

Chapter 11 – Federal Issues

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11.1 Introduction

This chapter covers Federal legislation which members may be required to administer. Officers should be aware of their powers and responsibilities in terms of that legislation and provide assistance to Federal authorities, where appropriate.

11.2 References to legislation

Frequent reference to legislation is made which impacts on the contents of this chapter. This chapter should be read in conjunction with those statutes, which can be accessed from the legislation page on the QPS Corporate Intranet (Bulletin Board).

11.3 Prosecution of Commonwealth offences

POLICY

In respect of Commonwealth offences, the office of the Director of Public Prosecutions (Cwlth) (see Service Manuals Contact Directory) determines whether the Service is to prosecute defendants after their first appearance in Court. However, generally, if a defendant is charged by an officer for committing Commonwealth and State offences at the same time, a police prosecutor will continue the prosecution of the defendant.

Except in remote areas of the State, police prosecutors will not normally be required to deal with hearings or committals unless the defendant has been charged with State and Commonwealth offences arising from the one incident.

ORDER

Police prosecutors involved in the prosecution of Commonwealth offences are to promptly advise the nearest office of the Director of Public Prosecutions (Cwlth) that a prosecution of a Commonwealth offence has commenced.

In Brisbane, if a matter arising from a State investigation into a Commonwealth offence is not dealt with by way of a plea of guilty on the first appearance, the matter is to be adjourned to the Commonwealth call over and the brief is to be referred to the office of the Director of Public Prosecutions (Cwlth).

Officers may contact the offices of the Director of Public Prosecutions (Cwlth) to discuss any proposed Commonwealth charge.

11.4 Inconsistencies between State and Commonwealth legislation

PROCEDURE

Officers should ensure any State legislation used is not inconsistent with Commonwealth legislation. Inconsistency between State and Commonwealth legislation arises when it would be impossible to obey both laws, when the law of one government permits an activity while the law of the other government prohibits the activity or when the Commonwealth law is deemed to exhaustively and exclusively cover a particular area of activity.

Officers should consider whether Commonwealth legislation applies to an offence or area of activity which is also covered by State law. Commonwealth law takes precedence over State law in these cases.

In determining which legislation to use in regard to offences occurring in places acquired by the Commonwealth, officers should consider whether Commonwealth legislation covers the offence in question. If no Commonwealth legislation exists which covers an activity then appropriate State law may be applied by virtue of s. 4(1) of the *Commonwealth Places (Application of Laws) Act*.

Queensland has passed complementary legislation in the form of the *Commonwealth Places (Application of Laws) Act*. By virtue of s. 4 of that Act, officers can perform their usual duties on Commonwealth places as if the place was a State place. The power of arrest for a State law applied to a Commonwealth place is the same as that which applies when the offence is dealt with as a State offence. An offence against State law, which is applied to a Commonwealth place, is treated as an offence against Commonwealth law and is heard by a court exercising Federal jurisdiction.

ORDER

When State legislation is being applied, officers are to make the following endorsement on the bench charge sheet or summons: Commonwealth Places (Application of Laws) Act 1970 (Cwlth) Section 4(1).

11.5 Investigation of Commonwealth offences

Parts 1AA and 1C of the *Crimes Act (Cwlth)* outline the procedures to be complied with by officers when investigating Commonwealth offences. These Parts contain provisions, which allow and regulate such things as the issue of search warrants, the arrest of persons, searches of people and places with and without warrant, the identification of suspects and the taking of fingerprints, photographs and other identification material. By virtue of s. 5(2A) of the *Commonwealth Places (Application of Laws) Act (Cwlth)* officers are not bound by the provisions of Parts 1AA and 1C of the *Crimes Act (Cwlth)*, when investigating offences against State laws which have been applied to Commonwealth places.

The *Crimes Act (Cwlth)* provides for and regulates the following powers and investigative practices:

- (i) issue and execution of search warrants (ss. 3E to 3JA, 3P, 3R to 3S, and 3ZS to 3ZU);
- (ii) seizure and detention of evidence as a result of a search (ss. 3K to 3N, 3Q, 3ZQX to 3ZQZB and 3ZV to 3ZW);
- (iii) stopping and searching vehicles without warrant (ss. 3T, 3U and 3ZR);
- (iv) requiring persons to state their name and address (s. 3V);
- (v) arrest without warrant (ss. 3W to 3Y);
- (vi) arrest with warrant (s. 3ZA);
- (vii) use of force when making an arrest (ss. 3ZB and 3ZC);
- (viii) searching of arrested persons (ss. 3ZE to 3ZI and 3ZR);
- (ix) taking and eventual destruction of fingerprints, photographs and other identification material (ss. 3ZJ to 3ZL);
- (x) use of identification parades (ss. 3ZM and 3ZN);
- (xi) use of photographic identification of suspects (s. 3ZO);
- (xii) identification procedures where there is more than one suspect (s. 3ZP);
- (xiii) use of descriptions of suspects (s. 3ZQ); and
- (xiv) detention period and interviewing of persons (ss. 23A to 23DA and 23E to 23W); and

the following specific powers and investigative practices related to terrorism offences:

- (i) requiring persons to state their name and address (s. 3UC);
- (ii) stopping and searching without warrant (s. 3UD);
- (iii) seizure of terrorism and serious offence related items as a result of a search (s. 3UE);
- (iv) arrest without warrant (s. 3WA); and
- (v) detention period (ss. 23DB to 23DF).

PROCEDURE

The powers and practices described in the *Crimes Act (Cwlth)* may be applied to the investigation of any offence against Commonwealth law, except the *Defence Force Discipline Act (Cwlth)*, despite the existence of similar powers under other Commonwealth legislation.

ORDER

Officers investigating Commonwealth offences or dealing with persons who are suspected of having committed offences against Commonwealth law, except the *Defence Force Discipline Act (Cwlth)*, are to comply with the provisions of the *Crimes Act (Cwlth)*. The provisions of the *Crimes Act (Cwlth)* are to be read in conjunction with Chapter 2: 'Investigative Process' of this Manual. The provisions of the *Crimes Act (Cwlth)* are to take precedence over the contents of this Manual where any inconsistency between the Act and Service policies, procedures or orders arises.

11.5.1 Investigation of offences

PROCEDURE

When investigating a mixture of State and Commonwealth offences, officers should, in addition to referring to Chapter 2: 'Investigative Process' of this Manual:

- (i) deal with State offences separately first, if possible; and
- (ii) clearly inform the suspect that the interview relates only to State offences at that stage.

11.5.2 Voluntary accompanied

PROCEDURE

If the officer, when first approaching the suspect, merely entertains a strong suspicion that the person has committed the offence, but does not have sufficient admissible evidence upon which to base reasonable grounds to believe that

the person has committed the offence, the officer should inquire as to whether the suspect is prepared to voluntarily accompany the officer to a police station/establishment for interview purposes.

If the person accompanies the officer voluntarily, the following applies:

(i) officers should advise suspects that they are not obliged to accompany the officer to the station and that if they do accompany the officer, they may leave at any time unless advised by the officer that they are deemed to be a protected suspect pursuant to s. 23B(2): 'Definitions' of the *Crimes Act* (Cwlth). (Note: A suspect will be deemed to be a protected suspect vide s. 23B(2)(a), (b), (c), (d) and (e) if the officer believes there is sufficient evidence to establish that the person has committed the offence (at which time the person should be cautioned) or the officer will not let the person leave or the officer has given the person reasonable grounds for believing that the person would not be allowed to leave if the person wished to do so. A person in custody as a protected suspect is not the same as a person under lawful arrest therefore the investigation periods in ss. 23C to 23DF of the *Crimes Act* (Cwlth) do not apply to protected suspects);

(ii) when officers form an opinion that they have reasonable grounds to believe that the person has committed a Commonwealth offence, a caution must be administered, before further questioning, advising the suspect that they do not have to say or do anything but anything that the person does say or do may be used in evidence. The giving of the caution must be recorded (see s. 23U: 'Tape recording of information required to be given to person under arrest' of the *Crimes Act* (Cwlth)); and

(iii) at that time, suspects must be informed:

(a) that they may communicate with a friend or relative to inform that friend or relative of their whereabouts; and

(b) that they may also communicate with a legal practitioner of their choice; and

(c) of the other rights and protections granted by ss. 23F to 23T of the *Crimes Act* (Cwlth). All of these rights and protections come into effect at this time.

The giving of this information and the responses to it must be audio recorded (see s. 23U of the *Crimes Act* (Cwlth)).

11.5.3 Arrest detention

PROCEDURE

If the officer, when first approaching the suspect, is satisfied that there are reasonable grounds to believe that:

(i) a Commonwealth offence (other than a terrorism offence and an offence against s. 80.2C: 'Advocating terrorism' of the Criminal Code (Cwlth)) has been committed;

(ii) the suspect has committed it; and

(iii) proceedings by way of summons would not achieve one or more of the purposes outlined in s. 3W(1)(b): 'Power of arrest without warrant by constables' of the *Crimes Act* (Cwlth),

the officer may arrest the suspect by virtue of s. 3W of the *Crimes Act* (Cwlth).

For an officers' power of arrest for a Commonwealth terrorism offence and an offence against s. 80.2C refer to s. 3WA(1)(b): 'Constables' power of arrest without warrant for a terrorism offence or offence of advocating terrorism' of the *Crimes Act* (Cwlth).

If a suspect is obliged to accompany the officer to the station/establishment for the purpose of investigation. As soon as the person is arrested, the investigation period (see ss. 23C: 'Period of arrest if arrested for non-terrorism offence' and 23DB: 'Period of investigation if arrested for a terrorism offence' of the *Crimes Act* (Cwlth) for periods of investigation for non-terrorism and terrorism offences respectively) has commenced and the whole of Part IC: 'Investigation of Commonwealth offences' of the Act applies.

To determine whether proceedings by way of summons would be effective in achieving the purposes listed in s. 3W(1)(b) or 3WA(1)(b) of the *Crimes Act* (Cwlth) officers should at least consider the following points:

(i) the nature of the offence;

(ii) the age, the age, marital status, dependants, employment history of the suspect;

(iii) the antecedents of the suspect in relation to previous grants of bail and offender history generally;

(iv) the likelihood that there will be a repetition or continuation of the offence or the commission of another offence;

(v) the need to preserve the suspected person's safety or welfare;

(vi) the likelihood that evidence may be concealed, destroyed or lost;

(vii) the likelihood that witnesses may be harassed or interfered with; and

(viii) the likelihood that evidence may be fabricated.

11.5.4 Post arrest detention

PROCEDURE

When investigating offences against Commonwealth legislation, except the *Defence Force Discipline Act (Cwlth)*, officers should, in order for admissions or confessions to be admissible, determine if the person to be interviewed:

- (i) is under 18 years of age;
- (ii) is of Aboriginal or Torres Strait Islander extraction;
- (iii) requires the services of an interpreter; or
- (iv) is a foreign national.

At the time when the suspect is placed under arrest, the officer should:

- (i) caution the person in the following terms before asking any questions –

'I intend to ask you (further) questions in relation to this matter but before I do I must warn you that you do not have to say or do anything but anything you do say or do may be used in evidence'

The caution not only includes answering questions but also 'doing anything'. For example, taking part in an interview or any other activity. The suspect is not obliged to co-operate in any way whatsoever;

- (ii) record the giving of the caution (see s. 23U: 'Tape recording of information required to be given to person under arrest' of the *Crimes Act (Cwlth)*); and

- (iii) comply with the following provisions of the *Crimes Act (Cwlth)*:

- (a) s. 23K: 'Persons under 18' if the person is under 18 years of age;
- (b) s. 23H(1), (2), (2A) and (2B): 'Aboriginal persons and Torres Strait Islanders' if the person is of Aboriginal or Torres Strait Island extraction and s. 23H(7) or (8) does not apply;
- (c) s. 23P: 'Right of non-Australian nationals to communicate with consular office' if the person is a foreign national;
- (d) s. 23N: 'Right to interpreter' by providing an interpreter if there are reasonable grounds to believe that the person has inadequate knowledge of the English language or a physical disability that hinders fluent communication; and
- (e) s. 23G: 'Right to communicate with friend, relative and legal practitioner' by advising the person of their right to communicate with a relative or friend and legal practitioner of their choice.

The giving of all the above information and responses thereto must also be recorded (see s. 23U).

Subject to the exceptions provided in s. 23L: 'Exceptions' of the *Crimes Act (Cwlth)*, the above caution and other information should always be given and recorded because, in addition to complying with s. 23U, it provides the best possible objective evidence as to the onus the prosecution must discharge in s. 23U(2). It protects both the suspect and, equally importantly, police from allegations of unfairness, etc.

Section 23M: 'Providing information relating to persons who are under arrest or protected suspects' imposes a duty on police to inform a relative, friend or legal representative (unless within the exclusions of s. 23L) of the whereabouts of the person under arrest if such information is sought, but only with the consent of the person under arrest.

The right to silence has been maintained in statutory form (see s. 23S: 'Right to remain silent etc. not affected' of the *Crimes Act (Cwlth)*).

The officer has a time limit imposed by s. 23C: 'Period of investigation if arrested for a non-terrorism offence' of the *Crimes Act (Cwlth)* for the arrest of the suspect for the purpose of investigating of a non-terrorism offence. Section 23C(4) of the *Crimes Act (Cwlth)* states that the time must be reasonable (onus on the prosecution) but cannot extend beyond:

- (i) two hours for Aboriginal or Torres Strait Islander persons, or persons under 18 years of age; or
- (ii) four hours in all other cases,

unless extended by s. 23DA: 'Magistrate may extend investigation period' of the *Crimes Act (Cwlth)*.

