; and

(b) for chapter 21, part 3, includes a thing that an approved officer reasonably believes is an explosive.

explosives detection, for chapter 2, part 3, see section 34.

extended police banning notice, for chapter 19, part 5A, see section 602F(2).

extradition offence see section 374.

final nuisance direction see section 595.

financial institution—

(a) generally—includes cash dealer; and

(b) for chapter 7, part 7, see section 197A; and

(c) for chapter 8, see section 198.

fingerprint means an image or impression of friction ridge detail from the palmar surface of a person's hand and includes a digital image of the friction ridge detail from the palmar surface of the person's hand.

firearms and explosives detection dog means a dog trained to detect firearms or explosives.

forced muster order, for chapter 22A, see section 789AA(1).

forensic examiner, for chapter 17, part 7, see section 501(1).

forensic nurse examiner means a nurse who is appointed by the chief executive (health) to perform the role of a forensic nurse examiner.

forensic procedure means—

(a) an intimate forensic procedure; or

(b) a non-intimate forensic procedure.

Not authorised—indicative only

Not authorised—indicative only

forensic procedure consent see section 447(1)(a).

forensic procedure order see section 458(1).

forfeiture order, other than in relation to a forfeiture proceeding—

(a) for chapter 4, see section 69; or

(b) for chapter 22, see section 747.

forfeiture proceeding means—

(a) a proceeding for a forfeiture order or a restraining order under the Confiscation Act; or

(b) a proceeding for an order forfeiting or restraining the use of property under another Act.

formal application, for chapter 11, see section 229.

formal authority, for chapter 11, see section 229.

formal variation application, for chapter 11, see section 229.

formal variation of authority, for chapter 11, see section 229.

fortification removal order means a fortification removal order under the *Peace and Good Behaviour Act 1982*.

found guilty, of an offence, means—

(a) for a vehicle related offence for which an infringement notice has been served under section 71—

(i) there is payment of a penalty, in full or by instalments, under the *State Penalties Enforcement Act 1999*; or

(ii) a default certificate for the infringement notice given to the person has been registered by the registrar under the *State Penalties Enforcement Act 1999*; or

(b) otherwise—there is a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

frisk search means—

(a) a search of a person conducted by quickly running the hands over the person's outer garments; and

(b) an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person.

function of the police service includes an investigation conducted by a police officer for a declared agency.

government entity means a government entity under the *Public Service Act 2008*, section 24, other than subsection (1)(d), (e) and (f).

government issuing agency, for chapter 12, see section 280.

graffiti offence means an offence against the Criminal Code, section 469 that is punishable under section 469, item 9.

guardian, of a person who is an adult, means a guardian appointed under the *Guardianship and Administration Act 2000* for the adult.

hand held scanner means a device that may be passed over or around a person or the person's belongings to detect metal or other substances.

handler, for chapter 2, part 3, see section 34.

health agency means the health department or a Hospital and Health Service.

health department means the department within which the *Hospital and Health Boards Act 2011* is administered.

heavy vehicle means a heavy vehicle for the purposes of the Heavy Vehicle National Law (Queensland), as provided for in section 6 of the Law.

holding yard means—

(a) for a person licensed under the *Tow Truck Act 1973* to tow motor vehicles—the place used by the licensee as a holding yard for the storage of—

(i) a motor vehicle towed under the licence; and

(ii) any moveable property found in the motor vehicle; or

Not authorised—indicative only

Not authorised—indicative only

(b) for a person exempted under a regulation under the *Tow Truck Act 1973* from holding a licence under that Act—the place used by the person as a holding yard for the storage of—

(i) a motor vehicle towed by the person; and

(ii) any moveable property found in the motor vehicle; or

(c) otherwise—

(i) a yard at a police establishment; or

(ii) a place the commissioner decides is to be a holding yard.

Hospital and Health Service means a Hospital and Health Service established under the *Hospital and Health Boards Act 2011*, section 17.

HVNL(Q) compliance means checking whether a vehicle complies, or a person is complying, with the Heavy Vehicle National Law (Queensland).

HVNL(Q) enforcement means enforcing the Heavy Vehicle National Law (Queensland).

identifying particulars, of a person, means any of the following—

(a) palm prints;

(b) fingerprints;

(c) handwriting;

(d) voiceprints;

(e) footprints;

(f) a photograph of the person's identifying features;

Examples for paragraph (f)—

1 photographs of scars or tattoos

2 photographs of the person

(g) a measurement of any part of the person's body, other than the person's genital or anal area, buttocks or, for a female, breasts.

identifying particulars notice see section 470(1).

identifying particulars offence means—

(a) an offence for which the maximum penalty is at least 1 year's imprisonment; or

