

Chapter 13 – Miscellaneous

| | |
|--|-----------|
| 13.1 INTRODUCTION | 8 |
| 13.2 REFERENCES TO LEGISLATION | 8 |
| 13.3 PUBLIC OFFICIALS | 8 |
| 13.3.1 PROVISIONS ABOUT APPOINTMENTS | 8 |
| 13.3.2 HELPING PUBLIC OFFICIALS EXERCISE POWERS UNDER VARIOUS ACTS | 9 |
| 13.4 MAINTAINING PEACE AND GOOD ORDER | 10 |
| 13.4.1 PEACE AND GOOD BEHAVIOUR ACT | 10 |
| 13.4.2 PEACEFUL ASSEMBLY ACT | 11 |
| 13.4.3 DELETED | 14 |
| 13.4.4 DELETED | 14 |
| 13.4.5 ELECTIONS | 14 |
| 13.4.6 SECURITY PROVIDERS | 14 |
| 13.4.7 RECEIVING A COMPLAINT IN RELATION TO MOVEABLE DWELLING (CARAVAN/MANUFACTURED HOME) PARKS | 16 |
| 13.4.8 ACCOMMODATION DISPUTES | 19 |
| 13.4.9 BREACHES OF THE PEACE | 26 |
| 13.4.10 DELETED | 27 |
| 13.4.11 ISSUING OF INFRINGEMENT NOTICES FOR PUBLIC NUISANCE, PUBLIC URINATION AND ASSOCIATED OFFENCES | 27 |
| 13.4.12 NEIGHBOURHOOD DISPUTES | 31 |
| 13.4.13 OUT-OF-CONTROL EVENTS | 32 |
| 13.5 CORRECTIONAL CENTRES AND INCIDENTS INVOLVING QUEENSLAND CORRECTIVE SERVICES | 34 |
| 13.5.1 DEFINITIONS | 34 |
| 13.5.2 OFFENCES UNDER THE CORRECTIVE SERVICES ACT | 35 |
| 13.5.3 CORRECTIVE SERVICES INVESTIGATION UNIT TO BE ADVISED | 35 |
| 13.5.4 QUEENSLAND CORRECTIVE SERVICES TO BE ADVISED | 36 |
| 13.5.5 REQUESTS FOR INFORMATION FROM QUEENSLAND CORRECTIVE SERVICES | 36 |
| 13.5.6 SUPPLY OF INFORMATION IMPACTING ON THE SECURITY CLASSIFICATION, PROTECTION OR SECURITY OF PRISONERS AND/OR THE SECURITY AND GOOD ORDER OF CORRECTIONAL FACILITIES TO QUEENSLAND CORRECTIVE SERVICES | 36 |
| 13.5.7 WHERE A PRISONER IS UNLAWFULLY AT LARGE OR ESCAPES FROM A CORRECTIONAL CENTRE | 37 |
| 13.5.8 WHERE A PRISONER WHO IS UNLAWFULLY AT LARGE OR ESCAPEE IS LOCATED | 37 |
| 13.5.9 COPY OF OCCURRENCE REPORT TO BE FORWARDED TO CORRECTIVE SERVICES INVESTIGATION UNIT | 37 |
| 13.5.10 OFFENCES COMMITTED BY PRISONERS PRIOR TO THEIR ADMISSION TO PRISONS | 37 |
| 13.5.11 DECLARATION OF EMERGENCY UNDER THE CORRECTIVE SERVICES ACT | 37 |
| 13.5.12 VISITING A QUEENSLAND CORRECTIVE SERVICES CORRECTIONAL CENTRE | 38 |
| 13.6 UNLAWFUL TAKING OF ELECTRICITY | 38 |
| 13.7 DELETED | 39 |
| 13.8 MARINE ENVIRONMENT | 39 |
| 13.8.1 DEFINITIONS | 39 |
| 13.8.2 MARITIME SAFETY QUEENSLAND | 40 |