Section 23DB: 'Period of investigation if arrested for a terrorism offence' of the *Crimes Act (Cwlth)* is to be complied with in relation to an arrest for a terrorism offence as defined in s. 3: 'Interpretation'.

11.5.5 Re-arrested within 48 hours

PROCEDURE

Section 23C(6): 'Period of investigation if arrested for a non-terrorism offence' of the *Crimes Act (Cwlth)* states that if the person has been arrested more than once within any period of 48 hours, the investigation period for each arrest

other than the first is reduced by the amount of the earlier investigation period or periods that occurred within that 48 hours (see s. 23C(6) of the Act). The provisions of this section apply only to non-terrorism offences.

Section 23DB(11): 'Period of investigation if arrested for a terrorism offence' of the *Crimes Act* (Cwlth) is to be complied with if a person has been arrested more than once within any period of 48 hour period and has subsequently been arrested for a terrorism offence.

11.5.6 Dead time

PROCEDURE

Officers should keep accurate records of when the investigation period commences and ceases and all periods of 'dead time' to ensure that the relevant investigation period is not exceeded.

For instances of 'dead time', that is, time not taken into account when calculating the time limits, officers should refer to the *Crimes Act* (Cwlth):

- (i) s. 23C(7): 'Period of investigation if arrested for a non-terrorism offence'; and
- (ii) s. 23DB(9): 'Period of investigation if arrested for a terrorism offence'.

11.5.7 Extension of time

PROCEDURE

Section 23D: 'Application may be made for extension of investigation period' of the *Crimes Act* (Cwlth) authorises the making of an application to extend the relevant investigation period for a period, in relation to a non-terrorism offence not exceeding eight hours. Section 23DA(2): 'Magistrate may extend investigation period' of the *Crimes Act* (Cwlth) prescribes the matters to be proved to the satisfaction of a Magistrate before they may grant the application and extend the period.

Section 23D(2) of the *Crimes Act* (Cwlth) states that an application may be made by telephone or in writing. The use of telex, fax or other electronic means is permitted by s. 23DA(5)(b) of the Act.

Any officer who obtains an extension by electronic means should complete the appropriate form and produce it at any subsequent Court hearing noting the provisions of s. 23E: 'Evidentiary provisions if application made by electronic means' of the *Crimes Act* (Cwlth).

An extension will only be granted for a serious offence. A serious offence is defined in s. 23B(1): 'Definitions' of the *Crimes Act* (Cwlth) as a Commonwealth offence that is punishable by imprisonment for a period exceeding 12 months.

Irrespective of whether the period of detention is two hours or four hours or an extension is granted, the officer must satisfy the Court that the detention period was reasonable (see s. 23C(8): 'Period of investigation if arrested for a non-terrorism offence' of the *Crimes Act* (Cwlth)).

Applications for extension of an investigation period for a terrorism offence must be approved by an 'authorising officer', defined in s. 23B(1) of the *Crimes Act* (Cwlth) as a superintendent, assistant commissioner or the Commissioner (see ss. 23DC to 23DF of the Act).

11.5.8 How to be released

PROCEDURE

Sections 23C(3): 'Period of investigation if arrested for a non-terrorism offence' and 23DB(4): 'Period of investigation if arrested for a terrorism offence' of the *Crimes Act* (Cwlth) states that if a person is not within the investigation period they must be brought before a judicial officer within that period or, if it is not practicable to do so within that period, as soon as practicable after the end of that period.

If the officer has exercised the power of arrest under ss. 3W: 'Power of arrest without warrant by constables' or 3WA: 'Constables' power of arrest without warrant for a terrorism offence or offence of advocating terrorism' of the *Crimes Act* (Cwlth) then the officer may formally charge the person.

If the person has voluntarily accompanied police and has been deemed to be a protected suspect by virtue of s. 23B(2): 'Definitions' of the *Crimes Act* (Cwlth) and a prima facie case has been established, then:

- (i) if proceedings by way of summons would be effective, the officer should release the person unconditionally pursuant to ss. 3W(2) or 3WA(2) of the *Crimes Act* (Cwlth) and later cause a summons to be issued for service upon the person concerned; or
- (ii) if it is reasonably believed that proceedings by way of summons would not achieve one or more of the purposes listed in ss. 3W(1)(b) or 3WA(1)(b) of the *Crimes Act* (Cwlth), the officer may formally arrest under ss. 3W or 3WA of the Act, charge the person and bring the person before a judicial officer within the investigation period, if possible, or as soon as practicable thereafter.

If there is insufficient evidence to justify a prosecution of a person who has been deemed to be a protected suspect by virtue of s. 23B(2) then the person should be allowed to leave the company of the interviewing officer unconditionally.

If the person has voluntarily accompanied the officer and never been deemed to be a protected suspect and there is insufficient evidence to justify a prosecution, the person should be allowed to leave the company of the interviewing officer unconditionally.

11.5.9 Audio/video recording of admissions and confessions

The audio/video recording requirements specified in ss. 23U: 'Tape recording of information required to be given to person under arrest' and 23V: 'Tape recording of confessions and admissions' of the *Crimes Act* (Cwlth) apply to State police officers when investigating Commonwealth offences.

ORDER

Officers investigating Commonwealth offences are to do so in the same manner as they would State offences and comply with the Digital Electronic Recording of Interviews and Evidence Manual.

11.5.10 Criminal responsibility

The Criminal Code contained within the *Criminal Code Act* (Cwlth) codifies the general principles of criminal responsibility applicable to Commonwealth legislation and Commonwealth offences.

POLICY

Officers are to familiarise themselves with the following provisions of Chapter 2: 'General principles of criminal responsibilities' of the Criminal Code (Cwlth):

- (i) part 2.2: 'The elements of an offence';
- (ii) part 2.3: 'Circumstances in which there is no criminal responsibility';
- (iii) part 2.4: 'Extensions of criminal responsibility';
- (iv) part 2.5: 'Corporate criminal responsibility';
- (v) part 2.6: 'Proof of criminal responsibility'; and
- (vi) part 2.7: 'Geographical jurisdiction'.

11.5.11 Interview friends

Provisions of Part 1C, sections 23A to 23W: 'Investigation of Commonwealth offences' of the *Crimes Act* (Cwlth) require the presence of an interview friend during the questioning of persons when investigating Commonwealth offences. A number of sections define what the term interview friend means, which includes a person whose name is included in the relevant list maintained under s. 23J(1): 'Lists of interview friends and interpreters' of the *Crimes Act* (Cwlth).

Pursuant to s. 23J, of the *Crimes Act* (Cwlth), a list has been established of suitable persons to act as interview friends, or as interpreters for Aboriginal and Torres Strait Islander persons being interviewed by police in relation to Commonwealth offences for the purpose of this section. The 'Lists of interview friends and interpreters' under section 23J of the *Crimes Act* (Cwlth) is located on the Operational Support web page on the QPS Corporate Intranet (Bulletin Board).

ORDER

Officers are to select an appropriate person from this list whenever Part 1C of the *Crimes Act* (Cwlth) requires the presence of an interview friend or interpreter during questioning.

11.6 Crimes Act and Criminal Code Act

The *Crimes Act* and the *Criminal Code Act*, are Acts relating to offences against the Commonwealth, and are the Acts which officers generally enforce.

In 2002, the Commonwealth Attorney General's Department has published a document titled: 'The Commonwealth Criminal Code – a Guide for Practitioners'. Reference to this document will assist officers to understand and apply the provisions of the Criminal Code.

11.6.1 Australia Post

PROCEDURE

An offence with respect to Australia Post or postal services can proceed under the provisions of the *Crimes Act*, Criminal Code depending on the circumstances.

11.6.2 Telecommunications Carriers (Telstra Corporation)

Telstra Corporation Ltd, formerly the Australian and Overseas Telecommunications Corporation is a public company limited by shares within the meaning of the *Corporations Act* (Cwlth) and registered with the Australian Securities and Investments Commission as the Telstra Corporation.

There are a number of telecommunication carriers within the Australian telecommunications industry, details of which can be obtained from the Australian Communications and Media Authority (ACMA) (see Service Manuals Contact Directory). Inquiries in the first instance may be made through the ACA web site, www.aca.gov.au.

An offence in respect of the Telstra Corporation Ltd (or any other carrier), can proceed under the provisions of the relevant Commonwealth or State legislation, dependent upon the circumstances, i.e., some sections of the *Crimes Act* relating to telecommunications carriers still apply.

Officers investigating offences committed against the Telstra Corporation Ltd may obtain information and investigation assistance from Telstra Law Enforcement Liaison Section, via the Call Charge Record Unit of the State Intelligence Group, Intelligence, Counter-Terrorism and Major Events Command (see 'Staff Contact' on the QPS Corporate Intranet (Bulletin Board)).

See s. 7.4.2: 'Telecommunication information' of the Management Support Manual when seeking information from telecommunication carriers.

11.6.3 Commonwealth Bank

PROCEDURE

The Office of the Commonwealth Director of Public Prosecutions advised that on and from 17 April 1991, the Commonwealth Bank ceased to be a 'public authority under the Commonwealth'. On and from that date it was to be a public company limited by shares within the meaning of the *Companies Act 1981* and registered with the Australian Securities Commission as the Commonwealth Bank of Australia. However, its subsidiaries, the Commonwealth Saving Bank (CSB) and the Commonwealth Development Bank (CDB) have retained their status as Commonwealth Public Authorities.

In most instances, premises will be owned or leased by the Commonwealth Bank and tenanted by the subsidiaries. As a result, jurisdiction and responsibility for investigation may sometimes be unclear.

If ownership of accounts, property or premises cannot be established by State police in consultation with the manager of the branch concerned, clarification should be sought from Branch Operations, Commonwealth Bank, Adelaide Street, Brisbane.

11.6.4 Narcotics sent through Australia Post

It is an offence against s. 85W of the *Crimes Act* to cause any article containing a prescribed narcotic substance within the meaning of the *Customs Act* to be carried by post intentionally.

The seizure of any article containing a prescribed substance which is sent or distributed through Australia Post and any subsequent investigation concerning the prescribed narcotic substance and the identification of parties involved is the responsibility of the Queensland Police Service where the substance is sent or distributed through domestic mail (i.e. posted and for delivery within Australia).

Investigations relating to prescribed narcotic substances which are imported into Australia by international mail are handled by the Australian Federal Police.

PROCEDURE

Officers who are notified of the discovery of a prescribed narcotic substance contained in a postal article should contact the Officer in Charge, Drug and Serious Crime Group, State Crime Command for advice on how to proceed with the investigation.

11.7 Crimes (Internationally Protected Persons) Act

The *Crimes (Internationally Protected Persons) Act* and the *Criminal Code Act* are Acts relating to the prevention and punishment of crimes against internationally protected persons, including diplomatic agents.

For arrest of foreign nationals, see Chapter 16: 'Custody' of this Manual.

11.7.1 Action to be taken in respect of internationally protected persons

ORDER

Officers who investigate incidents involving internationally protected persons are to, within seven days of the matter coming to their notice, report in writing through their respective officer in charge to the Commissioner outlining:

- (i) full particulars of the internationally protected person;

- (ii) full particulars of the offence committed against the internationally protected person; and
- (iii) action taken.

11.7.2 Prohibition of possession and use of firearms in diplomatic and consular premises

Possession, carriage and use of firearms on diplomatic and consular premises for the purpose of protection is prohibited. Individuals may obtain permission from the Department of Foreign Affairs and Trade to retain weapons solely for sporting purposes, and, in those cases, the relevant State or Territory licensing authority will be informed.

The Department of Foreign Affairs and Trade requests prompt advice of any instance of a contravention of this policy, which comes to the notice of officers.

This policy does not override the established rules of diplomatic and consular immunity and facts should be obtained discreetly by non-intrusive observation or courteous questioning.

Where Australian citizens are appointed as honorary consular officers or engaged locally as staff, the policy will apply in respect of their official capacities only. They will not be permitted to carry firearms while on duty or to have firearms in immune premises or vehicles.

PROCEDURE

Members observing apparent contraventions of the policy should promptly advise the Manager, Administration and Business Relations, Commonwealth Department of Foreign Affairs and Trade, Brisbane.

11.8 Diplomatic Privileges and Immunities Act

The *Diplomatic Privileges and Immunities Act* is an Act relating to diplomatic privileges, immunities and other purposes. For arrest of foreign nationals, see Chapter 16: 'Custody' of this Manual.

11.8.1 Diplomatic immunity entitlement

The head of a diplomatic mission of the Commonwealth and of a foreign country or the members of the diplomatic staff of the mission having diplomatic rank are entitled to a number of immunities, privileges and exemptions by virtue of diplomatic status.

These persons are exempt from the criminal jurisdiction of Federal and State legislation and cannot be arrested or summoned or brought before any Court, and all process against them is to be treated as null and void, unless their immunity is officially waived.

However, in the case of civil and administrative jurisdiction, diplomatic immunity is enjoyed with certain exceptions.

Diplomatic personnel are expected to respect the laws of the land, and for any violation of statutory provisions, redress should be sought through diplomatic, not legal sources.

The immunities extend to members of the family who form part of the household of the diplomatic personnel who are not Australian Nationals, and to members of the administrative and technical staff of the mission together with members of their families forming part of their respective households, provided these persons are not Australian citizens or permanently resident in Australia.

Domestic staff, who are employed by the diplomatic mission but who are not citizens of or permanently resident in Australia, enjoy immunity in respect of acts performed in the course of their duties.