(b) an offence against this Act or any of the following Acts—

- *Explosives Act 1999*
- *Police Service Administration Act 1990*, section 10.19, 10.20 or 10.22
- *Prostitution Act 1999*, section 73
- *Regulatory Offences Act 1985*
- *Second-hand Dealers and Pawnbrokers Act 2003*
- *Summary Offences Act 2005*
- *Weapons Act 1990*; or

(c) an extradition offence.

illegally acquired property means property that is illegally acquired property under the Confiscation Act.

illicit goods, for chapter 11, see section 229.

image, of a person, for chapter 19, part 5B, see section 602R.

imaged order, for chapter 19, part 5B, see section 602T(2).

immobilise, for chapter 4, see section 69.

immobilising device, for chapter 4, see section 69.

immobilising notice, for chapter 4, see section 69.

impounding order—

(a) for chapter 4, see section 69; or

(b) for chapter 22, see section 747.

independent member, of the controlled operations committee, means the member who is a retired District Court or Supreme Court judge.

Not authorised—indicative only

Not authorised—indicative only

independent person, for chapter 17, part 7, see section 503(b).

indictable offence, in relation to a reference to that term as including an indictable offence dealt with summarily, includes an indictable offence dealt with summarily whether or not the Criminal Code, section 659 applies to the indictable offence.

information notice, for chapter 4, part 2, division 2, see section 79.

infringement notice see the *State Penalties Enforcement Act 1999*, schedule 2.

infringement notice offence see the *State Penalties Enforcement Act 1999*, schedule 2.

initial impoundment period, for chapter 4, see section 69.

initial nuisance direction see section 594.

initial police banning notice, for chapter 19, part 5A, see section 602C(1).

initiating immobilisation, for chapter 4, see section 69.

initiating immobilisation offence, for chapter 4, see section 69.

initiating impoundment, for chapter 4, see section 69.

initiating impoundment offence, for chapter 4, see section 69.

inspection entity means—

(a) for chapter 11, see section 229; or

(b) for chapter 13, see section 322.

install, for chapter 13, see section 322.

intelligence agency, for chapter 12, see section 280.

intelligence officer, for chapter 12, see section 280.

interstate domestic violence order means an interstate order or registered foreign order under the *Domestic and Family Violence Protection Act 2012*, part 6, whether or not the order is a recognised interstate order under that Act.

intimate forensic procedure means all or any of the following procedures—

(a) a procedure performed on a person's external genital or anal area, buttocks or, for a female, breasts, that involves—

(i) an external examination of the relevant part of the body; or

(ii) taking a sample from the relevant part of the body, by swab, washing, vacuum suction, scraping, or by lifting by tape; or

(iii) photographing the relevant part of the body; or

(iv) making an impression or cast from the relevant part of the body; or

(v) measuring the relevant part of the body;

(b) a procedure performed on a person that involves—

(i) an internal examination of a body cavity; or

(ii) taking a sample of the person's hair from—

(A) the genital or anal area; or

(B) the buttocks; or

(C) if the person is a female—the breasts; or

(iii) taking a sample, by swab or washing, from a body cavity other than the mouth; or

(iv) removing a substance or thing from a body cavity other than the mouth; or

(v) taking an X-ray of a part of the person's body; or

(vi) taking a dental impression; or

(vii) taking a sample of the person's blood or urine.

intoxicated, in relation to a person, means the person is adversely affected by an intoxicating substance.

issuer, for chapter 7, see section 150(7).

issuing agency, for chapter 12, see section 280.

Not authorised—indicative only

Not authorised—indicative only

jurisdiction means—

(a) for chapters 11, 12 and 13, a State of the Commonwealth; or

(b) if the ACC may do a thing under chapter 11, 12 or 13, the Commonwealth or a State of the Commonwealth.

Note—

Under the *Acts Interpretation Act 1954*, section 33A, a reference to a State includes a reference to the Australian Capital Territory and the Northern Territory.

knife means a thing with a sharpened point or blade that is reasonably capable of—

(a) being held in 1 or both hands; and

(b) being used to wound or threaten someone when held in 1 or both hands.

law enforcement agency—

(a) for chapter 11, means—

(i) the police service; or

(ii) the CCC; or

(b) for chapter 12, means—

(i) the police service; or

(ii) the CCC; or

(c) for chapter 13, means—

(i) the police service; or

(ii) the CCC; or

(iii) the ACC.

law enforcement officer—

(a) for chapter 11, means—

(i) for the police service—a police officer; or

(ii) a staff member of the service authorised by the commissioner for the purpose of the provision in which the expression is used; or

(iii) for the CCC—a commission officer; or

(b) for chapter 12, means—

(i) for the police service—a police officer; or

(ii) for the CCC—a commission officer; or

(c) for chapter 13, means—

(i) for the police service—a police officer; or

(ii) for the CCC—a commission officer; or

(iii) for the ACC—a member of staff of the ACC who is a police officer of a police force or service of a State or the Commonwealth; or