| | |
|---|-----------|
| 13.8.3 INVESTIGATION OF OFFENCES AND MARINE INCIDENTS UNDER THE TRANSPORT OPERATIONS (MARINE SAFETY) ACT OR THE TRANSPORT OPERATIONS (MARINE SAFETY) REGULATION | 41 |
| 13.8.4 FISHERIES MANAGEMENT (OFFENCES DETECTED) | 46 |
| 13.8.5 INVESTIGATION OF MARINE INCIDENTS INVOLVING OFFICERS OR SERVICE VESSELS | 46 |
| 13.8.6 ISSUE OF MARINE INFRINGEMENT NOTICES UNDER THE TRANSPORT OPERATIONS (MARINE SAFETY) ACT AND THE TRANSPORT OPERATIONS (MARINE SAFETY) REGULATION | 47 |
| 13.8.7 MARINE TOWING INCIDENTS | 50 |
| 13.9 SECRET BALLOTS | 52 |
| 13.10 OBJECTIONABLE LITERATURE, FILMS AND COMPUTER GAMES | 52 |
| 13.10.1 OFFICERS NOT TO ACT AS CENSORS | 52 |
| 13.10.2 CLASSIFICATION ACT OFFENCES | 52 |
| 13.11 PROSTITUTION | 52 |
| 13.11.1 INFORMATION REQUESTS | 53 |
| 13.11.2 PRESENCE AT BROTHEL | 53 |
| 13.11.3 POWER OF ARREST | 53 |
| 13.11.4 BROTHEL POLICING RESPONSIBILITY | 54 |
| 13.11.5 PROSTITUTION RELATED OFFENCES | 54 |
| 13.11.6 TARGET GROUPS REGARDING PROSTITUTION OFFENCES | 54 |
| 13.11.7 AN INDEPENDENT PROSTITUTE | 54 |
| 13.11.8 SECURITY PROVIDERS FOR PROSTITUTION | 54 |
| 13.11.9 SPECIALIST INVESTIGATION (PROSTITUTION) | 55 |
| 13.11.10 OFFENCES RELATING TO PARTICIPATING IN, CARRYING ON THE BUSINESS OF, ENGAGING IN OR OBTAINING PROSTITUTION THROUGH UNLAWFUL PROSTITUTION | 57 |
| 13.11.11 PERSONS FOUND IN PLACES REASONABLY SUSPECTED OF BEING USED FOR UNLAWFUL PROSTITUTION | 58 |
| 13.11.12 PERMITTING YOUNG PERSON, ETC. TO BE AT PLACE USED FOR PROSTITUTION | 59 |
| 13.11.13 CERTIFICATE OF DISCHARGE FOR PARTICULAR OFFENCES | 59 |
| 13.11.14 PROHIBITED BROTHELS AND PERSONS HAVING AN INTEREST IN PREMISES USED FOR THE PURPOSES OF PROSTITUTION | 60 |
| 13.11.15 PUBLIC SOLICITING FOR PURPOSES OF PROSTITUTION | 62 |
| 13.11.16 ADVERTISING PROSTITUTION SERVICES | 62 |
| 13.11.17 REQUIRING A PERSON TO STATE NAME, ADDRESS, AGE AND EVIDENCE OF THEIR CORRECTNESS | 62 |
| 13.11.18 ENTRY TO AND SEARCH OF LICENSED BROTHELS AND PLACES OR PREMISES FOR THE PURPOSES OF DETECTING PROSTITUTION OFFENCES | 63 |
| 13.11.19 COMPLIANCE INSPECTIONS | 64 |
| 13.11.20 DISCIPLINARY ACTION AGAINST LICENSEE | 64 |
| 13.11.21 CERTIFICATE FOR EVIDENTIARY PURPOSES | 65 |
| 13.11.22 MEDICAL PRACTITIONERS/HEALTH SERVICE PROVIDERS FOR PROSTITUTES | 65 |
| 13.11.23 APPLICANT'S IDENTIFYING PARTICULARS | 65 |
| 13.11.24 CRIMINAL PROCEEDS CONFISCATION ACT (APPLICATION TO PROSTITUTION) | 66 |
| 13.11.25 INFRINGEMENT NOTICES FOR PROSTITUTION OFFENCES | 66 |
| 13.12 RAILWAYS | 68 |
| 13.12.1 REMOVAL OF OFFENDERS FROM A RAILWAY | 69 |
| 13.12.2 AUTHORITY TO DEMAND TICKET | 70 |
| 13.12.3 EXERCISE OF POWERS | 70 |
| 13.12.4 DELETED | 71 |
| 13.12.5 DELETED | 71 |
| 13.12.6 DELETED | 71 |

| | |
|--|----|
| 13.13.1 APPLICATION FOR LICENSES | 71 |
| 13.13.2 LICENCE PARTICULARS | 71 |
| 13.13.3 FRAUD AND CYBER CRIME, STATE CRIME COMMAND TO BE ADVISED | 71 |
| 13.13.4 STOLEN PROPERTY INVESTIGATION AND RECOVERY SYSTEM | 71 |
| 13.13.5 COLLECTION OF DATA FROM LICENSEES | 72 |
| 13.13.6 STOLEN PROPERTY INVESTIGATION AND RECOVERY SYSTEM INTEGRITY | 72 |
| 13.13.7 STOLEN PROPERTY INVESTIGATION AND RECOVERY SYSTEM PROPERTY MATCHES | 72 |
| 13.13.8 LICENSEE AUDITS | 73 |
| 13.13.9 AUTHORITY TO ISSUE INFRINGEMENT NOTICES FOR FAIR TRADING OFFENCES | 73 |
| 13.13.10 OFFICE OF FAIR TRADING (ADMINISTERING AUTHORITY) | 73 |
| 13.13.11 ENFORCEMENT POWERS | 74 |
| 13.13.12 EVIDENTIARY NOTES ON REAR OF INFRINGEMENT NOTICE | 75 |
| 13.13.13 PROPERTY CRIME UNIT TO BE FORWARDED COPY OF NOTICE | 75 |
| 13.13.14 DISCONTINUING ARREST | 75 |
| 13.13.15 IDENTIFYING PARTICULARS | 75 |
| 13.13.16 COURT ELECTION | 76 |
| 13.13.17 CHILDREN | 76 |
| 13.13.18 INFRINGEMENT NOTICES TO BE LIMITED | 76 |
| 13.13.19 DISTRIBUTION OF INFRINGEMENT NOTICES | 76 |
| 13.13.20 WITHDRAWAL AND CANCELLATION OF INFRINGEMENT NOTICES | 76 |
| 13.13.21 REQUESTS FOR WITHDRAWAL (WAIVING) OR CANCELLATION | 78 |

13.14 STEALING AND LIKE OFFENCES **78**

| | |
|--|----|
| 13.14.1 DIRECTOR OF PUBLIC PROSECUTIONS (STATE) GUIDELINES | 78 |
| 13.14.2 RECOVERY OF SUSPECTED STOLEN PROPERTY FROM THE DEPARTMENT OF EDUCATION, TRAINING AND EMPLOYMENT | 78 |
| 13.14.3 PRINCIPAL OFFENDERS (RECEIVING STOLEN PROPERTY WHEN THE 'THIEF' IS DEALT WITH UNDER REGULATORY OFFENCES ACT) | 78 |

13.15 DELETED **79**

13.16 ANIMALS **79**

| | |
|--|----|
| 13.16.1 CRUELTY TO ANIMALS | 79 |
| 13.16.2 DOG ATTACKS AND REGULATED DOGS | 79 |
| 13.16.3 PROVIDING RELIEF TO AN ANIMAL AT A PLACE OR VEHICLE | 79 |
| 13.16.4 DESTRUCTION OF ANIMALS | 80 |
| 13.16.5 ANIMAL WELFARE DIRECTIONS | 80 |
| 13.16.6 FAILURE TO COMPLY WITH AN ANIMAL WELFARE DIRECTION | 82 |
| 13.16.7 REVIEW AND APPEAL OF AN ANIMAL WELFARE DIRECTION | 82 |
| 13.16.8 PROVIDING ASSISTANCE TO THE DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY, AND ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS INCORPORATED | 82 |
| 13.16.9 DEALING WITH AN ANIMAL WELFARE INCIDENT | 83 |
| 13.16.10 CARCASSES OF ANIMALS ON ROADS | 84 |