However, diplomatic personnel and the staff of a diplomatic mission, who are Australian citizens or who are ordinarily resident in Australia, are entitled to immunity from jurisdiction and inviolability, in respect of official acts performed by them in the exercise of their duty.

11.8.2 Consular immunity entitlement

Consular officers and employees are entitled to certain privileges and immunities in respect of official acts performed in the exercise of consular functions, that is to say:

- (i) Immunity from jurisdiction, the head of a consular post, any person entrusted in that capacity with the exercise of consular functions, including an honorary consular officer, and any person employed in the administrative or technical service of a consulate-general, consular, vice-consulate or consular agency; and
- (ii) Inviolability privilege, the head of a consular post and any person entrusted in that capacity with the exercise of consular functions.

The privilege or immunity does not extend to the wife, family or other employees of a consul, nor to acts performed by the consul or other persons listed herein, outside their official duties.

Refer to s. 14.7: 'Diplomatic immunity and consular immunity for traffic offences' of the Traffic Manual for traffic offences committed by diplomats and consular officers.

11.8.3 Privileges and immunities of foreign representatives

POLICY

Only diplomatic and consular officials who have been officially accredited by the Department of Foreign Affairs and Trade are entitled to privileges and immunities. All persons entitled to any form of immunity are issued with a colour coded identification card. The reverse of the card summarises the level of privileges and immunities the bearer is entitled to.

PROCEDURE

Where officers have any doubt as to the status of a foreign representative or the immunities and privileges which may be afforded to that person, they should firstly contact the State Intelligence Group, Intelligence, Counter Terrorism and Major Events Command, during their hours of operation and outside of those hours, contact the Department of Foreign Affairs and Trade (see Service Manuals Contact Directory) for advice as to what action may be taken in respect of that representative.

Officers have the right to prevent foreign representatives from committing offences.

ORDER

Officers are not to apply any legislative provisions to persons who have reasonably identified themselves as foreign representatives except in accordance with the privileges and immunities summarised on the appropriate colour coded identification card issued by the Department of Foreign Affairs and Trade.

Officers who investigate incidents involving foreign representatives are to, within seven days of the matter coming to their notice, report in writing to the Commissioner outlining:

- (i) full particulars of the foreign representative;
- (ii) full particulars of the incident involving the foreign representative; and
- (iii) suggested action.

11.9 Crimes (Currency) Act

The *Crimes (Currency) Act (Cwlth)* provides for offences connected with the counterfeiting of money, certain kinds of securities and other activities injurious to Australian currency. Whilst currency related matters are coordinated from a central location by the Australian Federal Police Currency Team and the Reserve Bank of Australia, police offices are authorised under the *Crimes (Currency) Act (Cwlth)* to seize and prosecute currency related matters, including foreign currencies.

11.9.1 Investigations regarding counterfeit money

POLICY

Officers receiving a report of a breach of the *Crimes (Currency) Act (Cwlth)* are to view the Australian Federal Police website which provides information and procedures relating to dealing with counterfeit currency and the contact details for the Australian Federal Police Currency Team.

When receiving a complaint officers should ensure:

- (i) the provisions of s. 1.11.2: 'QPRIME – Policelink entered occurrences' of this Manual are followed;
- (ii) the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances surrounding the complaint;
 - (b) details of the counterfeit currency;
 - (c) any information available in relation to the origin and production of the counterfeit money; and
- (iii) an investigation is commenced (see Chapter 2: 'Investigative Process' of this Manual) and all available evidence seized, e.g CCTV.

PROCEDURE

The Australian Federal Police Currency Team requires officers seizing counterfeit money:

- (i) not to directly handle currency due to the risk of chemical residues from back yard production processes that maybe present;
- (ii) that all formal requests to be conducted by email; and

(iii) that any relevant intelligence regarding the seizure is forwarded to the Australian Federal Police Currency Team.

Officers who require expert witness statements are to contact the Australian Federal Police Currency Team and forward a completed Suspect Counterfeit Banknote Form (available on the Australian Federal Police website). A statement will be provided by the Reserve Bank of Australia.

When a prosecution commences, an order is to be sought under s. 29: 'Forfeiture and seizure' *Crimes (Currency) Act* (Cwlth) for the disposal of the counterfeit currency.

Disposal of counterfeit money

PROCEDURE

Once investigations or court proceedings are finalised in relation to counterfeit currency, the counterfeit currency is to be forwarded to the Australian Federal Police Currency Team for destruction (see s. 4.11.3: 'Counterfeit currency' of this Manual).

11.9.2 Defacing currency for scientific examination

ORDER

If an officer in charge of an investigation requires an exhibit taking the form of money to be defaced or destroyed during scientific examination, that officer is to obtain permission in writing direct from the Officer in Charge, Currency Team, Australian Federal Police (see Service Manuals Contact Directory).

PROCEDURE

Permission in writing may be obtained through facsimile transmission or service email.

11.9.3 Defacing currency for scientific examination

ORDER

When officers photograph or photocopy Australian bank notes for evidentiary purposes, they are to ensure that the:

- (i) photographic or photocopy reproduction is at least one third larger or smaller than the genuine note;
- (ii) photographic or photocopy reproduction is not reproduced in colour; and
- (iii) clause and the signature that specifies the note is legal tender is partially covered or erased.

The responsible officer is to ensure that any photographic or photocopy reproduction which is to be used for evidentiary purposes is recorded against the relevant property entry in the QPRIME occurrence.

The responsible officer is to ensure, upon finalisation of proceedings and at the conclusion of any appeal period that:

- (i) all photographic or photocopy reproductions in relation to the case are destroyed; and
- (ii) a notation is made against the relevant property entry in the QPRIME occurrence at the respective property point recording the date any photographic or photocopy reproduction was destroyed.

The destruction of photographic reproductions does not include original photographic negatives.

11.9.4 Deleted

11.10 Copyright Act

The law of copyright in Australia is wholly determined by the *Copyright Act*. This statute, which is binding on Federal, State and Territory governments defines what material is protected by copyright, who owns the rights and what rights belong to copyright owners. The Commonwealth Attorney General's Office is responsible for administration of copyright law.

Copyright is infringed by any person who, without permission, uses or authorises the use of all or a substantial part of copyright material in one of the ways that is the exclusive right of the copyright owner unless copyright has expired or a special exception applies. Copyright can also be infringed in certain circumstances by importing an article containing copyright material for commercial purposes, and by commercially dealing with infringing copies or unauthorised imports.

Copyright owners can take court action for infringements. Subject to this Act, the relief that a court may grant in an action for an infringement of copyright includes an injunction and either damages or an account of profits (that is, infringers may have to surrender any money they have made from dealing with the infringed works).

The Australasian Film and Video Security Office (AFVSO) and the Business Software Association of Australia (BSAA) will also take civil action against offenders. However, more serious breaches will generally be referred to police for investigation. There may be occasions where police detect more serious breaches committed by persons who are engaged in other criminal activity. The *Copyright Act* also provides for criminal proceedings.

The most common complaints received by police usually relate to the copying of video and audio tapes (commonly termed 'piracy') and the copying of artistic works such as that appearing upon designer T-shirts and other apparel. Incidents relating to the piracy, possession and distribution of unlicensed computer software are also being reported more frequently.

11.10.1 Investigations of breaches of film and video copyright

Section 11.5: 'Investigation of Commonwealth Offences' of this Manual deals with the investigation of Commonwealth offences.

POLICY

A member to whom a complaint or report of a breach of the *Copyright Act* is made, should:

- (i) comply with the provisions of s. 1.11: 'QPRIME – Policelink entered occurrence' of this Manual; and
- (ii) ensure the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances surrounding the complaint/breach;
 - (b) details of persons making the complaint/report of breach;
 - (c) details of persons found in possession of the copyright article;
 - (d) identification details of the copyright article and value where known;
 - (e) any information available in relation to the origin and production of the copyright article; and
 - (f) full details and contact telephone number of the member taking the complaint/report of breach.

An officer in charge of a station or establishment who receives a QPRIME occurrence for attention, concerning a breach of the *Copyright Act* in accordance with s. 1.11.4: 'Assigning Policelink entered occurrences' of this Manual, should:

- (i) check the details of the QPRIME occurrence with the member who took the complaint or report of breach of the *Copyright Act* and ensure all available information is included in the report;
- (ii) refer the complaint to the nearest regional office of the Australian Federal Police (AFP) by forwarding a facsimile copy of the QPRIME occurrence;
- (iii) in cases where evidentiary material is available, advise the appropriate AFP regional office and arrange for the forwarding of that material; and
- (iv) ensure that the complainant is contacted and advised of any action taken to resolve the complaint.

11.11 Defence Act

The *Defence Act* is an Act which relates to the Royal Australian Navy, Australian Army, Royal Australian Air Force and the protection of the Commonwealth and the States.

PROCEDURE

Officers investigating matters under the provisions of the *Defence Act* should not overlook that the Australian Defence Force consists of four Services, the Royal Australian Navy, Australian Army, Royal Australian Air Force and Headquarters, Australian Defence Force. Contact may be made direct with the appropriate establishment regarding investigations.

11.11.1 Contact persons and numbers of military establishments

ORDER

Officers in charge of divisions containing military establishments are to maintain a list of contact persons and telephone numbers for each military establishment and ensure that the list is accessible by staff under their control.

POLICY

Officers who arrest members of the Australian Defence Force should contact the duty officer at the relevant military establishment and where available, provide particulars of the service number, name and unit of the person charged.

11.11.2 Location of members of the Australian Defence Force

ORDER

When an officer requires access to a member of the Australian Defence Force who resides upon a military establishment, contact is to be made with:

- (i) the officer in charge of the relevant Australian Defence Force (ADF) Service police if such a unit exists at that establishment; or

(ii) the senior officer at that establishment if no ADF Service police unit exists.

PROCEDURE

Contact with the relevant ADF Service police or senior Australian Defence Force officers may be made verbally.

If written particulars of the reasons for requiring access are requested, the officer in charge of the inquiry may forward written advice direct.

11.12 Commonwealth Electoral Act

The *Commonwealth Electoral Act* is an Act to consolidate and amend the law relating to parliamentary elections and for other purposes.

11.12.1 Polling booths

POLICY

On the occasion of a Commonwealth election, officers should attend at polling booths as required to ensure the free flow of voters and to keep the peace.

ORDER

The officer in charge of a station or establishment during a Commonwealth election is to ensure that there are sufficient numbers of police to preserve the peace and the efficient flow of traffic at the election centre.

Officers are not to act as poll clerks in connection with Commonwealth elections.

11.12.2 Security of ballot boxes

ORDER

An officer is to assist the Commonwealth Assistant Returning Officer in the moving and related security of the ballot boxes when requested by that Returning Officer to do so.

11.13 Family Law Act

The *Family Law Act* is an Act relating to marriage, divorce, matrimonial cases and, in relation thereto and otherwise, parental rights, custody and guardianship of infants and certain other matters.

POLICY

Primary responsibility for service and execution of process under the *Family Law Act* resides with the Australian Federal Police. Officers will cooperate with the Federal Police in service and execution of process under the *Family Law Act*.

11.13.1 Serving of process

POLICY

An officer is not to serve a process under the *Family Law Act* where an Australian Federal Police office is located within a 40 kilometre radius.

POLICY

When officers are used as bailiffs in process serving, standard service fees should be applied for to the Under Secretary, Department of Justice.

11.13.2 Domestic complaints which involve breaches of an order or injunctions of the Family Law Court

Family Law Court orders

A Family Law Court may make Parenting orders under Part VII: 'Children' of the *Family Law Act* (Cwlth). These orders may deal with one or more of the following:

- (i) the person or persons with whom the child is to live;
- (ii) contact between the child and another person or persons;
- (iii) responsibility for the maintenance of the child; or
- (iv) any other aspect of parental responsibility for the child.

POLICY

Officers establishing the existence of, or receiving complaints relating to non-compliance with Family Law Court orders, should act only in accordance with the specific directions to police officers contained in the relevant order.

Where a Family Law Court order does not contain any specific direction to police officers, the first response officer should advise the complainant to seek legal advice, with a view to obtaining a suitable order for the enforcement of the Family Law Court order. Officers should also consider taking appropriate action under any relevant Queensland law, e.g. prosecution for child stealing or deprivation of liberty.

Where a parent refuses or declines to deliver a child to another parent in accordance with a residence or contact order, police have no authority to deliver the child to the parent in whose favour the residence or contact order was made without a recovery order issued by the Family Law Court.

Executing Family Law Court Recovery Orders

Section 67Q: 'Meaning of recovery order' of the *Family Law Act* defines a Recovery Order and describes the powers that may be exercised by an officer authorised under this section.

POLICY

Officers requested by the Australian Federal Police (AFP) to execute a Recovery Order are to:

- (i) view and take possession of the order;
- (ii) take note of the conditions and requirements endorsed on the order;
- (iii) liaise with the office of the AFP from where the Recovery Order was directed; and
- (iv) prior to serving documents on relevant parties, including the occupier, obtain authorisation from the AFP.