(d) for sections 614 and 800 to 803, means—

(i) a police officer; or

(ii) a person performing functions as a law enforcement officer under chapter 11 or 13.

law enforcement participant, for chapter 11, see section 229.

legal aid organisation means—

(a) in relation to an Aboriginal person, or Torres Strait Islander, who is not a child—an organisation, prescribed by regulation, that provides legal assistance to Aboriginal persons and Torres Strait Islanders; or

(b) otherwise—an organisation, prescribed by regulation, that provides legal assistance to persons.

licence, for chapter 2, part 1, includes accreditation, approval, authorisation, authority, exemption and permit.

licence holder, for chapter 2, part 1, means a person who holds a licence granted or issued under a relevant law.

licensed brothel means a licensed brothel under the *Prostitution Act 1999*.

licensed event, for chapter 2, part 7, see section 53BD.

licensed premises—

Not authorised—indicative only

Not authorised—indicative only

(a) means licensed premises within the meaning of the *Liquor Act 1992*; and

(b) includes a place to which a permit under that Act relates.

liquor see the Road Use Management Act, schedule 4.

listening device means any device capable of being used to overhear, record, monitor or listen to a private conversation or words spoken to or by any person in private conversation, but does not include a hearing aid or similar device used by a person with impaired hearing to overcome the impairment and permit that person to hear only sounds ordinarily audible to the human ear.

list of support persons and interpreters means the list of support persons and interpreters kept by the commissioner under section 440.

load, for chapter 5, part 1, see section 124AA.

magistrate, for chapter 4, see section 69.

maintain, for chapter 13, see section 322.

major crime see the *Crime and Corruption Act 2001*, schedule 2.

major event see the *Major Events Act 2014*, section 7.

make an inquiry includes find out whether someone is in a place.

mall means any of the following—

(a) a mall established under the *Local Government Act 2009*;

(b) a mall continued in existence under the *City of Brisbane Act 2010*.

minor drugs offence—

(a) means an offence against the *Drugs Misuse Act 1986*, section 9, 10(1) or 10(2) involving either or both of the following—

(i) possessing not more than 50 grams of cannabis;

(ii) possessing a thing for use, or that has been used, for smoking cannabis; but

(b) does not include an offence mentioned in paragraph (a) if the possession is an element of an offence against the *Drugs Misuse Act 1986* involving production or supply of cannabis or trafficking in cannabis.

missing person, for chapter 7, part 3A, see section 179B.

missing person powers, for chapter 7, part 3A, see section 179A.

missing person scene, for chapter 7, part 3A, see section 179A.

missing person warrant, for chapter 7, part 3A, see section 179J(1).

modify a motor vehicle—

(a) for chapter 4, see section 69; or

(b) for chapter 22, see section 770.

monitor, when used as a noun, means—

(a) the public interest monitor appointed under section 740; or

(b) a deputy public interest monitor.

monitoring order see section 199.

motorbike has the meaning given by the Road Use Management Act, and includes a 4-wheeled motor vehicle that is ridden in the same way as a motorbike.

motorbike noise direction offence see section 69.

motorbike noise order offence see section 69.

motor vehicle see the Road Use Management Act, schedule 4.

moveable dwelling park see the *Residential Tenancies and Rooming Accommodation Act 2008*, schedule 2.

moving expenses, for chapter 5, part 1, see section 124AA.

Not authorised—indicative only

Not authorised—indicative only

National Credit Code means the *National Credit Code* in Schedule 1 of the *National Consumer Credit Protection Act 2009* (Cwlth).

night means the interval between 9p.m. on one day and 6a.m. on the next day.

noise abatement direction see section 581.

noise abatement order see section 589.

nominated person, in relation to a type 1 vehicle related offence, for chapter 22, see section 747.

non-commercial authority of the State means an authority of the State that is non-commercial within the meaning of the *Competition and Consumer Act 2010* (Cwlth), section 2C.

non-government issuing agency, for chapter 12, see section 280.

non-intimate forensic procedure means a procedure performed on a person, other than an intimate forensic procedure, that involves all or any of the following—

(a) an examination of an external part of the person's body, that requires clothing to be removed or contact with the person's body;

(b) taking a sample from a part of the person's body, by swab, washing, vacuum suction, scraping, or by lifting by tape;

(c) photographing a part of the person's body;

(d) making an impression or cast of a part of the person's body;

(e) taking a DNA sample;

(f) taking a sample of saliva;

(g) taking a sample from, or from under, a fingernail or toenail;

(h) taking identifying particulars.

non-medical examination means a non-intimate forensic procedure, other than taking a DNA sample or palm prints, fingerprints, handwriting, voiceprints or footprints.

non-medical examination notice see section 499(2).

notice to appear see section 382(2).

noxious or offensive substance means a thing made or adapted, or intended for use by the person possessing the thing, to—

(a) assault another person, other than by injuring or incapacitating the other person; or

(b) damage property; or

(c) disrupt business conducted by the State, or a non-commercial authority of the State, in a state building, including, for example, interrupting court proceedings.