13.17 TRESPASS **84**

| | |
|--|----|
| 13.17.1 WHEN TO TAKE ACTION FOR TRESPASS | 84 |
| 13.17.2 REQUESTS TO REMOVE PERSON(S) FROM A PLACE, ETC. FOR TRESPASS OR DISORDERLY CONDUCT | 85 |
| 13.17.3 TRESPASS (INDUSTRIAL DISPUTES) | 85 |
| 13.17.4 WHEEL CLAMPING OF MOTOR VEHICLES | 87 |
| 13.17.5 TRESPASS IN SHOPPING CENTRES | 89 |

| | |
|---|-----|
| 13.18.1 DEFINITIONS | 90 |
| 13.18.2 INTRODUCTION | 90 |
| 13.18.3 WARRANT PROCEDURES GENERALLY | 91 |
| 13.18.4 EXECUTING AND SATISFYING COMPUTER (ELECTRONIC) AND PAPER WARRANTS | 92 |
| 13.18.5 RESPONSIBILITIES OF THE MANAGER, POLICE INFORMATION CENTRE | 94 |
| 13.18.6 RESPONSIBILITIES OF OFFICERS IN CHARGE OF STATIONS | 95 |
| 13.18.7 RESPONSIBILITIES OF POLICE OFFICERS | 96 |
| 13.18.8 RESPONSIBILITIES OF STAFF MEMBERS | 96 |
| 13.18.9 RESPONSIBILITIES OF WATCHHOUSE MANAGERS | 97 |
| 13.18.10 RESPONSIBILITIES OF PROSECUTORS | 97 |
| 13.18.11 LOST PAPER WARRANTS | 97 |
| 13.18.12 INCORRECT OR INCOMPLETE DETAILS ON WARRANTS | 97 |
| 13.18.13 WARRANTS ISSUED UNDER THE SERVICE AND EXECUTION OF PROCESS ACT (CWLTH) | 98 |
| 13.18.14 WARRANTS OF APPREHENSION AND CONVEYANCE OF PRISONER TO A CORRECTIVE SERVICES FACILITY | 100 |
| 13.18.15 BAIL ACT WARRANTS | 100 |
| 13.18.16 BENCH WARRANTS | 101 |
| 13.18.17 WARRANTS OF COMMITMENT ISSUED UNDER THE PENALTIES AND SENTENCES ACT | 101 |
| 13.18.18 DEFENCE FORCE WARRANTS | 102 |
| 13.18.19 WARRANTS OF COMMITMENT ISSUED FORTHWITH | 104 |
| 13.18.20 WARRANTS OF COMMITMENT WHERE PUNISHMENT IS BY IMPRISONMENT | 104 |
| 13.18.21 WARRANTS OF COMMITMENT FOR TRIAL OR SENTENCE | 105 |
| 13.18.22 WARRANTS AND ORDERS FOR IMPRISONMENT | 105 |
| 13.18.23 REMAND WARRANTS | 106 |
| 13.18.24 WARRANTS OF EXECUTION | 106 |
| 13.18.25 WARRANTS OF POSSESSION | 107 |
| 13.18.26 ARREST WARRANTS | 109 |
| 13.18.27 WARRANT IN THE FIRST INSTANCE TO APPREHEND A PERSON CHARGED WITH AN INDICTABLE OFFENCE OR A SIMPLE OFFENCE | 110 |
| 13.18.28 MENTAL HEALTH ACT WARRANTS | 111 |
| 13.18.29 MESNE WARRANTS | 112 |
| 13.18.30 POLICE POWERS AND RESPONSIBILITIES ACT FAIL TO APPEAR WARRANTS | 113 |
| 13.18.31 ARREST AND IMPRISONMENT WARRANTS | 113 |
| 13.18.32 DANGEROUS PRISONERS (SEXUAL OFFENDERS) ACT WARRANTS | 114 |
| 13.18.33 EXECUTION OF WARRANT ON CORRECTIVE SERVICE PRISONER | 115 |
| 13.18.34 POLICE PROVISION OF ASSISTANCE TO THE DEPARTMENT OF JUSTICE AND ATTORNEY-GENERAL IN THE EXECUTION OF CIVIL ENFORCEMENT WARRANTS. | 115 |

13.19 CASINOS, UNLAWFUL GAMING AND MATCH-FIXING **117**

| | |
|---|-----|
| 13.19.1 CASINO CRIME UNITS AND THE OFFICE OF LIQUOR AND GAMING REGULATION | 117 |
| 13.19.2 CASINO ACCESS | 117 |
| 13.19.3 CAMERA SURVEILLANCE REQUESTS | 117 |
| 13.19.4 EXCLUSION OF A SPECIFIED PERSON FROM A CASINO | 117 |
| 13.19.5 OFFICE OF LIQUOR AND GAMING REGULATION | 118 |
| 13.19.6 UNLAWFUL GAMING | 118 |
| 13.19.7 MATCH-FIXING | 120 |

13.20 COMPENSATION AWARDED TO POLICE OFFICERS **120**

| | |
|---|-----|
| 13.20.1 PROCEDURES FOR OFFICERS SEEKING CRIMINAL COMPENSATION | 120 |
| 13.20.2 DAMAGES OR PENALTIES AWARDED TO POLICE OFFICERS | 121 |