Officers executing a Recovery Order are to:

- (i) as far as possible and convenient, familiarise themselves with any place to be entered and searched;
- (ii) conduct a briefing involving all officers and persons who are to assist in the search of a place. This briefing should outline:
 - (a) all identified non-confidential information relating to the place;
 - (b) any specific powers or conditions contained in the order;
 - (c) the purpose of the search and the details of the child to be recovered;
 - (d) the person or persons thought to be a resident or otherwise in the place;
 - (e) the possibility of a dangerous situation arising; and
 - (f) anything else relevant to the purpose of the search or the safety of the officer and persons helping to recover the child;
- (iii) advise the officers' immediate supervisor prior to executing the order;
- (iv) seek the cooperation of any person in possession of the child named in the order;
- (v) supply their details in accordance with s. 637: 'Supplying police officer's details' of the *Police Powers and Responsibilities Act*;
- (vi) ensure that as little as possible physical and emotional disturbance occurs in executing the order, including consideration of the time of day or night the order is executed;
- (vii) ensure that the minimum number of officers, persons and equipment required to execute the order safely and effectively are used;
- (viii) complete register entries for any enforcement act as outlined in s. 2.1.2: 'Registers required to be kept' of this Manual; and
- (ix) enter a QPRIME Child/Young Person report under the name of each child recovered under the order and complete a QPRIME occurrence linking each child recovered under the order.

Officers are not to use force to execute a Recovery Order unless the use of force has been authorised in the order.

PROCEDURE

Officers who enter a place and recover a child under a Recovery Order should ensure that the following details are recorded in the relevant QPRIME Child/Young Person Report in the QPRIME occurrence:

- (i) the reason for the entry; and
- (ii) the purpose of the entry.

Breaches of injunctions

The *Family Law Act* also provides that a Family Law Court may issue injunctions under the provisions of s. 68B: 'Injunctions' or s. 114: 'Injunctions'. These injunctions can be issued for the personal protection and welfare of a child or a party to a marriage.

Powers of arrest are provided by s. 68C: 'Powers of arrest' and s. 114AA: 'Powers of arrest' respectively for breaches of injunctions issued for the personal protection of a person under s. 68B or s. 114, where the respondent causes or threatens to cause bodily harm to the person protected by the injunction.

However, the inability of police prosecutors to appear in subsequent court proceedings make the application of Queensland laws a more effective and efficient response to any act or omission which might also constitute a breach of an injunction.

POLICY

Officers receiving complaints of breaches of injunctions made under the *Family Law Act*, should take appropriate action under any relevant Queensland law, e.g. prosecution for assault, wilful damage or stalking (s. 112AM of the *Family Law Act* refers).

If the application of Queensland law is not appropriate or the complainant seeks the enforcement of rights conferred by an injunction, officers should advise the complainant to seek legal advice with a view to enforcing the injunction through the Family Law Court.

ORDER

Officers receiving complaints which give reasonable grounds to suspect that a person is an aggrieved spouse (see s. 12(2): 'What is a spousal relationship and who is a spouse' of the *Domestic and Family Violence Protection Act*) are to investigate the matter and take such action as is required by the provision of Chapter 9: 'Domestic Violence' of this Manual.

11.13.3 Family Law Court order inconsistent with domestic violence order

When the Family Law Court makes a parenting order, recovery order or grants an injunction that is inconsistent with an existing domestic violence order, the family court order or injunction will take precedence over the domestic violence order to the extent of any inconsistency.

Additionally s. 68P: 'Obligations of court making an order or granting an injunction under this Act that is inconsistent with an existing family violence order' of the *Family Law Act* provides that if a court:

- (i) makes a parenting order that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child; or
- (ii) makes a recovery order (as defined in s. 67Q of the *Family Law Act*) or any other order under the *Family Law Act* that expressly or impliedly requires or authorises a person to spend time with a child; or
- (iii) grants an injunction under ss. 68B or 114 of the *Family Law Act* that expressly or impliedly requires or authorises a person to spend time with a child; and

the order made or injunction granted is inconsistent with an existing domestic violence order, the court must, to the extent to which the order or injunction provides for the child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with the child, give a copy to various persons including the Commissioner.

A domestic violence order is invalid to the extent to which an order or injunction mentioned in s. 68P(1)(a) of the *Family Law Act* is made or granted that provides for a child to spend time with a person, or expressly or impliedly requires or authorises a person to spend time with a child and the order or injunction is inconsistent with the existing domestic violence order (see s. 68Q: 'Relationship of order or injunction made under this Act with existing inconsistent family violence order' of the *Family Law Act*).

PROCEDURE

When officers become aware of the existence of a parenting order, recovery order or injunction made under the provisions of the *Family Law Act* that is inconsistent with a current domestic violence order, officers should make inquiries with the Duty Registrar, Family Law Court Brisbane with a view to obtaining a court copy of the order or injunction (see Service Manuals Contact Directory). Officers should forward the court copy of the order or injunction to their officer in charge with a brief report outlining the inconsistencies and requesting the relevant domestic violence occurrence in QPRIME be updated.

ORDER

Officers in charge of a station or establishment receiving a copy of a Family Law Court parenting order, recovery order or injunction made under the provisions of the *Family Law Act*, are to ensure that any details inconsistent with an existing domestic violence order are entered in QPRIME under the relevant domestic violence occurrence in the 'Conditions tab' of the 'Order' of the respondent person on the same day as the copy of the order or injunction is received. Officers should ensure that an effective to date and an expiry date are also entered in QPRIME for the new condition. The copy of the order or injunction is to be scanned as an attachment to the relevant domestic violence occurrence.

11.13.4 Missing persons

PROCEDURE

Refer to Chapter 7: 'Child Harm' of this Manual.

11.13.5 Child custody disputes

Frequently, separated parents contact police requesting intervention in a dispute over custody arrangements of their children. The Service's position with respect to these custody matters is that the Service will not intervene on behalf of a parent of a child unless a court order exists or the child is at risk of harm or there is some other compelling reason.

ORDER

Officers receiving requests for assistance in child custody disputes are not to adjudicate in custody matters or make any decisions as to which parent is to have custody of the child.

Officers are not to retrieve a child in child custody matters unless acting in accordance with a court order or legislative authority.

POLICY

Where there is a dispute about which person a child is to live with, or what contact a child is to have with another person, and there is no Family Law Court order (see 'Family Law Court orders' as described in s. 11.13.2: 'Domestic complaints which involve breaches of an order or injunctions of the Family Law Court' of this chapter), a police officer does not have power to act unless the police officer believes on reasonable grounds that the child is in imminent danger (see s. 7.4.1: 'Children at immediate risk of harm' and, if relevant, s. 6.6.19: 'Protection of children of mentally ill persons' of this Manual) or the circumstances of the contact create an offence (e.g. a parent is subject to a bail condition which requires the parent not to have contact with the child as the child is a prosecution witness for an offence committed by the parent).

Request for police assistance

PROCEDURE

When officers:

- (i) receive a request from a parent of a child to:
 - (a) recover a child from the other parent's custody;
 - (b) recover a child from another party who has permission from the other parent to have custody of the child at that time;
 - (c) keep the peace in relation to recovering a child; or
- (ii) attend or are requested to attend a location where a child custody dispute is taking place;

officers should, where practicable:

- (i) establish if the child is the subject of a current Family Law Court order, and if so, comply with s. 11.13.2: 'Domestic complaints which involve breaches of an order or injunctions of the Family Law Court' of this chapter;
- (ii) if no Family Law Court order exists, advise the parties to seek legal advice with a view to obtaining a Family Law Court order;
- (iii) conduct inquiries to establish whether the child is at risk of harm, including relevant checks on all parties establishing:
 - (a) their personal particulars including name, date of birth and their usual place of residence;
 - (b) their mental state and whether there is a history of mental illness;
 - (c) any previous dealings with police (QPRIME), and where possible, other agencies including other jurisdictions; and
 - (d) if there is a history of domestic violence or child welfare issues.
- (iv) ensure that the subject child is safe and not at risk of immediate harm. If at risk of immediate harm, officers are to take action in accordance with s. 7.4.1 of this Manual;
- (v) if allegations of child harm are made where a child is subject to a Family Law Court order, officers are to comply with s. 7.3.8: 'Allegations of child harm where child is subject of Family Law proceedings' of this Manual;
- (vi) seek advice from their local Child Protection and Investigation Unit office should officers have any concerns;
- (vii) take any other enforcement action as required by legislation (e.g. *Domestic and Family Violence Protection Act* and *Mental Health Act*);
- (viii) where a child is present during a custody dispute between parents, consider furnishing an 'Emotional Abuse of Child' Policelink occurrence for assessment by Child Protection and Investigation Unit; and

(ix) advise the parent in general terms of police inquiries made regarding the welfare of the child. For example the subject child was sighted by officers to be in good health.

11.14 Commonwealth support and the Australian Defence Force assistance and aid

11.14.1 Introduction

Standing arrangements are in place for provision of support, assistance and aid by the Commonwealth to the States and Territories for acts of terrorism, other serious acts of violence that may be beyond the capability of the State or Territory police, civil emergencies/disasters, significant Commonwealth/State anniversaries, significant cultural events, and special medical evacuations.

11.14.2 Commonwealth support (includes Defence Assistance to the Civil Community)

Emergency Management Australia (EMA) is responsible for the coordination of all Commonwealth support during periods of disaster.

PROCEDURE

The Executive Officer, Queensland Disaster Management Committee, is the nominated Queensland official to request Commonwealth support from EMA in a disaster.

11.14.3 Defence Assistance to the Civil Community

Defence Assistance to the Civil Community is the provision of Australian Defence Force personnel, equipment, facilities or capabilities to perform tasks that are primarily the responsibility of civil authorities or organisations, and for which the civilian community lacks the necessary equipment or resources. It includes assistance in counter disaster training. Such assistance is not automatic, except where a local Australian Defence Force commander may authorise assistance in civil emergencies where immediate action is necessary to save the lives or property of people in imminent danger and where local civilian resources are inadequate or unavailable.

The six categories of Defence Assistance to the Civil Community

The six categories of Defence Assistance to the Civil Community (DACC) are summarised in the following paragraphs:

(i) Emergency situations:

- (a) **Category 1 DACC** is emergency assistance for a specific task(s) provided by a Local Commander/Administrator, from within his or her own resources, in localised emergency situations when immediate action is necessary to save human life, alleviate suffering, prevent extensive loss of animal life or prevent widespread loss/damage to property;
- (b) **Category 2 DACC** is emergency assistance, beyond that provided under Category 1, in a more extensive or continuing disaster where action is necessary to save human life or alleviate suffering, prevent extensive loss of animal life or prevent loss/damage to property, and when State/Territory resources are inadequate; and
- (c) **Category 3 DACC** is assistance associated with a civil emergency or disaster recovery, which is not directly related to the saving of life or property; and

(ii) Non-emergency situations:

- (a) **Category 4 DACC** is non-emergency assistance provided to other government departments or authorities, to the States or Territories, local government or other authorities or organisations, commercial enterprises, non-profit organisations, or individuals or bodies in the general community;
- (b) **Category 5 DACC** is non-emergency assistance of a minor nature, excluding flying tasks, provided to local organisations and which is within the capacity of a Local Commander/Administrator's resources and authority; and
- (c) **Category 6 DACC** is assistance to civil authorities in the performance of non-emergency law enforcement related tasks where there is no likelihood that Australian Defence Force personnel will be required to use force.

Call out procedure

POLICY

A request for Defence Assistance to the Civil Community made under the Queensland Disaster Management Arrangements is to be made by the relevant District Disaster Coordinator through the State Disaster Coordination Centre (also see ss. 17.2: 'Disaster Management', 17.2.1: 'District Disaster Management Group members' responsibilities', and 17.2.2: 'Declaration of a disaster situation' of this Manual).

A request for Defence Assistance to the Civil Community at other times should be made in accordance with local arrangements or district or station instructions to the commanding officer or nominated delegate of the relevant Australian Defence Force establishment.

Cost recovery for DACC

Category 1 Defence Assistance to the Civil Community is cost free. For Category 2 Defence Assistance to the Civil Community, costs can be sought. For Categories 3 through to 6 Defence Assistance to the Civil Community, full cost recovery may be made against the relevant region. All decisions on cost recovery are made by the Australian Defence Force.

Requesting Defence Assistance to the Civil Community (primary considerations)

POLICY

Before any request for Defence Assistance to the Civil Community is submitted, the following criteria should be met:

- (i) it should be demonstrated that no suitable alternative resource is available;
- (ii) there is an inability to react with sufficient speed;
- (iii) appropriate resources are not available; or
- (iv) there is a need for immediate action necessary to:
 - (a) save human life;
 - (b) alleviate suffering;
 - (c) prevent extensive loss of animal life; or
 - (d) prevent wide spread loss/damage to property.

As a general principle, the provision of Defence Assistance to the Civil Community should be regarded as the exception rather than the rule.

Requests for supplies and/or Australian Defence Force equipment under Defence Assistance to the Civil Community (additional considerations)

PROCEDURE

The following factors should be considered before requesting supplies and/or equipment under Defence Assistance to the Civil Community:

- (i) description of item(s), including any known handling restrictions (e.g. weight and dimensions if aircraft movement is involved);
- (ii) quantities required (by location);
- (iii) whether the request includes transport or whether transport arrangements have been made;
- (iv) whether the request is a loan (i.e. are items recoverable);
- (v) person or authority who will take responsibility for the supplies or equipment when delivered on site;
- (vi) address and telephone number of consignee who will accept delivery if not on site;
- (vii) urgency of request, including date and time by which delivery should be completed; and
- (viii) reasons of inability to provide or arrange for supplies/equipment from local or commercial sources.

Requests for Australian Defence Force air support under Defence Assistance to the Civil Community (additional considerations)

POLICY

The following factors should be considered before requesting aircraft support under Defence Assistance to the Civil Community:

- (i) description of types of tasks likely to be undertaken (e.g. pre-positioning of aircraft in an area for prolonged period, casualty evacuation, distributing relief supplies or reconnaissance);
- (ii) an indication of the likely commitment including anticipated radius of operation and number of tasks per day;
- (iii) person or authority who will be coordinating requests at the disaster site, including call sign and frequency;
- (iv) location of the base that aircraft will be working from and, if possible, the availability of fuel by type at the base;
- (v) current conditions of airfields and loading zones in the area;
- (vi) expected duration of task; and
- (vii) reasons alternate methods not used (e.g. commercial or other aircraft).