Examples of a noxious or offensive substance—

blood or paint in a plastic or paper wrapping intended to burst on impact when thrown at a person or a solid object

nuisance offence means an offence for any of the following—

(a) contravening a direction of a police officer under section 791 if the direction is given by the officer exercising a power under chapter 2, part 5;

(b) public nuisance under the *Summary Offences Act 2005*, section 6;

(c) urinating in a public place under the *Summary Offences Act 2005*, section 7.

Note—

Chapter 2, part 5 deals with directions to move on.

number plate, for chapter 4, see section 69.

number plate confiscation notice, for chapter 4, see section 69.

number plate confiscation period, for chapter 4, see section 69.

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

(a) to practise in the nursing profession, other than as a student; and

(b) in the registered nurses division of that profession.

offence of habitually consorting see section 53BAA.

offensive weapon or instrument includes—

(a) a weapon; and

(b) an antique firearm, explosive tool, captive bolt humane killer, spear gun, longbow, sword or knife; and

(c) an explosive; and

(d) a replica of a weapon under the *Weapons Act 1990*, section 6A; and

(e) a replica of a thing mentioned in paragraph (b) or (c); and

(f) a slingshot or shanghai; and

(g) a laser pointer; and

(h) a thing made or adapted, or intended for use by the person possessing the thing, to injure or incapacitate another person.

officer, for chapter 12, see section 280.

official warning, for consorting, see section 53BAA.

optical surveillance device, for chapter 13, see section 322.

organise, an event, for chapter 2, part 7, see section 53BD.

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

outer garment includes cloak, coat, shirt and garment.

out-of-control event power, for chapter 2, part 7, see section 53BD.

owner, of a motor vehicle—

(a) for chapter 4, includes—

(i) a person in whose name the vehicle is registered under a transport Act or a corresponding law, within the meaning of the Road Use Management Act, schedule 4, of another State; and

(ii) a holder of a security interest registered for the vehicle under the *Personal Property Securities Act 2009* (Cwlth); or

(b) for chapter 22—see section 747.

pain, for an animal, includes distress and mental or physical suffering.

parent—

1 for chapter 2, part 7, see section 53BD; or

2 of a person, for chapter 17—

(a) means a parent or guardian of the person; and

(b) includes—

(i) for an Aboriginal person, a person who, under Aboriginal tradition, is regarded as a parent of the person; or

(ii) for a Torres Strait Islander person, a person who, under Island custom, is regarded as a parent of the person; but

(c) does not include an approved carer of the person under the *Child Protection Act 1999*.

parliamentary commissioner means the parliamentary commissioner under the *Crime and Corruption Act 2001*.

parliamentary committee, for chapters 11, 12 and 13, means the Parliamentary Crime and Corruption Committee of the Legislative Assembly.

parliamentary committee chairperson means the chairperson of the parliamentary committee.

participant—

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(a) in a criminal organisation, see the *Penalties and Sentences Act 1992*, section 161P; or

(b) for chapter 11, see section 229.

participating jurisdiction, for chapter 11, 12 or 13, means a jurisdiction in which a corresponding law for the purposes of the chapter is in force.

pedestrian see the Road Use Management Act, schedule 4.

person in charge, of an animal, for chapter 6, see section 130.

person in control, of a vehicle, see the Road Use Management Act, schedule 4.

person with impaired capacity means a person whose capacity to look after or manage his or her own interests is impaired because of either of the following—

(a) an obvious loss or partial loss of the person's mental functions;

(b) an obvious disorder, illness or disease that affects a person's thought processes, perceptions of reality, emotions or judgment, or that results in disturbed behaviour.

photograph, when used as a verb—

(a) generally, includes photocopy, videotape, and record an image, whether digitally or in another way; but

(b) for chapter 19, part 5B, does not include videotaping an image.

photo licence means a licence for a weapon issued under the *Weapons Act 1990* that shows the following—

(a) the photograph of the licensee or, if the licensee is an incorporated or unincorporated body, the licensee's representative;

(b) the licence number;

(c) numbers and letters indicating licence conditions;

(d) letters indicating the categories of weapons the licensee may possess.

place—

(a) generally, includes—

(i) premises; and

(ii) vacant land; and

(iii) a vehicle; and

(iv) a place in Queensland waters; and

(v) a place held under 2 or more titles or by 2 or more owners; and

(b) for chapter 13, see section 322.

police assistance removal order, for chapter 15, part 2, division 3A, see section 411B(2).

police banning notice see section 602B.

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

police establishment means a police station or police establishment under the *Police Service Administration Act 1990*.