13.21 JUDICIAL REVIEW **121**

| | |
|---|------------|
| 13.21.1 STATEMENT OF REASONS | 121 |
| 13.21.2 STATUTORY ORDER OF REVIEW | 122 |
| 13.21.3 TIME LIMITS | 122 |
| 13.22 EXPLOSIVES | 122 |
| 13.22.1 ISSUING, SUSPENSION OR CANCELLATION OF AUTHORITIES | 122 |
| 13.22.2 INCIDENTS INVOLVING EXPLOSIVES | 123 |
| 13.22.3 ENTRY TO EXPLOSIVES FACTORIES AND MAGAZINES | 124 |
| 13.22.4 ASSISTANCE TO EXPLOSIVES INSPECTORS | 124 |
| 13.22.5 PROCEEDING FOR AN OFFENCE | 124 |
| 13.22.6 HANDLING EXPLOSIVES | 124 |
| 13.23 MOVE-ON POWER | 125 |
| 13.23.1 DIRECTIONS TO MOVE ON | 125 |
| 13.23.2 WHEN DO MOVE ON POWERS APPLY | 125 |
| 13.23.3 GIVING A MOVE ON DIRECTION | 126 |
| 13.23.4 FAILURE TO COMPLY WITH MOVE ON DIRECTIONS | 127 |
| 13.23.5 INSPECTION OF THE REGISTER OF DIRECTIONS GIVEN | 127 |
| 13.24 DIRECTIONS IN STATE BUILDINGS | 127 |
| 13.25 ENVIRONMENTAL (STATE PARKS AND WILDLIFE) OFFENCES | 128 |
| 13.25.1 APPOINTMENT OF CONSERVATION OFFICERS, INSPECTORS AND AUTHORISED OFFICERS | 128 |
| 13.25.2 INVESTIGATION AND PROSECUTION OF OFFENCES RELATING TO STATE PARKS AND WILDLIFE ISSUES | 128 |
| 13.25.3 REPORTING WILDLIFE OFFENCES | 129 |
| 13.25.4 AUTHORITY TO ISSUE INFRINGEMENT NOTICES | 130 |
| 13.25.5 ISSUING OF INFRINGEMENT NOTICES | 130 |
| 13.25.6 ABORIGINAL CULTURAL HERITAGE ACT | 133 |
| 13.25.7 DAMS | 133 |
| 13.26 RACIAL, RELIGIOUS, SEXUALITY AND GENDER IDENTITY VILIFICATION (ANTI-DISCRIMINATION ACT) | 133 |
| 13.27 PERSONAL INJURIES PROCEEDINGS ACT | 136 |
| 13.27.1 SECTION 10(1): 'PERSON TO WHOM NOTICE OF A CLAIM IS GIVEN MUST GIVE PRELIMINARY RESPONSE TO CLAIMANT' OF THE ACT | 136 |
| 13.27.2 SECTION 67: 'PROHIBITION OF TOUTING AT SCENE OF INCIDENT OR AT ANY TIME' OF THE ACT | 136 |
| 13.27.3 DEALING WITH OFFENCES AGAINST THE PERSONAL INJURIES PROCEEDINGS ACT | 137 |
| 13.28 EDUCATION (GENERAL PROVISIONS) ACT | 137 |
| 13.28.1 DIRECTIONS AND OFFENCES UNDER THE EDUCATION (GENERAL PROVISIONS) ACT | 138 |
| 13.28.2 POWERS UNDER THE POLICE POWERS AND RESPONSIBILITIES ACT | 140 |
| 13.28.3 DEALING WITH OFFENCES RELATING TO WILFUL DISTURBANCE, TRESPASS AND OFFENCES RELATING TO DIRECTIONS AND ORDERS ABOUT CONDUCT OR MOVEMENT AT, OR ENTRY TO, PREMISES OF STATE INSTRUCTIONAL INSTITUTIONS AND NON-STATE SCHOOLS | 140 |
| 13.28.4 COMPULSORY SCHOOLING AND PARTICIPATION IN EDUCATION AND TRAINING | 141 |
| 13.29 NOISE COMPLAINTS | 142 |

| | |
|--|------------|
| 13.29.1 INVESTIGATION AND FIRST DIRECTION | 143 |
| 13.29.2 ADDITIONAL POWERS OF POLICE OFFICERS ON LATER INVESTIGATION | 145 |
| 13.29.3 PROPERTY SEIZED AND REMOVED UNDER S. 583(2) OF THE POLICE POWERS AND RESPONSIBILITIES ACT | 145 |
| 13.29.4 MOTORBIKE NOISE ABATEMENT ORDERS | 146 |
| 13.29.5 DUTIES OF POLICE PROSECUTORS AND OFFICERS IN CHARGE AFTER THE APPLICATION FOR A MOTORBIKE NOISE ABATEMENT ORDER IS DETERMINED | 148 |
| 13.29.6 APPEALS AGAINST MOTORBIKE NOISE ABATEMENT ORDER | 148 |
| 13.29.7 OFFENCES/POWERS | 148 |
| 13.29.8 OTHER NOISE COMPLAINTS | 148 |
| 13.30 STARTING A CIVIL PROCEEDING | 149 |
| 13.31 POLICING OF CRIMINAL ORGANISATIONS | 150 |
| 13.32 SOCIAL MEDIA | 150 |
| APPENDIX 13.1 SUGGESTED FORMAT FOR LETTER UNDER POLICE POWERS AND RESPONSIBILITIES ACT | 152 |
| APPENDIX 13.2 WRITTEN WARNING TO INTERESTED PERSON (S. 229K OF THE CRIMINAL CODE) | 153 |
| APPENDIX 13.3 NOTIFICATION UNDER S. 799 OF THE POLICE POWERS AND RESPONSIBILITIES ACT 2000 OF THE STARTING OF A PROCEEDING | 154 |
| APPENDIX 13.4 DISCRIMINATION AND SEXUAL HARASSMENT COMPLAINT FORM | 155 |
| APPENDIX 13.5 SUGGESTED FORMAT FOR ADVICE REGARDING A COMPLAINT OF AN OFFENCE AGAINST S. 131A OF THE ANTI-DISCRIMINATION ACT 1991 | 156 |
| APPENDIX 13.6 ENVIRONMENTAL NUISANCE CAUSED BY NOISE – FLOW CHART 1 | 157 |
| APPENDIX 13.7 ENVIRONMENTAL NUISANCE CAUSED BY NOISE – FLOW CHART 2 | 158 |
| APPENDIX 13.8 ENVIRONMENTAL NUISANCE CAUSED BY NOISE – FLOW CHART 3 | 159 |
| APPENDIX 13.9 EXAMPLE OF A COMPLETED FORM 5 – ORIGINATING APPLICATION | 160 |
| APPENDIX 13.10 EXAMPLE OF A COMPLETED FORM 46 – AFFIDAVIT BY REPORTING OFFICER | 161 |
| APPENDIX 13.11 EXAMPLE AFFIDAVIT IN SUPPORT OF AN APPLICATION UNDER S. 694 OF THE POLICE POWERS AND RESPONSIBILITIES ACT | 162 |
| APPENDIX 13.12 EXAMPLE OF COMPLETED AFFIDAVIT OF SERVICE | 163 |
| APPENDIX 13.13 EXAMPLE OF A COMPLETED FORM 9 – APPLICATION | 164 |
| APPENDIX 13.14 EXAMPLE OF COMPLETED FORM 46 – AFFIDAVIT BY REPORTING OFFICER (FOR S. 694 OF THE POLICE POWERS AND RESPONSIBILITIES ACT) | 165 |
| APPENDIX 13.15 EXAMPLE OF COMPLETED FORM 46 – AFFIDAVIT BY REPORTING OFFICER (FOR APPLICATION FOR SUBSTITUTED SERVICE UNDER S. 57 OF CHILD PROTECTION (OFFENDER PROHIBITION ORDER) ACT) | 166 |