11.14.4 Defence Force Aid to the Civil Authority

National agreements for State/Commonwealth involvement are coordinated through the National Counter-Terrorism Committee (NCTC). The Australian Defence Force (ADF) can provide assistance to civil authorities to perform their law enforcement tasks where such tasks are beyond the capability of that authority and where ADF resources may be required to use force against persons. Such assistance may be in response to terrorism or other serious acts of violence. Assistance to the Civil Authority is facilitated through the process of 'Defence Force Aid to the Civil Authority' (DFACA).

Templates for the requests of ADF through DFACA are found in the QPS Terrorism Response Plan or the National Counter-Terrorism Handbook.

ORDER

Police Commanders are to adhere to the guidelines set down in the QPS Terrorism Response Plan and the National Counter-Terrorism Handbook available upon request from the Intelligence, Counter-Terrorism and Major Events Command, and/or after hours to the Duty Officer, Police Communications Centre, Brisbane.

11.15 Migration Act (Cwlth)

The *Migration Act* (Cwlth) relates to the entry into, and presence in Australia of aliens, and the departure or deportation from Australia of aliens and certain other persons.

11.15.1 Department of Immigration and Border Protection and Australian Border Force

The Department of Immigration and Border Protection sets the policy and legal framework for the management of Australia's borders as well as contributing to other policy outcomes (e.g. productivity and trade). The department also delivers:

- (i) information strategy and intelligence services;
- (ii) offshore maritime security;
- (iii) migration and humanitarian programmes;
- (iv) visa and citizenship application assessments; and
- (v) corporate services for the department and the Australian Border Force.

The Australian Border Force is the operational enforcement entity within the Department of Immigration and Border Protection, focussing on border protection and border enforcement activities, including investigations, compliance and detention.

Law Enforcement Liaison Unit

Department of Immigration and Border Protection maintains a Law Enforcement Liaison Unit (LELU). In Queensland, LELU functions are carried out by the Department of Immigration and Border Protection, Queensland Information Management Unit/Police Liaison Officer (Qld IMU/Police Liaison Officer) on behalf of LELU. The Qld IMU/Police Liaison Officer can supply information such as:

- (i) passenger movement details in and out of Australia;
- (ii) passenger cards (disembark cards);
- (iii) other immigration information requiring certified court extracts; and
- (iv) assistance in establishing the identity and location of a person of interest.

All requests to Department of Immigration and Border Protection QLD IMU/Police Liaison Officer are to:

- (i) be in writing through their email address unless urgent;
- (ii) include a brief description of the information sought;
- (iii) include full details of the person/s;
- (iv) include the relevant Act and section of the offence;
- (v) include the relevant QPRIME occurrence number; and
- (vi) be authorised by a commissioned officer.

The QP 0908: 'Request for information to Department of Immigration and Border Protection', available on QPS Forms Select is the suitable form. The Qld IMU/Police Liaison Officer will reply where possible within 7 days but usually much sooner. The Qld IMU/Police Liaison Officer operates between normal business hours. See Service Manuals Contact Directory.

Border Operations Centre

Department of Immigration and Border Protection has also created the Border Operations Centre. This Centre is responsible for the management of an electronic database, the Central Movement Alert List (CMAL). CMAL stores details about people of immigration concern to Australia. It is used for screening entry to Australia and is the key tool in detecting applications for entry from persons Australia may wish to exclude.

It is important that the CMAL contains as much information as possible regarding possible threats to the safety of Australian citizens and national security. Such threats may be posed by an individual or group. It is important that law enforcement agencies disseminate any relevant information on foreign nationals to Department of Immigration and Border Protection for inclusion on CMAL. Any enquiries however in relation to the CMAL are to be made to the Qld IMU/Police Liaison Officer. See also s. 11.15.2: 'Assistance to officers of the Department of Immigration and Border Protection and Australian Border Force' subsection: 'Providing intelligence to the Department of Immigration and Border Protection' of this chapter.

The Compliance Operations and Removals Section

The Compliance Operations and Removals Section, see Service Manuals Contact Directory located in Brisbane provides operational assistance to police on joint operations in areas of mutual interest. They also provide advice and assistance regarding any necessary action that may be taken in regards to unlawful non-citizens or deportees, once their status as unlawful non-citizens or deportees is determined. See also s. 11.15.3: 'Deportation and removal' of this chapter.

Immigration Status Service

Department of Immigration and Border Protection has also created the Immigration Status Service (ISS). The ISS facilitates the checking of the immigration status of persons of interest to determine if they are lawfully or unlawfully in Australia. The ISS helpline is available to assist police anytime (available 24 hours) (see Service Manuals Contact Directory). See also s. 11.15.4: 'Unlawful non-citizens' of this chapter.

11.15.2 Assistance to officers of the Department of Immigration and Border Protection and Australian Border Force

POLICY

Officers who are called upon to assist officers from the Australian Border Force should do so in order to control breaches of the peace (see also s. 13.4.9: 'Breaches of the peace' of this Manual and s. 50: 'Dealing with breach of the peace' of the *Police Powers and Responsibilities Act*).

PROCEDURE

Assistance to Australian Border Force officers may include:

- (i) arrest of persons detained by Australian Border Force officers;
- (ii) escort of persons detained to the nearest detention centre; and
- (iii) location of persons who have escaped immigration detention.

Assistance does not normally extend to the escort of detainees from prisons or watchhouses to airports or to interstate destinations, as this responsibility rests with the Australian Federal Police in conjunction with the Australian Border Force.

Where Australian Federal Police or immigration authorities are unable to attend, the escort of such prisoners can be undertaken within the State provided that no expense concerning the escort is incurred by the Service.

Providing intelligence to the Department of Immigration and Border Protection

POLICY

Officers who are requested to provide intelligence held by the Service to the Department of Immigration and Border Protection are to forward a report outlining the intelligence sought through their regional crime intelligence coordinator to the Detective Superintendent, Intelligence, Counter Terrorism and Major Events Command.

The Detective Superintendent, Intelligence, Counter Terrorism and Major Events Command, should consider the request and advise Department of Immigration and Border Protection what intelligence if any will be released.

See also s. 5.6.15: 'Requests for information from other law enforcement agencies' of the Management Support Manual.

11.15.3 Deportation and removal

POLICY

Responsibility for the deportation and removal of non-citizens resides with Federal authorities. Officers will provide assistance to the Federal authorities where necessary regarding any investigations involving non-citizens as suspects.

Sections 201: 'Deportation of non-citizens in Australia for less than 10 years who are convicted of crimes' and 203: 'Deportation of non-citizens who are convicted of certain serious offences' of the *Migration Act (Cwlth)* set out the conditions necessary for non-citizens to be deported.

Section 501: 'Refusal or cancellation of visa on character grounds', of the *Migration Act (Cwlth)* allows for the refusal or cancellation of visas for non-citizens who it is believed do not pass the character test. Subsection 501(6) of the *Migration Act (Cwlth)*, outlines when a person does not pass the character test. This can include when a person:

- (i) has a substantial criminal record where the person has been:
 - (a) sentenced to death;
 - (b) sentenced to imprisonment for life;
 - (c) sentenced to a term of imprisonment of 12 months or more;
 - (d) sentenced to 2 or more terms of imprisonment, where the total of those terms is 12 months or more. To establish the total term of imprisonment for concurrent sentences, see s. 501(7A) of the *Migration Act (Cwlth)*;
 - (e) acquitted of an offence on the grounds of unsoundness of mind or insanity, and as a result the person has been detained in a facility or institution; or
 - (f) found by a court to be unfit to plead to an offence but nonetheless found on the evidence available to have committed the offence, and as a result has been detained in a facility or institution;
- (ii) is reasonably suspected by the Minister to have been or is:
 - (a) a member of a group or organisation, or has had an association with a group, organisation or person which is or has been involved in criminal conduct; or
 - (b) involved in conduct constituting:
 - people smuggling;
 - trafficking in persons; or
 - the crime of genocide, a crime against humanity, a war crime, a crime involving torture or slavery or a crime of serious international concern;
- (iii) is not of good character (relating to their past or present criminal or general conduct);
- (iv) if allowed to enter or remain in Australia there is a risk the person would:
 - (a) engage in criminal conduct;
 - (b) harass, molest, intimidate or stalk another person;
 - (c) vilify a segment of the community;
 - (d) incite discord in the community; or
 - (e) represent a danger to the community, whether by way of being liable to become involved in activities that are disruptive to, or in violence threatening harm to, that community, or in any other way;
- (v) has been found guilty of a sexual offence involving a child in Australia or elsewhere, even if discharged without a conviction;
- (vi) has been charged in Australia or elsewhere for the crime of genocide; a crime against humanity; a war crime; a crime involving torture or slavery or a crime of serious international concern;
- (vii) has been assessed by the Australian Security Intelligence Organisation to be a security risk; or
- (viii) is the subject of a current Interpol notice which reasonably indicates they present a risk to the Australian community, or a segment of the Australian community.

A non-citizen who does not pass the character test may have their visa cancelled and be removed from Australia.

PROCEDURE

Officers investigating matters involving non-citizens who may be liable to deportation or removal from Australia in accordance with the legislation above, are to furnish a report through their chain of command to the State Manager, Department of Immigration and Border Protection (see Service Manuals Contact Directory), advising of the circumstances and that deportation or removal may be considered for that non-citizen.

Officers who suspect a person is an unlawful non-citizen or deportee should contact Department of Immigration and Border Protection to establish that person's status (see s. 11.15.4: 'Unlawful non-citizens', of this chapter).

Officers who become aware of the location of unlawful non-citizens or deportees should seek advice regarding any necessary action from the Department of Immigration and Border Protection. Contact the Compliance Operations and

Removals section of Department of Immigration and Border Protection (see Service Manuals Contact Directory and s. 11.15.1: 'Department of Immigration and Border Protection and Australian Border Force' of this Manual).

POLICY

Where the Department of Immigration and Citizenship request information in accordance with s.501L: 'Disclosure of information to the Minister' of the *Migration Act*, the information is to be released in accordance with D 61.2 of the Handbook of Delegations and Authorities.

11.15.4 Unlawful non-citizens

Unlawful non-citizens are people who are not citizens of Australia and do not hold current visas permitting them to be in Australia. There is an exception made for non-citizens who are traditional visitors within the Torres Strait Protected Zone.

Police officers of the Queensland Police Service are 'officers' for the purpose of the *Migration Act* (Cwlth) (s. 5: 'Interpretation') and pursuant to Delegation D 61.1 of the Handbook of Delegations and Authorities.

PROCEDURE

Officers who locate persons that they know or reasonably suspect are unlawful non-citizens should require them to produce evidence that they are lawful non-citizens (s. 188: 'Lawful non-citizen to give evidence of being so' of the *Migration Act* (Cwlth)). If the persons are unable to produce such evidence officers should:

(i) obtain:

- (a) their full name, date and place of birth and nationality;
- (b) any other names used by the person;
- (c) any current and previous addresses;
- (d) date and port of arrival;
- (e) the type of visa held and whether it is current;
- (f) details of any other visa applications made; and
- (g) any other documentation which proves identity and right to be in Australia;

(ii) contact the 'Immigration Status Service (ISS)' of the Department of Immigration and Border Protection by telephone, e-mail or facsimile to confirm the immigration status of the persons, see Service Manuals Contact Directory. (If the request is by telephone, a follow-up written request on official letterhead or email will also be required);

(iii) if the persons' unlawful non-citizen status is confirmed then detain the person at a watchhouse (s. 189: 'Detention of unlawful non-citizens' of the *Migration Act* (Cwlth)); and

(iv) arrange with Compliance Operations and Removals of the Australian Border Force, see Service Manuals Contact Directory for the persons to be taken into their custody or be issued with bridging visas.

ORDER

Officers are to detain persons whom they know or reasonably suspect are unlawful non-citizens. Detention under the *Migration Act* (Cwlth) can include requiring persons to remain in the company of an officer while further inquiries are made. Officers are to document the reasons for detaining persons they suspect are unlawful non-citizens in the relevant QPRIME Custody Report or Custody Report (Full) in the Detention Log, under General Detention.

A person so detained is to be detained until lawfully released or until that person is taken into custody by the Australian Border Force or the Department of Immigration and Border Protection.

Officers are to release the person from immigration detention if:

- (i) the person provides evidence of Australian citizenship;
- (ii) the officer comes to know or later forms a belief on reasonable grounds that the person is an Australian citizen;
- (iii) the person provides evidence that they are a lawful non-citizen; or
- (iv) the person is granted a visa.

Officers who detain unlawful non-citizens are to advise them that they will be detained until they are removed from Australia or until they can be lawfully released and that they may apply to the Department of Immigration and Border Protection for a visa within two working days of the beginning of their detention (ss. 194: 'Detainee to be told of consequences of detention' and 195: 'Detainee may apply for visa' of the *Migration Act* (Cwlth)). Officers detaining any person under the provisions of s. 189: 'Detention of unlawful non-citizens' of the *Migration Act* (Cwlth) are to complete a Form 1275 'Police record of immigration detention' (see QPS Forms Select) and forward this form to the ISS by e-mail or facsimile. See Service Manuals Contact Directory.