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

police officer includes—

(a) for chapter 19, part 3—a community police officer; and

(b) for chapters 11 and 13—a police officer of a police force or service of another State or the Commonwealth; and

(c) other than for chapters 11 and 13—a police officer of a police force or service of another State or the Commonwealth who is, for the time being, performing duties for the police service.

police protection notice see the *Domestic and Family Violence Protection Act 2012*.

police service means the Queensland Police Service.

possession includes—

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(a) custody; and

(b) control.

post-amended Act, for chapter 23, part 13, see section 870.

potentially harmful thing—

(a) means a thing a person may lawfully possess that is or contains a substance that may be harmful to a person if ingested or inhaled; and

Examples—

1 glue

2 paint

3 a solvent

(b) includes methylated spirits; and

(c) does not include a thing intended by its manufacturer to be inhaled or ingested by a person using it.

pre-amended Act, for chapter 23, part 13, see section 870.

premises—

(a) for chapter 13, see section 322; or

(b) otherwise, includes—

(i) a building or structure, or part of a building or structure, of any type; and

(ii) a group of buildings or structures, or part of a group of buildings or structures, of any type; and

(iii) the land or water where a building or structure, or a group of buildings or structures, is situated; and

(iv) a vehicle or a caravan; and

(v) a tent or cave; and

(vi) premises held under 2 or more titles or owners.

prescribed area, for chapter 2, part 3A, see section 39A.

prescribed authority see section 800.

prescribed circumstance, for chapter 5, part 1, see section 124AA.

prescribed nurse means a nurse who is employed in the health department or in a Hospital and Health Service.

prescribed offence, for chapter 4, see section 69.

prescribed period—

(a) for chapter 4—see section 69; or

(b) for chapter 22—see section 747.

prescribed place, for chapter 2, part 5, means—

(a) a shop; or

(b) a child-care centre; or

(c) a pre-school centre; or

(d) a primary, secondary or special school; or

(e) premises licensed under the *Liquor Act 1992*; or

(f) a railway station and any railway land around it; or

(g) a mall; or

(h) the part of the corporation area under the *South Bank Corporation Act 1989* declared to be the site under that Act; or

(i) a licensed venue under the *Racing Act 2002*; or

(j) an automatic teller machine; or

(k) a war memorial;

but, in relation to soliciting for prostitution, does not include any area in a licensed brothel that can not be viewed from outside the brothel.

principal law enforcement officer, for chapter 11, see section 229.

prison see the *Corrective Services Act 2006*, schedule 4.

prisoner see the *Corrective Services Act 2006*, schedule 4.

private conversation means any words spoken by 1 person to another person in circumstances that indicate—

(a) that those persons desire the words to be heard or listened to only by themselves; or

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(b) that either of those persons desires the words to be heard or listened to only by themselves and by some other person;

but does not include words spoken by 1 person to another person in circumstances in which either of those persons ought reasonably to expect the words may be overheard, recorded, monitored or listened to by some other person, not being a person who has the consent, express or implied, of either of those persons to do so.

private vehicle see the Road Use Management Act, schedule 4.

produce, a document, includes make the document available.

production notice see section 180.

production order see section 189.

prohibited item see the *Peace and Good Behaviour Act 1982*, section 33.

property officer means—

(a) a member of the police service appointed by the commissioner as a property officer; or

(b) an officer of a government entity appointed as a property officer under an arrangement between the commissioner and the chief executive officer of the entity.

property point means a place lawfully used by the police service as a place for the storage of relevant things.

property tracking document means—

(a) a document relevant to identifying, locating or quantifying—

(i) property of a person who committed a confiscation offence; or

(ii) property of a person a police officer reasonably suspects committed a confiscation offence; or

(iii) tainted property in relation to a confiscation offence; or

(iv) property of a person a police officer reasonably suspects is or has engaged in a serious crime related activity; or

(v) property a police officer reasonably suspects is serious crime derived property; or

(b) a document relevant to identifying or locating a document necessary for the transfer of—

(i) property of a person who committed a confiscation offence; or

(ii) property of a person a police officer reasonably suspects committed a confiscation offence; or

(iii) tainted property in relation to a confiscation offence; or

(iv) property of a person a police officer reasonably suspects is or has been engaged in a serious crime related activity; or

(v) property a police officer reasonably suspects is illegally acquired property derived from a serious crime related activity.

proscribed thing means—

(a) an offensive weapon or instrument; or

(b) a noxious or offensive substance; or

(c) another thing in the unlawful possession of the person possessing the thing.

prostitution see the Criminal Code, section 229E.

protected information, for chapter 13, see section 322.

protective services officer see the *Police Service Administration Act 1990*, section 1.4.

public officer, for chapter 13, see section 322.

public official means—

(a) for a government entity—a person who is appointed or authorised under an authorising law to perform

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inspection, investigation or other enforcement functions under the authorising law for the entity; or

(b) for an entity other than a government entity or a local government—a person who is declared under a regulation under this Act to be a public official in relation to inspection, investigation or other enforcement functions the person is appointed or authorised to perform under an authorising law for the entity; or

(c) for chapter 1, part 3, division 2—an authorised person under the *Local Government Act 2009*; or

(d) otherwise—a person who is declared by another Act to be a public official for this Act.

public place means—

(a) a place to which members of the public have access as of right, whether or not on payment of a fee and whether or not access to the place may be restricted at particular times or for particular purposes; or

(b) a place declared under another Act to be a public place for any law conferring powers or imposing functions on police officers; or

(c) a part of a place that the occupier of the place allows members of the public to enter, but only while the place is ordinarily open to members of the public; or

(d) a place that is a public place under another Act.