OPM Issue 48
Public Edition

13.1 Introduction

The functions of the Service are outlined in s. 2.3 of the *Police Service Administration Act*.

This chapter relates to those basic tenets of policing and is designed to provide all police with a framework for dealing with most issues relating to public order, safety and miscellaneous matters relating to operational policing not covered elsewhere.

Service policy regarding public order within terms of Federal Issues is contained in Chapter 11: 'Federal Issues' of this Manual.

This chapter refers to a number of Acts, offences under which may be dealt with summarily. Officers should be aware of Service policy contained in s. 3.4: 'General prosecution policy' of this Manual and in particular s. 3.4.2: 'The decision to institute proceedings' before exercising their authority as contained in these Acts.

The provisions of the *Police Powers and Responsibilities Act* should be applied where appropriate to the matters discussed in this chapter (see s. 2.1.1: 'Use of *Police Powers and Responsibilities Act 2000*' of this Manual).

13.2 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 located on the QPS Corporate Intranet (Bulletin Board).

13.3 Public officials

Chapter 1, Part 3, ss. 13-18: 'Appointment as, and helping, public officials' of the *Police Powers and Responsibilities Act*, outlines provisions when a police officer may be appointed as a public official and circumstances under which a police officer may help a public official, who is not a police officer, under an Act (authorising law) which authorises a public official to perform functions in relation to a person or thing.

'public official' means:

- (a) for a government entity – a person who is appointed or authorised under an authorising law to perform inspection, investigation or other enforcement functions under the authorising law for the entity; or
- (b) for an entity other than a government entity or a local government – a person who is declared under a regulation under this Act to be a public official in relation to inspection, investigation or other enforcement functions the person is appointed or authorised to perform under an authorising law for the entity; or
- (c) for Chapter 1, Part 3, Division 2 – an authorised person under the *Local Government Act*; or
- (d) otherwise – a person who is declared by another Act to be a public official for this Act.

'Government entity' means a government entity under the *Public Service Act*, s. 24, other than subsection 1(d), (e) and (f).

13.3.1 Provisions about appointments

Under various authorising laws, a police officer may be appointed as a public official. For example pursuant to s. 4C: 'Analysts' of the *Drugs Misuse Act*, the Minister may, by gazette notice, appoint as an analyst, for that Act, a person the Minister is satisfied has the qualifications, standing and experience necessary to be an analyst for that Act.

Also an authorising law may expressly provide that a police officer is a public official. For example under s. 4: 'Officers' of the *Brands Act*, all police officers are ex officio and without further or other appointment, authorised officers.

However any such appointments or express provisions apply subject to:

- (i) s. 13: 'Appointment of police officers as public officials for other Acts' of the *Police Powers and Responsibilities Act*, which provides that despite the authorising law, the appointer may appoint a police officer as a public official for the authorising law only with the Commissioner's written approval to the proposed appointment; or
- (ii) s. 14: 'Declarations of police officers as public officials' of the *Police Powers and Responsibilities Act*, which provides that despite the authorising law, the police officer may exercise the powers of the public official only to the extent that the Commissioner first approves the exercise of the powers.

POLICY

The Commissioner has delegated the Commissioner's powers under ss. 13 and 14 of the *Police Powers and Responsibilities Act* to Assistant Commissioners.

Officers who have a need to be appointed as public officials under an authorising law, which authorises someone (appointer) to appoint public officials for giving effect to the authorising law and a police officer may be appointed as a public official under the authorising law, are to furnish a report through their officer in charge to their assistant commissioner. The report is to include the following information:

- (i) the circumstances giving rise to the need to be appointed as a public official;
- (ii) whether the officer has:
 - (a) the necessary experience or expertise to be a public official for the authorising law. In this regard the report is to outline the experience or expertise the officer has relating to the particular public official appointment; or
 - (b) satisfactorily completed a course of training approved by the Commissioner, and if so identify the course of training and time of attendance and completion;
- (iii) in cases where only certain powers need to be exercised, identification of the public official's powers to be exercised by the police officer; and
- (iv) any other information considered relevant.

Assistant commissioners may approve appointments of police officers as public officials under authorising laws subject to and in accordance with the conditions of Delegation No. D 24.5 of the Handbook of Delegations and Authorities. Any approval of appointment as a public official is to be communicated by the relevant assistant commissioner to the appointer.