11.15.5 Criminal justice certificates

Under the *Migration Act* (Cwlth) persons who are not Australian citizens are termed non-citizens. Officers who believe that it is necessary for the purposes of the administration of criminal justice with respect to an offence against State law for a non-citizen to enter Australia or for a non-citizen unlawfully in Australia to remain may apply to the Commissioner for the issue of a State criminal justice entry certificate or a State criminal justice stay certificate.

The issue of these certificates is a necessary preliminary to the person being issued with a criminal justice visa by the Minister for Immigration and Border Protection which will allow that person to enter or remain in Australia. The Service is subject to this section, generally responsible for meeting the costs associated with the travel and subsistence of persons entering or remaining in Australia on criminal justice visas issued subsequent to State criminal justice entry certificates or State criminal justice stay certificates issued at the request of officers.

Criminal justice entry visa

Section 160: 'Conditions of criminal justice visa' of the *Migration Act* (Cwlth), states that it is a condition of a criminal justice entry visa for a non-citizen, that the non-citizen must not do any work in Australia. This means all costs associated with travel (to and from Australia), accommodation, health and other living expenses for non-citizens on a criminal justice entry visa are the responsibility of the Service. It is usual practice that these costs are equivalent to a Centrelink unemployment benefit, however the final determination of costs may be by the courts.

Criminal justice stay visa

The *Migration Act* (Cwlth) is silent on whether non-citizens on a criminal justice stay visa may work. The implication of this fact is that these non-citizens may work. There is no ability however, to force these persons to work while they are in Australia. As a result, non-citizens on criminal justice stay visas may be entitled to costs associated with accommodation, health and other living expenses whilst the visa is valid. Usually these costs will be equivalent to a Centrelink unemployment benefit, although the final determination of costs may be by the courts. However it should be noted, that the Service is not responsible for the costs of travel to or from Australia where the persons travel to Australia has not been requested by officers (e.g. the person becomes a witness to a crime while holidaying in Australia and is required to stay in Australia for longer than the person had originally planned) or for any costs after the stay visa expires or is cancelled.

POLICY

A non-citizen who may require a criminal justice certificate is generally either a suspect or a witness. Officers may seek State criminal justice entry certificates when the non-citizen is prepared to voluntarily come to Australia. Officers are to seek State criminal justice entry certificates when the non-citizen requires extradition to Australia from another country under the *Extradition Act* (Cwlth). A criminal justice visa does not prevent a non-citizen from leaving Australia.

A State criminal justice entry certificate or a State criminal justice stay certificate is generally not to be sought where the non-citizen is otherwise entitled to apply for a visa to enter or remain in Australia. (The exception to this may be when a witness may still possess a valid visa or is entitled to apply for and will be granted a visa to remain in Australia, but to remain would require financial assistance.) In practice, State criminal justice certificates will be required for persons who have criminal records or are otherwise generally prohibited from obtaining a visa to enter Australia.

Entry certificate

Officers who believe that it is necessary for a non-citizen to be allowed to enter Australia for the purposes of the administration of criminal justice in relation to an offence against the law of the State are to:

- (i) complete the following correspondence available on the Deputy Commissioner (Regional Operations) QPS Corporate Intranet (Bulletin Board) web page (found under heading 'Correspondence Proformas'):
 - (a) Commissioners Cover letter;
 - (b) Maintenance (Cost) Undertaking;
 - (c) Questionnaire; and
 - (d) Certificate;
- (ii) complete a report to the Deputy Commissioner (Regional Operations). This report is to contain:
 - (a) the reason why the non-citizen's temporary presence in Australia is required;
 - (b) the details of a valid travel document (passport etc.) which will be used by the non-citizen for travel to Australia;
 - (c) an outline of the proposed travel arrangements including the date on which the non-citizen will leave Australia;
 - (d) the non-citizen's proposed address whilst in Australia;
 - (e) an outline of the costs involved in the transport of the non-citizen to and from Australia, evidence that the necessary expenditure will be authorised and advice as to how the costs will be met;

(f) an outline of the arrangements made for the subsistence of the non-citizen while in Australia and evidence that the necessary expenditure will be authorised; and

(g) details of what arrangements have been made to ensure that a non-citizen with a history of violence will not be a danger to the general public; and

(iii) submit this correspondence and report in hardcopy and also by electronic copy through the chain of command to the relevant assistant commissioner or executive director who after approval is to forward both copies onto the Deputy Commissioner (Regional Operations), requesting the issue of a State criminal justice entry certificate; (s. 146: 'State criminal justice entry certificate' of the *Migration Act* (Cwlth)).

Stay certificate

Officers who believe that it is necessary for an unlawful non-citizen, who is about to be or is likely to be removed or deported from Australia, to be allowed to remain for the purposes of the administration of criminal justice in relation to an offence against the law of the State are to:

(i) complete the following correspondence available on the Deputy Commissioner (Regional Operations) QPS Corporate Intranet (Bulletin Board) web page (found under heading 'Correspondence Proformas'):

- (a) Commissioners Cover letter;
- (b) Maintenance (Cost) Undertaking;
- (c) Questionnaire; and
- (d) Certificate;

(ii) complete a report to the Deputy Commissioner (Regional Operations). This report is to contain:

- (a) information that the person for whom the certificate is sought is an unlawful non-citizen who is about to be or is likely to be removed or deported from Australia;
- (b) why the unlawful non-citizen's continued presence is required for the administration of justice concerning an offence against State law;
- (c) details of what arrangements will be made for the subsistence of the unlawful non-citizen, if the unlawful non-citizen is not to be kept in detention, and evidence that any necessary expenditure incurred will be authorised;
- (d) the address of the unlawful non-citizen if the person is not being kept in custody; and
- (e) what arrangements have been made to ensure that an unlawful non-citizen with a history of violence will not be a danger to the general public; and

(iii) submit this correspondence and report in hardcopy and by electronic copy through the chain of command to the relevant assistant commissioner or executive director who after approval is to forward both copies onto the Deputy Commissioner (Regional Operations), requesting the issue of a State criminal justice stay certificate (s. 148: 'State criminal justice stay certificate', of the *Migration Act* (Cwlth)).

Cancellation of certificates

When a non-citizen is no longer required for the purposes of the administration of criminal justice with respect to an offence against State law the officer who initially requested the criminal justice entry certificate or a criminal justice stay certificate is to:

(i) complete the following correspondence available on the Deputy Commissioner (Regional Operations) QPS Corporate Intranet (Bulletin Board) web page (found under heading 'Correspondence Proformas'):

- (a) Cancellation Letter;
- (b) Cancellation certificate;

(ii) complete a report that contains:

- (a) the reason why the non-citizen is no longer required;
- (b) the date after which the non-citizen will no longer be required;
- (c) the expected address of the non-citizen at the time that the non-citizen is no longer required; and
- (d) details of what arrangements, in cases of State criminal justice entry certificates, have been made for the non-citizen's departure from Australia; and

(iii) submit this correspondence by the most expedient means through the chain of command to the Deputy Commissioner (Regional Operations).

The Service is not responsible for the removal of the unlawful non-citizen from Australia upon the cancellation of a criminal justice stay certificate. However, to allow the Department of Immigration and Border Protection sufficient time to arrange the non-citizen's detention and removal from Australia, it is necessary that at the earliest opportunity advice

be provided to the office of the Deputy Commissioner (Regional Operations) about a non-citizen on a criminal justice stay certificate no longer being required.

ORDER

Officers who are investigating a matter that involves a non-citizen on a criminal justice stay certificate are to ensure that written advice as detailed in this section is provided at the earliest possible opportunity to the office of the Deputy Commissioner (Regional Operations) when the non-citizen is longer required in relation to the matter.

PROCEDURE

If the Deputy Commissioner (Regional Operations), is satisfied that the information supporting the application for the issue of a State criminal justice entry certificate or a State criminal justice stay certificate is sufficient then the application will be forwarded to the Commissioner for the issue of a certificate.

Where the Commissioner decides that the issue of a State criminal justice entry certificate or State criminal justice stay certificate is appropriate then such certificate may be issued. The Commissioners cover letter, certificate, questionnaire and maintenance (cost) undertakings will then be forwarded by the Office of the Deputy Commissioner (Regional Operations), to:

- (i) the International Crime Corporation Central Authority, Commonwealth Attorney-General (for entry visas only for endorsement by the Attorney-General in accordance with s. 146(2) of the *Migration Act* (Cwlth)), see Service Manuals Contact Directory; and/or
- (ii) the People Trafficking and Criminal Justice Visa Section, (Department of Immigration and Border Protection) (for both entry and stay visas), see Service Manuals Contact Directory.

The Deputy Commissioner (Regional Operations), will forward reports requesting the cancellation of a State criminal justice certificate to the Commissioner for approval prior to referring the signed documents for processing to Department of Immigration and Border Protection.

11.16 Racial Discrimination Act

The *Racial Discrimination Act* is an Act relating to the elimination of racial and other discrimination.

Policy and procedures regarding discrimination are contained within Chapter 6: 'Special Needs' of this Manual and in the Human Resources Policies.

11.17 Social Security Act

The *Social Security Act* is an Act which provides for the payment of certain pensions, benefits and allowances, and for related purposes.

PROCEDURE

Officers who become aware that an offence has been committed against the *Social Security Act* or who suspect that an offence has been committed should outline the full particulars of the offence or grounds for suspicion in a report to the officer in charge of their region or command who should advise Centrelink.

Officers who require information from Centrelink should refer to s. 7.2.3: 'Department of Human Services (Centrelink, Medicare and Child Support)' of the Management Support Manual.

11.18 Airports legislation

See s. 14.11: 'Carriage of firearms or ammunition on aircraft and at airports' of this Manual.

11.18.1 Air Navigation Act

The *Air Navigation Act* is an Act relating to air navigation.

11.18.2 Civil Aviation Act

Section 24: 'Interference with crew or aircraft' of the *Civil Aviation Act* includes an offence for interfering with a crew member of an aircraft in the course of the performance of his or her duties as such a crew member or for doing anything which threatens the safety of an aircraft or of any persons on board the aircraft.

11.18.3 Civil Aviation Regulations

The Civil Aviation Regulations, contains provisions including an offence for disorderly and offensive behaviour in an aircraft (s. 256AA refers).

11.18.4 Crimes (Aviation) Act

The *Crimes (Aviation) Act* is an Act relating to crimes and certain other acts committed on or in respect of certain aircraft, aerodromes, airports and air navigation facilities and for related purposes.

11.18.5 Crimes (Hostages) Act

The *Crimes (Hostages) Act* is an Act which gives effect to the International Convention against the taking of hostages and for other related purposes.

11.19 Other Acts

PROCEDURE

Generally, officers are not required to take any action in relation to these Acts.

Matters that come to the attention of members of the Service relating to these Acts should be referred to the relevant authority.

11.19.1 Customs Act

Where members of the Service assist the Australian Border Force enforcing provisions of the *Customs Act (Cwlth)*, it should be noted that State police officers are authorised persons under s. 183UA: 'Definitions' of the *Customs Act (Cwlth)*. Part XII, Division 1: 'Powers of Officers' of the *Customs Act (Cwlth)* contains the powers, duties and responsibilities of an authorised person.

POLICY

Before exercising the powers, duties and responsibilities of an authorised person under the *Customs Act (Cwlth)*, officers are to ensure that they have been granted approval in compliance with s. 14: 'Declaration of police officers as public officials' of the *Police Powers and Responsibilities Act*.

See also s. 11.5.1: 'Department of Immigration and Border Protection and Australian Border Force' of this chapter.

11.19.2 Navigation Act

The *Navigation Act* is an Act relating to navigation and shipping.

11.19.3 Defence Force Discipline Act

The *Defence Force Discipline Act* is an Act relating to the discipline of the Defence Force and for related purposes.

11.20 Other Commonwealth matters and agencies

11.20.1 Australian Protective Service (cultural property)

The Australian Protective Service (APS), a division of the Commonwealth Department of Administrative Services, protects certain property which is owned by the Commonwealth, as well as property for which the Commonwealth accepts responsibility while it is in Australia.

For the purposes of this section, the term 'cultural property' includes valuable works of art, antiquities, property of artistic interest, rare manuscripts and archives. Displays of Aboriginal artefacts, properly identified and valued as such, could be cultural property.

Responsibilities of the APS include the escort and protection of Commonwealth indemnified exhibitions of cultural property, assessment of security arrangements at cultural institutions accepting cultural property for display and the exchange of information with Interpol regarding the theft or vandalism of any cultural property.

POLICY

Members investigating offences in relation to cultural property should contact the Australian Protective Service and supply information as to the:

- (i) complainant person or organisation;
- (ii) location of the offence;

- (iii) description of property;
- (iv) value of property and whether or not indemnified by the Commonwealth; and
- (v) if property has been stolen, the likelihood of attempts being made to dispose of the property interstate or overseas.

11.20.2 Interpol

Section 2.17.8: 'International inquiries through Interpol' of this Manual contains Service policy and procedures relating to requests for Interpol assistance.

See also s. 8.4.7: 'Advising relatives', s. 10.9.3: 'Action prior to approval to seek extradition' and s. 12.4.1: 'Responsibility of officer who receives a report' of this Manual.

11.20.3 War Crimes Tribunal inquiries

In Australia, the primary function of investigating war crimes activities rests with the Commonwealth and, in particular, the Australian Federal Police (AFP) in conjunction with the Department of Immigration and Border Protection and the Attorney General's Department. The Department of Immigration and Border Protection has responsibility for liaising with relevant ethnic groups and non-government organisations to facilitate reported sightings of alleged war criminals in Australia.

The various state and territory Police Services have been requested to refer the report of any sightings, which have been made to them, to the AFP in their respective states and territories.