Examples for paragraph (a)—

1 a road

2 a park

3 a beach

4 a road that is closed to general use by vehicles for a public procession or a parade

Example for paragraph (b)—

Under the *Sanctuary Cove Resort Act 1985*, section 54A primary and secondary thoroughfares are public places for the purposes of any law conferring powers or imposing functions on a police officer.

Examples for paragraph (c)—

1 a cinema complex

2 a shop

3 a restaurant

4 a racecourse

public prosecutor means the director, deputy director, or another lawyer appointed under the *Director of Public Prosecutions Act 1984*.

Public Records Act means the *Public Records Act 2002*.

public safety order means a public safety order under the *Peace and Good Behaviour Act 1982*.

QDNA see section 491(1).

QDNA index means an index of a kind prescribed under a regulation containing information derived from, or relating to, the results of DNA analyses.

qualified person, in relation to a forensic procedure, see section 445.

qualifying offence see the Confiscation Act, section 93F.

question, for chapter 15, means question a person as a suspect about his or her involvement in an indictable offence.

questioning period means the time for which a person may be questioned under this Act in relation to an offence.

reasonably believe means believe on grounds that are reasonable in the circumstances.

reasonably suspects means suspects on grounds that are reasonable in the circumstances.

recognised offender—

(a) generally—see the Criminal Code, section 77; and

(b) for chapter 2, part 6A—see section 53BAA.

record, for chapter 13, see section 322.

registered corresponding forensic procedure order means a corresponding forensic procedure order registered under section 524.

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registered operator has the meaning given by the Road Use Management Act, schedule 4.

register of covert acts means the register of covert acts kept under section 664.

register of dangerous drugs for training, for chapter 21, part 4, see section 726.

register of enforcement acts means the register of enforcement acts kept under section 678.

registrar-general means the registrar under the *Births, Deaths and Marriages Registration Act 2003*.

regulated place means a place that is a regulated place under section 44.

release conditions see the *Domestic and Family Violence Protection Act 2012*.

relevant act means conduct of a kind mentioned in section 46 or 47.

relevant assault offence, for chapter 18A, see section 548B.

relevant court—

(a) for chapter 4, see section 69; or

(b) for chapter 22, see section 747.

relevant disease means a communicable disease prescribed under a regulation.

relevant evidence, for chapter 7, see section 149A.

relevant law, means an Act under which a person or place must be licensed, and prescribed under a regulation for chapter 2, part 1.

relevant offence—

(a) for chapter 11, see section 229; or

(b) for chapter 13, see section 322.

relevant period—

(a) for chapter 4—see section 69; or

(b) for chapter 22—see section 747.

relevant person—

(a) in relation to an application to a judge or a magistrate for a surveillance device warrant—see section 329; or

(b) in relation to an application to a judge or a magistrate for a retrieval warrant—see section 337; or

(c) in relation to an application to a judge for a covert search warrant—see section 213; or

(d) in relation to a removal order—see section 402; or

(e) for chapter 15, part 2, division 3A—see section 411B(2); or

(f) for chapter 15, part 3—see section 415; or

(g) for chapter 17—see section 447(2).

relevant police officer, for chapter 15, part 2, division 3A, see section 411E(b).

relevant proceeding, for chapter 13, see section 351.

relevant public place, for chapter 19, part 5A, see section 602A.

relevant thing, for chapter 21, part 3, see section 686.

relevant vehicle incident means—

(a) an incident involving a vehicle on a road in which—

(i) death or injury was caused to a person; or

(ii) damage was caused to a vehicle, tram, or train, or any other real or personal property; or

(iii) death or injury was caused to an animal; or

(b) an incident involving a boat in which—

(i) death or injury was caused to a person; or

(ii) damage was caused to a boat or any other real or personal property.

remote application, for chapter 13, see section 322.

removal order see section 399.