Police officers may exercise powers as a public official under an authorising law only if and to the extent the relevant assistant commissioner has approved the police officer's appointment under s. 13 of the *Police Powers and Responsibilities Act*, and following the appointment made by the appointer.

For the power to approve appointments as analysts pursuant to s. 4C: 'Analysts' of the *Drugs Misuse Act* see s. 2.19.6: 'Forensic Services Group' of this Manual and Delegation No. D 24.5 of the Handbook of Delegations and Authorities.

In accordance with s. 14 of the *Police Powers and Responsibilities Act*, when under an express provision of an authorising law police officers are public officials, they are not to exercise the powers of the public official except to the extent that the Commissioner first approves the exercise of the powers.

Officers who have or identify a need to exercise the powers of a public official under an authorising law, wherein by express provision therein police officers are public officials, are to furnish a report through their officer in charge to their assistant commissioner. The report is to include the following information:

- (i) the authorising law is to be identified;
- (ii) whether all of the public official's powers under the authorising law are to be exercised or in cases where only certain powers need to be exercised, identification of the public official's powers to be exercised by the police officer;
- (iii) whether the officer has:
 - (a) the necessary experience or expertise to exercise the powers of the public official for the authorising law. In this regard the report is to outline the experience or expertise the officer has relating to the particular public official's powers; or
 - (b) satisfactorily completed a course of training approved by the Commissioner, and if so identify the course of training and time of attendance and completion; and
- (iv) any other information considered relevant.

Assistant commissioners may approve police officers to exercise powers of a public official under an authorising law under Delegation No. D 24.6 of the Handbook of Delegations and Authorities. Approvals issued under s. 14 are to be in writing and communicated to the police officer being approved.

13.3.2 Helping public officials exercise powers under various Acts

POLICY

If an authorising law authorises a public official to perform functions in relation to a person or thing and the public official asks a police officer, who is not a public official for the authorising law, to help the public official perform the public official's functions under the authorising law, the police officer may help the public official. However before the police officer helps the public official, the police officer is to:

- (i) establish that the person concerned is in fact a public official under the authorising law; and
- (ii) ask the public official to explain to the officer the powers the public official has under the authorising law.

If the public official does not explain to the police officer the powers the public official has under the authorising law, the police officer is not obliged to help the public official. Also if the public official is not present or will not be present when

the help is to be given, the police officer may give the help only if the police officer is satisfied giving the help in the public official's absence is reasonably necessary in the particular circumstances.

Police officers have, while helping a public official, the same powers and protection under the authorising law as the public official (see s. 16 of the *Police Powers and Responsibilities Act*).

See also ss. 17: 'Steps police officer may take for failure to give name and address etc. to public official' and 18: 'Steps police officer may take for obstruction of public official' of the *Police Powers and Responsibilities Act*. Note, these two sections do not apply if the public official is a police officer.

See also s. 3.4.7: 'Assisting court staff' of this Manual for assistance to courts in relation to the safe custody and welfare of prisoners and in assisting bailiffs to protect juries.

13.4 Maintaining peace and good order

13.4.1 Peace and Good Behaviour Act

The *Peace and Good Behaviour Act* details an avenue of redress for a person who has been aggrieved by another.

Section 4 of the *Peace and Good Behaviour Act* provides that a person (the complainant) may make a complaint against another person (the defendant) when that person has threatened:

- (i) to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant;
- (ii) to procure any other person to assault or to do any bodily injury to the complainant or to any person under the care or charge of the complainant;
- (iii) to destroy or damage any property of the complainant; or
- (iv) to procure any other person to destroy or damage property of the complainant;

and the complainant is in fear of the defendant.

A complaint under s. 4 of the *Peace and Good Behaviour Act* must be made by the complainant in writing and must be made under oath before a Justice of the Peace. The Justice of the Peace may issue a summons or warrant for the defendant to appear or be brought before a Magistrates Court.

POLICY

Officers attending incidents or when advised by a complainant or person acting on behalf of the complainant, of an incident which constitutes one or more of a relevant matter under s. 4 should advise the complainant of the provisions of the *Peace and Good Behaviour Act*. Officers should advise the complainant of procedures for making an application of a peace and good behaviour order and refer the complainant or representative to the most convenient courthouse to seek further information and to make the application.

Officers who receive a warrant for the apprehension of a person to be brought before a Magistrate to answer a complaint under the *Peace and Good Behaviour Act* should execute the warrant as soon as practicable. For further information refer to s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

ORDER

Officers who have executed a warrant issued under the *Peace and Good Behaviour Act* are to:

- (i) convey the defendant to the nearest watchhouse;
- (ii) complete a Bench Charge Sheet in QPRIME using the Specimen Charge database (if QPRIME is unavailable, from the specimen charge menu on the QPRIME Online Gateway on the QPS Corporate Intranet). There is no requirement for a Court Brief (QP9) to be furnished;
- (iii) notify the complainant or the complainant's solicitor of the execution of the warrant;
- (iv) notify the appropriate police prosecution corps of the time and date the matter is to come before the court; and
- (v) supply a copy of the bench charge sheet to the prosecutor.

The prosecutor is to represent the Service at the first appearance and then seek the leave of the court to withdraw from the proceedings.

Breach of Peace and Good Behaviour Order

POLICY

Section 6 of the *Peace and Good Behaviour Act* allows for a Magistrates Court that hears a complaint under the provisions of the *Peace and Good Behaviour Act* to make an order for the defendant to keep the peace and be of good behaviour, subject to such stipulations or conditions as the court thinks fit.

Section 10 of the *Peace and Good Behaviour Act* provides that a person who fails to comply with an order issued under s. 6 of the *Peace and Good Behaviour Act* is guilty of an offence.