There may be occasions where persons seek to report sightings of alleged war criminals to officers of the Service.

POLICY

Officers should not interview suspected war criminals. In all circumstances the presumption of innocence is to prevail including due regard to privacy. Officers should also be aware of the possibility of malicious allegations.

PROCEDURE

Where persons seek to report sightings of alleged war criminals, officers should refer the complainant to, and separately report details of the complainant/complaint to the AFP (see Service Manuals Contact Directory).

11.20.4 Assistance to Australians overseas

The Department of Foreign Affairs and Trade is responsible for the provision of consular services to Australian citizens overseas.

Consular assistance and protection are typically provided to Australians overseas who:

- (i) are detained by the local authorities for alleged breaches of local law;
- (ii) fall ill or are injured and need help in dealing with the local medical services and/or in keeping family members in Australia informed;
- (iii) encounter an unexpected difficulty, e.g. loss of travel documents, tickets or money, and need guidance or assistance; or
- (iv) have been out of contact with their family for an extended period or family members need to make urgent contact with them due to matters such as the death of a family member.

POLICY

Members who receive enquiries in relation to assistance which may be required by an Australian citizen overseas should advise the enquirer to contact the Consular Operations Centre, Department of Foreign Affairs and Trade, Canberra (see Service Manuals Contact Directory).

See also s. 12.4: 'Missing person occurrence' of this Manual in relation to residents of Australia missing overseas.

11.20.5 International persons wishing to defect from their country of origin

Persons who are not Australian citizens are permitted to be in Australia if they hold an appropriate current visa.

There may be instances where a lawful non-citizen may approach an officer and claim that they wish to defect to Australia from their country of origin, i.e. they wish to seek political asylum.

PROCEDURE

Officers who are approached by a person claiming to be a defector are to endeavour to determine the status of the person.

To assist in establishing whether the person is a genuine political defector or an economic refugee, officers should determine:

- (i) the person's name (surname, former surname or maiden name, first names and any other names known by, including pseudonyms and nicknames);
- (ii) the person's address (current address in Australia and address in their country of origin);
- (iii) the person's date and place of birth;
- (iv) the person's nationality, citizenship or ethnicity;
- (v) any identifying documents in the person's possession;
- (vi) any safety issues;
- (vii) the languages spoken or read by the person; and
- (viii) the person's basis for claiming to be a 'defector'.

Officers should have the person accompany them to a place of safety (this may not be a police station if there are safety concerns).

Officers should then contact the Duty Officer, Police Communications Centre, Brisbane, or, in areas not covered by Police Communications Centre, Brisbane, the officer in charge of the relevant police communications centre. In places where no police communications centre exists, officers should contact the officer in charge of their station.

The Duty Officer, PCC, or other officer in charge, as the case may be, should contact the Officer in Charge, Security Intelligence Unit, Intelligence, Counter Terrorism and Major Events Command, and provide that officer with all available information relating to the possible defector.

The Officer in Charge, Security Intelligence Unit, Intelligence, Counter Terrorism and Major Events Command, should advise the first response officer what action is then required.

11.20.6 Commonwealth Department of Education and Training and Department of Employment

The Commonwealth departments of:

- (a) Education and Training; and
- (b) Employment,

are responsible for administering relevant Commonwealth funded programs.

These departments' national offices and a joint investigations branch is located in Canberra. The purpose of the investigations branch is to investigate and initiate prosecutions where fraud is detected and to undertake fraud prevention against departmental programs.

POLICY

A member of the Service who receives a complaint or report concerning a fraud related offence relevant to funding from the Commonwealth departments of Education and Training and/or Employment, should:

- (i) comply with the provisions of s. 1.11: 'QPRIME – Policelink entered occurrences' of this Manual; and
- (ii) ensure the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances of the complaint/report;
 - (b) details of person(s) making the complaint/report; and
 - (c) details and contact telephone number of the member taking the complaint/report.

An officer in charge of a station or establishment who receives a QPRIME occurrence for attention, concerning a fraud related offence committed against the Commonwealth departments of Education and Training and/or Employment, in accordance with s. 1.11.4: 'Assigning Policelink entered occurrences' of this Manual, should:

- (i) check the details of the QPRIME occurrence with the member who took the complaint or report of the fraud related offence and ensure all available information is included in the report;
- (ii) ensure the QPRIME occurrence is cross referenced with the initial report (hard copy);
- (iii) forward to the Director, Investigations Branch, Shared Services Centre (see Service Manuals Contact Directory):
 - (a) an email copy of the QPRIME occurrence; and
 - (b) any evidentiary material; and
- (iv) ensure that the complainant is contacted and advised of any action to resolve the complaint.

Members who detect a matter that may impact on the Commonwealth departments of Education and Training and/or Employment operations should advise the Director, Investigations Branch, Shared Services Centre (see Service Manuals Contact Directory).

Officers who wish to access information held by the Commonwealth departments of Education and Training and/or Employment should refer to s. 7.2.5: 'Requesting information from either the Commonwealth Department of Education and Training or Department of Employment' of the Management Support Manual.

11.20.7 Medicare Australia

Medicare Australia is responsible for investigations and review of Commonwealth funded programs relating to health including: the Medical Benefits System (Medicare) and the Pharmaceutical Benefits Scheme. Medicare Australia has an office in Canberra, which is responsible for the co-ordination of all state and territory offices. Medicare Australia has seven State and Territory offices at which investigation and review units are located. These units are responsible for undertaking investigations and prosecutions into fraud related offences committed against those Commonwealth funded programs.

POLICY

A member who receives a complaint or report concerning a fraud related offence committed against Medicare or the Pharmaceutical Benefits Scheme, should:

- (i) comply with the provisions of s. 1.11.2: 'QPRIME – Policelink entered occurrences' of this Manual; and
- (ii) ensure the following information is recorded in the QPRIME occurrence:
 - (a) full circumstances of the complaint/report;
 - (b) details of persons making the complaint/report; and
 - (c) details and contact telephone number of the member taking the complaint/report.

An officer in charge of a station or establishment who receives a QPRIME occurrence for attention, concerning a fraud related offence committed against Medicare or the Pharmaceutical Benefits Scheme in accordance with s. 1.11.4: 'Assigning Policelink entered occurrences' of this Manual should forward to the Manager, Investigation and Program Review Unit, Brisbane (see Service Manuals Contact Directory) a facsimile copy of the QPRIME occurrence, but only where the QPRIME occurrence nominates a suspect.

An officer who receives a QPRIME occurrence for investigation concerning a fraud related offence committed against Medicare or the Pharmaceutical Benefits Scheme may:

- (i) contact the Manager, Investigation and Program Review Unit, Brisbane (see Service Manuals Contact Directory) for any assistance or advice required to fully investigate the matter;
- (ii) if the matter is complex, the investigation protracted or involves substantial access to Medicare Australia records contact the Manager, Investigation and Program Review Unit, Brisbane (see Service Manuals Contact Directory) to discuss forwarding the matter to the unit for investigation; and
- (iii) ensure that the complainant is contacted and advised of any action to resolve the complaint, especially if the matter is transferred to Medicare Australia for investigation.

Members who detect a matter that may impact on Medicare Australia operations should advise the Manager, Investigation and Program Review Unit, Brisbane, (see Service Manuals Contact Directory) who will ensure any matters relating to other States or Territories will be passed onto the relevant area.

Officers who wish to access information held by Medicare Australia should refer to s. 7.2.3: 'Department Human Services (Centrelink, Medicare and Child Support)' of the Management Support Manual.

11.21 Public Order (Protection of Persons and Property) Act

The *Public Order (Protection of Persons and Property) Act* is an Act relating to the preservation of public order and security in certain territories and in respect of Commonwealth premises, premises and personnel of diplomatic and special missions, consular posts, and international organisations, federal courts and tribunals.

Policy regarding Public Order/Safety within the terms of State legislation is in Chapter 13: 'Miscellaneous' of this Manual.

POLICY

Officers are to familiarise themselves with the following provisions of the *Public Order (Protection of Persons and Property) Act*:

Part IIA – Provisions relating to premises of certain Federal Courts and Tribunals

Interpretation

13A. In this Part, unless the contrary intention appears:

authorised officer, in relation to a court, means:

- (a) a constable; or

- (b) a person authorised to exercise powers under this Part in relation to the court by:
- (i) the Attorney-General; or
 - (ii) if the court has power to administer its own affairs, a person exercising that power on behalf of the court.

court means a federal court and includes a tribunal, authority or person having power under a law of the Commonwealth to require the production of documents or the answering of questions.

court premises, in relation to a court, means any premises occupied in connection with the operations of the court.

explosive substance includes:

- (a) any material for making an explosive substance; and
- (b) any apparatus, machine, implement or material used, or intended to be used, or adapted, for causing, or aiding in causing, an explosion in or with an explosive substance; and
- (c) a part of such an apparatus, machine or implement.

firearm means a weapon designed or adapted to discharge shot, a bullet, or any other missile, as a result of the expansion of gases produced in the weapon by the ignition of strongly combustible materials, or by compressed air or other gases, whether stored in the weapon in pressurised containers or produced in the weapon by mechanical means, and includes a part of such a weapon and ammunition for use in such a weapon.

offensive weapon means any article:

- (a) made or adapted for use for causing injury to, or incapacitating, a person; or
- (b) intended by the person having it with him or her, for such use;

and includes a part of such an article.

Application of Part

13B. This Part applies only to a court (as defined by section 13A) that is prescribed by the regulations for the purposes of this Part.

Power of authorised officer to require information

13C.(1) Subject to any limitations and restrictions provided by the regulations, if an authorised officer in relation to a court believes on reasonable grounds that it is necessary in the interests of security to do so, the officer may require a person who is on the court premises to tell the officer:

- (a) the person's name; and
- (b) the address of the person's place of residence; and
- (c) the person's reason for being on the premises; and
- (d) evidence of the person's identity.

(2) A person of whom such a requirement is made must not:

- (a) refuse or fail to comply with the requirement; or
- (b) give false information, or false evidence of identity, in response to the requirement.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

Penalty: 20 penalty units.

Power of authorised officer to search a person or require a person to deposit personal effects

13D.(1) Subject to any limitations and restrictions provided by the regulations, if an authorised officer in relation to a court believes on reasonable grounds that it is necessary in the interests of security to do so, the officer may:

- (a) require a person who is on the court premises to submit to either or both of the following:
 - (i) a screening search and/or a frisk search of the person;
 - (ii) a search of any of the person's personal effects that are reasonably capable of concealing a firearm, explosive substance or offensive weapon;

for the purposes of finding out whether a firearm, explosive substance or offensive weapon is hidden in the person's clothing or personal effects; and

- (b) require a person who is on the court premises to deposit with the authorised officer any personal effects that are reasonably capable of:
 - (i) concealing a firearm, explosive substance or offensive weapon; or

(ii) being used to cause injury to, or incapacitate, a person.

(2) A person of whom a requirement is made under subsection (1) must not refuse or fail, to comply with the requirement.

(2A) Subsection (2) does not apply if the person has a reasonable excuse.

Penalty: 20 penalty units.

(3) If, in the course of a search under paragraph (1)(a), a firearm, explosive substance or offensive weapon is found, an authorised officer in relation to the court:

(a) may take possession of the firearm, substance or weapon; and

(b) may retain it for any period that he or she thinks necessary for the purposes of this Part.

(4) This section does not authorise anyone conducting a frisk search of a person to remove, or to require the person to remove, any of the person's clothing.

(5) A frisk search of a person under this section is to be conducted by:

(a) an authorised officer of the same sex as the person; or

(b) if an authorised officer of the same sex as the person is not available to conduct the search, any other person who is of the same sex and;

(i) is requested by an authorised officer; and

(ii) agrees;

to conduct the search.

(6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an authorised officer, conducts a search under this section if the person acts in good faith and does not contravene subsection (7).

(7) An authorised officer or other person who conducts a search under this section must not use more force, or subject a person to greater indignity, than is reasonably necessary in order to conduct the search.

Removal from court premises

13E.(1) An authorised officer in relation to a court may direct a person to leave the court premises if the person:

(a) refuses or fails to comply with a requirement made under subsection 13C(1) or 13D(1); or

(b) does not satisfy the authorised officer that the person has a proper reason for being on the court premises.

(2) For the purposes of paragraph (1)(b), without limiting what constitutes a proper reason for being on court premises, a person has such a reason if he or she wishes to attend the hearing of the proceedings in the court.

(3) If a person refuses or fails to comply with a direction given to the person under subsection (1):

(a) the person is guilty of an offence punishable on conviction by a fine of not more than 20 penalty units; and

(b) a constable may refuse the person entry to, or remove the person from, the court premises, as the case requires.

(4) Except as provided in subsection (1), a person is entitled to enter and remain on court premises if there is room for the person on the premises.

Person not to carry firearm, explosive substance or offensive weapon on court premises

13F. A person must not, while on any court premises, carry or otherwise have in his or her possession a firearm, an explosive substance or an offensive weapon.

Penalty: Imprisonment for 12 months.

Section 13F applies with exception to section 5A(2) of the *Public Order (Protection of Persons and Property) Act*, in which section 10.5 of the *Criminal Code Act* applies to an offence against section 13F. Section 10.5 of the *Criminal Code* outlines that a person is not criminally responsible for an offence if the conduct constituting the offence is justified or excused by a law of the Commonwealth or a State or Territory.

Saving

13G.(1) The powers conferred by this Part are in addition to, and do not derogate from, any other powers conferred on or possessed by any court, judge or person in relation to the conduct of proceedings in a court or the regulation of the conduct of people on court premises.

(2) This Part does not affect any other power of a court in relation to contempt of the court or any other similar power.