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report of a conversation or activity, for chapter 13, see section 322.

reportable offender see the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*.

report entity, for chapter 11, see section 229.

residence, for chapter 7, part 3A, see section 179A.

respondent, for a police banning notice, see section 602A.

responsibilities code means the code of responsibilities of police officers prescribed under a regulation.

responsible Minister, for chapter 17, part 9, see section 522.

responsible officer—

(a) for chapter 7, part 3—see section 165(1); or

(b) for chapter 7, part 3A—see section 179D.

restricted item means an item prescribed as a restricted item under the *Weapons Categories Regulation 1997*.

restricted premises order means a restricted premises order under the *Peace and Good Behaviour Act 1982*.

retrieval warrant means a warrant issued under chapter 13, part 2, division 3.

road see the Road Use Management Act.

Road Use Management Act means the *Transport Operations (Road Use Management) Act 1995*.

safe night precinct see the *Liquor Act 1992*, section 173NC(1).

saliva analysis see the Road Use Management Act, section 80(1).

saliva test see the Road Use Management Act, section 80(1).

SDOCO related evidence means evidence of property that may be subject to forfeiture under a confiscation order for which a proceeding may be started under the Confiscation Act, chapter 2A.

search—

(a) includes frisk search a person; and

(b) does not include the use of a drug detection dog to carry out drug detection under chapter 2, part 3, even if the drug detection dog physically intrudes onto a person or the clothing of a person; and

(c) does not include the use of a firearms and explosives detection dog to carry out explosives detection under chapter 2, part 3, even if the firearms and explosives detection dog physically intrudes onto a person or the clothing of a person; and

(d) does not include the use of a hand held scanner, in relation to a person, under chapter 2, part 3A.

search warrant see section 150 or 599.

search warrant powers see section 157.

secure facility, for chapter 21, part 4, see section 726.

security, of a state building, includes—

(a) the safety of entrants to the building; and

(b) the safety of things in, or about to be brought into, the building; and

(c) the good order, or safe operation, of the building.

seize includes retain, but does not include impound.

senior officer, for chapter 13, see section 322.

senior police officer—

(a) for chapter 2, part 7, see section 53BD; or

(b) for chapter 7, part 7, see section 197A.

serious crime derived property see the Confiscation Act, section 23.

serious crime related activity see the Confiscation Act, section 16.

serious indictable offence means an indictable offence involving any of the following—

(a) serious risk to, or actual loss of, a person's life;

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(b) serious risk of, or actual, serious injury to a person;

(c) serious damage to property in circumstances endangering the safety of any person;

(d) serious fraud;

(e) serious loss of revenue to the State;

(f) official corruption;

(g) serious theft;

(h) money laundering;

(i) conduct related to prostitution or SP bookmaking;

(j) child abuse, including child pornography;

(k) an offence against the *Drugs Misuse Act 1986* punishable by at least 20 years imprisonment;

(l) an offence against the *Weapons Act 1990* involving the trafficking of weapons or explosives or the unlawful supply or unlawful manufacture of weapons.

serious violent offence means—

(a) an offence involving deprivation of liberty; or

(b) a 7 year imprisonment offence involving violence or a threat of violence to a person.

seven year imprisonment offence means an indictable offence for which the maximum penalty is at least 7 years imprisonment.

SMS message means a text message sent using the mobile phone service known as the short messaging service.

solicit includes the following—

(a) offer to provide prostitution;

(b) accept an offer to provide prostitution.

specified person, in relation to a digital device at, or seized from, a place for which a search warrant is or was issued, or for which a crime scene is or was established, for chapter 7, see section 149A.

speed trial means—

(a) any attempt to establish or break any vehicle speed record of any description on a road; or

(b) any trial of any description of the speed of a vehicle on a road; or

(c) any competitive trial of any description designed to test the skill of any vehicle or driver or the reliability or mechanical condition of any vehicle on any road.

staff member see the *Police Service Administration Act 1990*, section 1.4.

state building see section 549.

stock means any of the following animals or their young—

(a) horses, asses, mules or camels;

(b) cattle, oxen or buffalo;

(c) sheep;

(d) swine;

(e) deer;

(f) goats.

stop, for chapter 22, see section 747.

stop, of a vehicle or animal, includes requiring it to remain stationary for the time reasonably necessary to enable a function or power under this or another Act to be exercised.

stop and desist notice means a stop and desist notice under the *Peace and Good Behaviour Act 1982*.

supervisor, for chapter 12, see section 280.

support person means—

(a) for an Aboriginal person or Torres Strait Islander person who is at least 17—

(i) an adult relative or another adult chosen by the person; or

(ii) a lawyer acting for the person; or

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(iii) a representative of a legal aid organisation; or

(iv) a person whose name is included in a list of support persons and interpreters; or

(b) for a child—

(i) a parent or guardian of the child; or

(ii) a lawyer acting for the child; or

(iii) a person acting for the child who is employed by an agency whose primary purpose is to provide legal services; or

(iv) an adult relative or friend of the child who is acceptable to the child; or

(v) if the child is an Aboriginal person or a Torres Strait Islander person and no-one mentioned in subparagraphs (i) to (iv) is available—a person whose name is included in the list of support persons and interpreters; or

(vi) if no-one mentioned in subparagraphs (i) to (v) is available—a justice of the peace, other than a justice of the peace who is a member of the Queensland Police Service or a justice of the peace (commissioner for declarations); or

(c) for a person with impaired capacity—a parent or another adult who provides or is able to provide support necessary to help care for the person by looking after or managing the person's interests.