Officers identifying breaches of orders made under s. 6 of the *Peace and Good Behaviour Act* may institute proceedings against the offender (see s. 3.5: 'The Institution of proceedings', and Chapter 5: 'Children' of this Manual) by:

- (i) complaint and summons under s. 42 of the *Justices Act*. The summons is to detail the exact behaviour that breached a condition of the order;
- (ii) proceedings under the provisions of the *Police Powers and Responsibilities Act*, i.e. arrest with/without warrant, notice to appear; or
- (iii) proceedings under the provisions of the *Youth Justice Act*, i.e. caution, notice to appear.

When deciding the method of proceedings, officers should, consider the safety and welfare of the complainant and whether there would be a continuation or repetition of the commission of another offence if such action decided would not be taken.

ORDER

Officers who take action in respect of a breach of an order under the *Peace and Good Behaviour Act* are to advise the prosecutor by the preparation and submission of a Court Brief (QP9).

In respect of a breach of an order under the *Peace and Good Behaviour Act*, the prosecutor is to represent the Service until the matter has been finalised.

Mediation

POLICY

Under s. 4 subsections (2) and (3) of the *Peace and Good Behaviour Act*, where a complainant makes a complaint to a justice that someone else is engaging in conduct that is adversely affecting or likely to adversely affect, the complainant's enjoyment of the complainant's property, the justice may, with the complainant's consent, order the complainant to submit the matter to mediation under the *Dispute Resolution Centres Act*.

The *Dispute Resolution Centres Act* is administered by the Department of Justice and Attorney-General.

There are dispute resolution centres located throughout the State and contact can be made with the Dispute Resolution Branch of Department of Justice and Attorney-General to find the nearest location (see Service Manuals Contact Directory).

Mediation at dispute resolution centres is not undertaken with matters involving domestic violence, where parties are not willing to negotiate, ongoing criminal cases, or where legislation or court orders would otherwise be breached.

Officers should advise the complainant of the avenue of redress through mediation where applicable.

See also s. 13.4.12: 'Neighbourhood disputes' of this chapter where disputes relate to dividing fences or overhanging trees.

13.4.2 Peaceful Assembly Act

The fundamental purpose of the *Peaceful Assembly Act* is to ensure the right of a person to assemble peacefully with others in a public place subject to the restrictions set down in s. 5(2) and 5(3): 'Right of peaceful assembly' of the Act.

In accordance with the *Peaceful Assembly Act*, people should ordinarily be able to exercise this right without restriction.

The *Peaceful Assembly Act* essentially allows organisers of assemblies to give notice to police and local authorities of the proposed assembly. It also allows for the settlement of the authority to hold the public assembly when mediation has failed.

Where an assembly notice is given and the public assembly is taken to have been approved in conformity with the provisions of the *Peaceful Assembly Act*, the assembly then becomes an authorised public assembly. Providing that the assembly is peaceful and is held substantially in accordance with the relevant particulars and conditions, participants in that assembly do not, merely because of their participation, incur any civil or criminal liability because of the obstruction of a public place (note ss. 6 to 10 of the *Peaceful Assembly Act*).

For the purposes of this section and in accordance with s. 17: 'Delegation of powers' of the *Peaceful Assembly Act*, reference to the **officer in charge or the delegated officer** means an officer who is the rank of Sergeant or higher.

Notice of intention to hold assembly

To obtain approval for an authorised assembly, it is necessary for the organiser of the proposed assembly to give notice of intention to hold the assembly in compliance with s. 9: 'Requirements for assembly notice' of the *Peaceful Assembly Act* to the Commissioner and, depending on the intended location of the proposed assembly, the local authority having jurisdiction in relation to the place.

The *Peaceful Assembly Act* does not provide for a notice to be in any specific form, however, where possible, organisers are to be encouraged to use a QP 0802: 'Notice of intention to hold a public assembly' (available on QPS Forms Select and on the Queensland Police Service corporate internet site).

Consideration of assembly notice

ORDER

Overall responsibility for the consideration of any assembly notice is to rest with the officer in charge or the delegated officer of the police division in which the peaceful assembly is to take place (see Delegation D 7.2 of the Handbook of Delegations and Authorities).

POLICY

A member who receives a notice of intention to hold an assembly is to ensure that the notice applies to their division and forward the notice to the officer in charge or the officer delegated.

Where the intended assembly lies outside of the relevant division, the organiser or person lodging the notice on their behalf is to be advised of the relevant police station or establishment to lodge the notice of intention to hold an assembly.

Where a notice of intention to hold a public assembly is requesting variances of dates and/or times, it is at the discretion of the officer in charge or the officer delegated to consider if a notice of intention to hold a public assembly should be made on each variance to the public assembly application, for example:

The same public assembly intended to be held for three Saturday mornings in the month of September 2013 (therefore different dates), specifying different times, but the location and route remain the same.

When the officer in charge or the officer delegated receives a notice of intention to hold a public assembly, they are to:

- (i) consider the application, ensure that all particulars as stated in s. 9(2) of the *Peaceful Assembly Act*, have been included;
- (ii) be aware of the five business days requirement for submission and approval of notice applications (where the application notice is less than five business days see subsection 'less than five business days' notice' of this section); and
- (iii) consider whether grounds exist which make it necessary for the Commissioner to 'oppose' the holding of the assembly (where grounds exist see subsection 'Opposing the holding of an assembly' of this section).

When the officer in charge or the officer delegated approves the notice to hold an assembly, the organiser is to be provided with a QP 0803: 'Notice of permission to hold a public assembly' (available on QPS Forms Select).

The officer in charge or the officer delegated is to make appropriate arrangements to ensure the safe conduct of the assembly.

Opposing the holding of an assembly

POLICY

Should there be a reason to oppose the holding of a public assembly, the officer in charge or the officer delegated should:

- (i) contact the organiser of the assembly;
- (ii) discuss the concerns that may be held in relation to the holding of the assembly;
- (iii) discuss the imposition of terms and/or conditions that will allow the assembly to be held; and
- (iv) if agreement on the terms and conditions is reached, obtain agreement in writing from the organiser of the assembly by issuing a QP 0803 to the organiser, incorporating the agreed terms and/or conditions.