Arrest

22. A constable may, without warrant, arrest a person for an offence against this Act if the constable has reasonable ground to believe that the person has committed that offence and that:

- (a) proceedings against the person by summons would not be effective; or
- (b) the arrest is necessary in order to prevent persistence by the person in, or repetition by the person of, conduct of the kind constituting the offence, or the commission by the person of other offences against this Act.

11.22 Excise Act

11.22.1 Seizure of illicit tobacco products

All tobacco products manufactured (including cultivated) in, or imported into Australia are subject to payment of Federal Government taxes in the form of excise and/or licensing fees.

This policy is concerned with possession of or trade in locally cultivated tobacco products for which excise or relevant license fees have not been paid ('illicit tobacco products' or 'ITP'). ITP are also sometimes referred to as 'chop-chop'.

Mareeba and the Glass House Mountains are two of the chief tobacco cultivation areas in Australia and road transport of large amounts of ITP from Queensland to the Southern states is believed to occur on a regular basis.

From time to time, Queensland Police Service officers may detect ITP in the normal course of their duties, such as during the interception of motor vehicles. In such cases, the regional investigations office of Excise attached to the Australian Taxation Office (ATO), whose responsibility includes the detection and prosecution of trade in and cultivation of ITP, is able to provide advice, and in appropriate cases, assistance to those officers.

Relevant legislation

The *Excise Act* contains a number of offence provisions, within ss. 117 to 117I, relating to trade in ITP, including unlawful possession, moving, selling, and buying of excisable goods, and tobacco leaf, plant and seed.

Section 116: 'Forfeiture' of the *Excise Act* provides for the automatic forfeiture to the Crown of a number of classes of goods related to the unlicensed manufacture or possession of excisable goods and tobacco seed, plant and leaf, and the transport and packaging of such goods. Of particular relevance to this policy, the following goods are deemed to be forfeited to the Crown under this section of the *Excise Act*:

- (i) all tobacco leaf which has been moved without permission (given pursuant to s. 44: 'Permission to move tobacco leaf' of the *Excise Act*);
- (ii) all tobacco seed, tobacco plant (whether or not in the ground) or tobacco leaf found in the possession, custody or control of a person (other than a licensed producer, licensed dealer or licensed manufacturer) without permission;
- (iii) all tobacco seed, tobacco plant (whether or not in the ground) or tobacco leaf kept or stored at a place that is not specified in a producer licence, dealer licence or manufacturer licence;
- (iv) all vehicles conveying, or having packed therein or thereon, any forfeited goods; and
- (v) any packaging in which forfeited goods are contained.

Section 9: 'Seizure and condemnation of forfeitable goods' of the *Crimes Act* provides that 'any constable' (which includes QPS police officers) may, without warrant, seize any articles which are forfeited or are reasonably believed to be forfeited under any law of the Commonwealth.

Section 107FA(4): 'Seized goods to be secured' of the *Excise Act* provides that if a police officer seizes any forfeited goods under s. 9 of the *Crimes Act*, the police officer must, as soon as practicable, deliver the goods into the custody of an officer. An 'officer' for the purpose of the *Excise Act* means

'...a person employed or engaged under the *Public Service Act* who is:

- (a) exercising powers; or
- (b) performing functions;

under, pursuant to or in relation to a taxation law (as defined by the *Taxation Administration Act*)'

This definition includes investigations officers attached to a regional investigations office of Excise, ATO.

Action following detection of forfeitable tobacco related goods

POLICY

Officers who detect any goods which are forfeited or are reasonably believed to be forfeited pursuant to s. 116 of the *Excise Act* should not automatically seize those goods. In such cases, officers should contact the regional investigations office of Excise, ATO, for:

- (i) assistance in determining:
 - (a) the status of the suspected goods; and
 - (b) whether seizure is warranted in the circumstances; and
- (ii) if seizure of the goods is recommended by the ATO:
 - (a) when and to whom will delivery of the goods be effected (see policy below titled 'Action following seizure of forfeitable tobacco related goods'); and
 - (b) any additional assistance the ATO can provide with respect to the seized goods, such as transport and storage arrangements for large seizures.

Additionally, officers should not commence a proceeding for an offence against the *Excise Act*, but should provide the regional investigations office of Excise, ATO, with details of any person whom they believe may have committed such an offence.

Officers may use discretion in applying the above policy in cases where small amounts of goods which are forfeited or are reasonably believed to be forfeited pursuant to s. 116 of the *Excise Act* are detected.

Example for the above paragraph –

An officer may locate, upon searching a person, a clear plastic bag containing 10 grams of tobacco suspected of being chop-chop.

Action following seizure of forfeitable tobacco related goods

POLICY

The term 'relevant commonwealth officer' means an officer for the purpose of the *Excise Act*.

After seizing goods under s. 9 of the *Crimes Act*, the seizing officer should:

- (i) where applicable, advise the person from whom the goods were seized:
 - (a) that the goods will be delivered into the custody of a relevant commonwealth officer pursuant to s. 107FA(4) of the *Excise Act*, who will contact them concerning the goods in due course; and
 - (b) any queries they may have with respect to the seized goods should be directed to the Regional Manager, Excise Investigations, ATO;
- (ii) comply with the relevant provisions of Chapter 4: 'Property' of this Manual relating to the issuing of a Field Property Receipt (QPB32A) with respect to the goods;
- (iii) as soon as practicable after the seizure deliver the goods into the custody of, and obtain a receipt from, a relevant commonwealth officer nominated by the ATO; and
- (iv) if the goods cannot be immediately delivered into the custody of a relevant commonwealth officer, lodge the goods at an appropriate property point and comply with the provisions of paragraph (iii) hereof as soon as practicable thereafter.

When seized goods have been delivered into the custody of a relevant commonwealth officer by a police officer in accordance with this policy and a receipt obtained for them, the matter is considered as finalised from the Service's perspective unless the seizing officer is required to provide a statement or affidavit, or give direct evidence at any subsequent hearing, with respect to the seizure.

Costs associated with seizure

POLICY

The ATO has undertaken to cover all costs incurred by the Service for transport and storage of goods deemed to be forfeited pursuant to s. 116 of the *Excise Act* and seized by police officers under s. 9 of the *Crimes Act*. Application for reimbursement of these costs should be negotiated directly with the regional investigations office of Excise, ATO, by the officer in charge of the station, establishment or district concerned.

Regional investigations office of Excise, ATO

In addition to providing advice and other assistance to officers with respect to the issues addressed in this policy, the regional investigations office of Excise, ATO, will also provide advice with respect to other articles subject to excise and which may be liable to seizure, such as suspected illicit alcohol products.

See the Service Manuals Contact Directory for address and contact details of the Queensland regional investigations office of Excise, ATO.

11.23 Aviation and Maritime Transport Security

The *Aviation Transport Security Act* provides a regulatory framework to safeguard against unlawful interference with aviation within Australia. To achieve this purpose the *Aviation Transport Security Act* establishes minimum security requirements for civil aviation in Australia by imposing obligations upon persons engaged in civil aviation related activities. Part 5, Division 3: 'Law enforcement officers' of the *Aviation Transport Security Act* provides police with specific powers relating to areas in and around airports.

Similarly, the *Maritime Transport and Offshore Facilities Security Act* provides a safeguard against unlawful interference with maritime transport and achieves this by establishing minimum security requirements. Part 8, Division 4: 'Law enforcement officers' of the *Maritime Transport and Offshore Facilities Security Act* provides police with specific powers in and around ports and ships.

11.23.1 Aviation Transport Security Act

For the definitions of 'airport', 'airside area', 'airside security zone', 'landside area', 'landside security zone', and 'security controlled airport' see s. 9: 'Definitions' of the *Aviation Transport Security Act* and for a definition of 'unlawful interference with aviation' see s. 10 of the *Aviation Transport Security Act*. For the definition of 'law enforcement officer', see s. 82: 'Law enforcement officers' of the *Aviation Transport Security Act*.

See also s. 14.11: 'Carriage of firearms, ammunition, handcuffs, batons, conducted energy weapons and Oleoresin Capsicum (OC) Spray etc. on aircraft and at airports' of this Manual.

POLICY

Access

Officers performing duty at a security controlled airport may enter and remain in any part of a security controlled airport at any time. See s. 83: 'Access to airports by law enforcement officers' of the *Aviation Transport Security Act*.

Stopping and searching

Section 84: 'Stopping and searching people' and s. 85: 'Stopping and searching vehicles' of the *Aviation Transport Security Act* provides officers with the authority to stop and search people and vehicles within an airside area, where the officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with aviation.

Removal of people and vehicles

Officers are authorised under s. 86: 'Requests to leave areas or zones' of the *Aviation Transport Security Act* to request people to leave an aircraft, an area, a zone, or an airport when the officer reasonably suspects that a person is committing or has committed an offence against the *Aviation Transport Security Act*. Once a request has been made, and the person fails to comply with the request, officers are authorised to remove people from the aircraft, area, zone, or airport under s. 87: 'Removing people from aircraft, airports, areas or zones' of the *Aviation Transport Security Act*. When removing people officers may only use as much force as is reasonably necessary.

Officers have the authority under s. 88: 'Removing vehicles from areas or zones' of the *Aviation Transport Security Act* to remove a vehicle from an area or zone of a security controlled airport, where the officer reasonably suspects that the vehicle presents a risk to aviation security or the vehicle is in the zone without the proper authority. However, the officer must not remove the vehicle without making reasonable efforts to have the person in control of the vehicle remove the vehicle.

11.23.2 Maritime Transport and Offshore Facilities Security Act

For definitions of 'maritime industry participant', 'maritime security zone', 'security regulated port' and 'security regulated ship' see s. 10: 'Definitions' of *Maritime Transport and Offshore Facilities Security Act*. For definition of 'unlawful interference with maritime transport' see s. 11 of the *Maritime Transport and Offshore Facilities Security Act*. For the definition of 'law enforcement officer', see s. 151: 'Law enforcement officers' of the *Maritime Transport and Offshore Facilities Security Act*.

POLICY

Access

Officers may enter and remain in, any part of a security regulated port at any time. However, before entering any part of a security regulated port the officer is to identify themselves to the maritime industry participant who is in control of the area the officer is entering, and inform the participant why the officer is entering that part of the security regulated port, (see s. 152: 'Access to ports by law enforcement officers' of the *Maritime Transport and Offshore Facilities Security Act*).

Stopping and searching

When an officer reasonably believes that it is necessary to do so for the purposes of safeguarding against unlawful interference with maritime transport, the officer may stop a person, vehicle or vessel that is within a maritime security zone or a person that is on a security regulated ship and may search the person, vehicle or vessel. See s. 153: 'Stopping and searching people', s. 154: 'Stopping and searching vehicles' and s. 155: 'Stopping and searching vessels' of the *Maritime Transport and Offshore Facilities Security Act*.

When an officer stops a person, vehicle or vessel the officer is to identify themselves as a police officer to the person or the person in charge of the vehicle or vessel, and then tell the person the reason for being stopped. If a search is then to be conducted, the officer is to tell the person the reason for the search.

Removal of people, vehicles and vessels

Where an officer reasonably suspects that a person who is on a ship or within a maritime security zone, has committed or is committing an offence against the Act, the officer may request the person to leave the ship or the zone. See s. 156: 'Requests to leave ships or zones' of the *Maritime Transport and Offshore Facilities Security Act*.

When a person fails to comply with a request from an officer to leave a ship or maritime security zone, the officer may remove the person using as much force as is reasonably necessary to do so (see s. 157: 'Removing people from ships or zones' of the *Maritime Transport and Offshore Facilities Security Act*).

When an officer reasonably suspects that a vehicle or vessel that is in or near a maritime security zone and presents a risk to maritime transport security or is there without the proper authorisation, the officer may remove the vehicle or vessel (see s. 158: 'Removing vehicles from zones' and s. 159: 'Removing vessels from zones' of the *Maritime Transport and Offshore Facilities Security Act*).

11.23.3 General provisions

POLICY

To comply with the provisions of either Act, officers may only remove a vehicle or vessel after making reasonable efforts to have the person in control of the vehicle or vessel remove it. When a vehicle is to be removed, officers are to comply with the provisions of s. 4.15: 'Action in special cases (vehicles, loads or other things)' of this Manual.

Any person who hinders or obstructs an officer exercising a power under either Act commits an offence. When commencing an investigation for an offence against either Act refer to ss. 11.5: 'Investigation of Commonwealth offences' and 11.3: 'Prosecution of Commonwealth offences' of this Chapter and Chapter 3: 'Prosecution Process' of this Manual.

When searching people under the provisions of either Act, an 'ordinary search' or a 'frisk search' may be conducted, for the definitions of these terms see s. 3C: 'Interpretation' of the *Crimes Act (Cwlth)*. See also s. 16.10: 'Search of persons' of this Manual.

In all cases where a person or vehicle has been stopped and searched, officers are to comply with the requirements of s. 2.1.2: 'Registers required to be kept' and s. 16.8: 'QPRIME custody, search and property reports' of this Manual.

Officers should remain aware at all times that an incident at airports and ports may relate to terrorist acts or preparatory activities relating to terrorism. When officers suspect that an incident may relate to terrorism, officers should refer to the relevant provisions of Chapter 18: 'Counter-Terrorism and Security' of this Manual.

For the carriage of weapons and prohibited items within airports refer to s. 14.11: 'Carriage of firearms or ammunition on aircraft and at airports' of this Manual. For the escort of persons in custody by commercial aircraft, see s. 10.4.18: 'Escort of persons in custody by commercial transport' of this Manual.