Surfers Paradise CBD safe night precinct, for chapter 2, part 3A, see section 39A.

surveillance device, for chapter 13, see section 322.

surveillance device warrant means a warrant issued under chapter 13, part 2, division 2 or section 347(2).

suspect, for chapter 11, see section 229.

suspension order see section 205.

tainted property see the Confiscation Act, section 104.

take, for chapters 16, 17 and 18, includes collect.

tattoo parlour, for chapter 2, part 3, see section 34.

term of imprisonment see the *Penalties and Sentences Act 1992*.

terrorism see section 211(4).

terrorist act see section 211.

this jurisdiction, for chapters 11, 12 and 13, means Queensland.

three year imprisonment offence, for chapter 13, see section 322.

time out includes any time reasonably required—

(a) to take a person from the place where the person is arrested to the nearest place where the investigating officer has access to facilities for complying with chapter 15, part 3; and

(b) to allow the person, or someone else on the person's behalf, to telephone or speak to a lawyer, friend, relative, parent, guardian, interpreter, support person or other person; and

(c) to allow a lawyer, friend, relative, parent, guardian, interpreter, support person or other person to arrive at the place where the person is to be questioned; and

(d) to allow the person to receive medical attention; and

(e) to allow the person to recover from the effects of intoxication; and

(f) to allow the person to rest; and

(g) to allow for the questioning of co-offenders; and

(h) to prepare and dispose of an application under this Act for approval of the examination of the person by a doctor or dentist; and

(i) to convey the person to a suitable place for medical or dental examination or treatment; and

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(j) to allow for an identification parade to be arranged and held; and

(k) to allow for—

(i) an examination of the person under this Act by a doctor, dentist or forensic nurse examiner; or

(ii) the performance of a forensic procedure; or

(iii) the taking of a blood or urine sample under chapter 18 by a doctor or nurse; and

(l) to allow for witnesses to be interviewed; and

(m) to allow for investigating police to arrive; and

(n) to allow for the person to be taken to another place for the investigation or as part of the investigation; and

(o) to allow for the search of any place, including a crime scene examination; and

(p) to decide the appropriate nature and content of a charge against the person and to charge the person and decide whether to release the person on bail or serve on the person a notice to appear or complaint and summons.

tracking device, for chapter 13, see section 322.

tracking device authorisation see section 348A(2).

train includes tram.

tram see the Road Use Management Act, schedule 4.

transport Act see the Road Use Management Act, schedule 4.

transport vehicle means—

(a) an aircraft; or

(b) a boat; or

(c) a bus; or

(d) a train.

type 1 vehicle related offence see section 69A.

type 1 vehicle related offence notice see section 755(2).

type 2 vehicle related offence see section 69A.

unique electronic address, for a person, means a fixed designation on a communication network assigned to the person for the purpose of the person receiving information.

Examples—

an email address, mobile phone number or user account

unlawful dangerous drug, for chapter 2, part 3, see section 34.

unlawfully means without authorisation, justification or excuse by law.

urgent application, for chapter 11, see section 229.

urgent authority, for chapter 11, see section 229.

urgent variation application, for chapter 11, see section 229.

urgent variation of authority, for chapter 11, see section 229.

use—

(aa) of a hand held scanner, in relation to a person, for chapter 2, part 3A, see section 39B; or

(a) for chapter 12, see section 280; or

(b) of a surveillance device, for chapter 13, see section 322.

used, for chapter 5, part 1, see section 124AA.

vehicle means a vehicle under the Road Use Management Act, an aircraft or a boat.

vehicle production notice, for chapter 4, see section 69.

vehicle related offence see section 69.

vehicle release notice, for chapter 4, part 2, division 2, see section 79.

veterinary surgeon means a person registered as a veterinary surgeon under the *Veterinary Surgeons Act 1936*.

walk-through detector, for chapter 19, means a device through which a person walks, that detects metal or other substances.

warning light, for chapter 22, see section 747.

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warrant, for chapter 13, see section 322.

warrant evidence or property, for chapter 7, see section 149A.

watch-house manager means a police officer for the time being in charge of a watch-house.

watch-house officer see the *Police Service Administration Act 1990*, section 1.4.

weapon—

(a) for chapter 21, part 3—includes antique firearm and restricted item; and

(b) otherwise—see the *Weapons Act 1990*, schedule 2.

welfare, of an animal, means issues about the health, safety or wellbeing of the animal.

X-ray machine, for chapter 19, means a device through which a person's belongings are passed and X-rayed.