Should the organiser of an assembly not agree to the terms and/or conditions, the officer in charge or the officer delegated is to complete and forward a QP 0804: 'Objection to application to hold a public assembly' (available on QPS Forms Select) to a commissioned officer, who is responsible for the mediation between the organiser and the opposing officer in charge or the officer delegated, and will:

- (i) contact the organiser of the assembly, advising him/her of the arrangements for the mediation session; and
- (ii) the making of a final determination regarding the terms and/or conditions (if agreement on the terms and/or conditions is reached, obtain agreement in writing by issuing the organiser with a QP0803 incorporating the agreed terms and/or conditions).

PROCEDURE

Should the mediation process fail:

- (i) in cases involving assembly notices given not less than five business days before the day specified in the notice as the day on which it is proposed that the public assembly be held, the officer in charge or the officer delegated is to:

- (a) apply for an order refusing to authorise the holding of the assembly to the magistrates court in the magistrates court district where the proposed assembly is to be held, for a hearing before a magistrate;
 - (b) make every effort to contact and advise the organiser of the arrangements for the hearing;
 - (c) advise the police prosecution corps relevant to the magistrates court district where the hearing is to be held of the hearing arrangements;
 - (d) arrange for a police prosecutor to appear at the hearing;
 - (e) personally attend the hearing to provide evidence as required by the police prosecutor and the court;
 - (f) prepare a typewritten statement for the police prosecutor, outlining the details of the steps taken when considering the notice and the particulars of the grounds for opposing the holding of the assembly;
 - (g) seek an order from the magistrate refusing to authorise the holding of the assembly; and
 - (h) should the magistrate refuse to authorise the assembly and the organiser proceeds with the assembly, make arrangements, which may include the option to prevent the holding of the assembly, that are in keeping with the objects of the *Peaceful Assembly Act*; or
- (ii) in cases where the assembly notice was given less than five business days before the day specified in the notice as the day on which it is proposed that the public assembly be held, and following mediation no approval has been given, the organiser may apply to a magistrates court for an order authorising the holding of the assembly. If the organiser in fact applies for such an order, the superintendent of traffic upon being notified of the application is to:
- (a) advise the police prosecution corps relevant to the magistrates court district where the hearing is to be held of the hearing arrangements;
 - (b) arrange for a police prosecutor to appear at the hearing;
 - (c) prepare a typewritten statement for the police prosecutor, outlining the details of the steps taken when considering the notice and the particulars of the grounds for opposing the holding of the assembly; and
 - (d) whether or not the assembly is authorised and if applicable make necessary arrangements, which may include the prevention of the assembly, in keeping with the objects of the *Peaceful Assembly Act*.

ORDER

At the conclusion of the process, the officer in charge or the officer delegated is to:

- (i) ensure that the QP 0802: 'Notice of Intention to Hold a Public Assembly' is completed; and
- (ii) retain this form, together with a copy of the QP 0803: 'Notice of permission to hold a public assembly' and any other relevant correspondence at the station or establishment where the application was made.

Conduct of the assembly

POLICY

Whenever a public assembly is held and it is necessary to exercise the powers provided for by Acts such as the *Police Powers and Responsibilities Act*, officers should exercise those powers during the conduct of the assembly, regardless of whether the assembly is authorised or not, e.g. where an emergency vehicle needs to proceed through an authorised assembly, a direction may still be given to participants in the assembly to allow the vehicle to proceed.

However, officers are not to give participants in an authorised public assembly any direction under s. 48: 'Direction may be given to person' of the *Police Powers and Responsibilities Act* (a 'move-on' direction) (see ss. 45, 46 and 48 of the *Police Powers and Responsibilities Act*).

Should the situation arise that the public assembly, whether authorised or not, is in conflict with the terms and/or conditions stated in the QP 0803: 'Notice of permission to hold a public assembly' or is in conflict with s. 5 of the *Peaceful Assembly Act*, the senior officer present at the scene should (if it is believed that it is necessary in all the circumstances to do so) make a statement to the assembly as a whole to the effect that:

'in the interests of public safety/public order/protection of the rights and freedoms of others this assembly cannot continue in its present form'.

The participants may then be given a direction under s. 59: 'Power for regulating vehicular and pedestrian traffic' of the *Police Powers and Responsibilities Act* to move to the footpath or to reform so as to allow for public safety, public order or the protection of the rights and freedoms of other persons to be maintained.

Conducive with the objects of the *Peaceful Assembly Act* and wherever practicable, subject to the participants complying with any direction or request to modify the manner in which they are assembling, the assembly should be allowed to continue. For example, where the assembly is in the form of a street march blocking an entire street, an opportunity should be extended to the participants to continue their march provided that they reform in a manner that will allow traffic to pass.

Persons taking part in public assemblies who commit offences should be dealt with in the same manner as they would if the offence was committed in other circumstances. That is, if persons commit offences, officers should have no hesitation in dealing with those persons according to law.

Officers should use their discretion in exercising their power of arrest during the conduct of a public assembly as the process of arresting a person for an offence of a minor nature may cause an otherwise peaceful assembly to escalate into a situation of a serious nature. The more serious the offence committed, the more likely it should be that an arrest will take place.

13.4.3 Deleted

13.4.4 Deleted

13.4.5 Elections

Federal/State/local government elections

ORDER

Officers are not to act as poll clerks in connection with Federal, State or local government elections.

13.4.6 Security Providers

A **Security Provider** is defined in s. 4 of the *Security Providers Act* as a:

- (i) bodyguard;
- (ii) crowd controller;
- (iii) private investigator;
- (iv) security adviser;
- (v) security equipment installer;
- (vi) security officer; or
- (vii) security firm.

Inspectors under the Security Providers Act

The primary enforcement role of the *Security Providers Act* rests with the Office of Fair Trading. Police officers cannot be appointed as inspectors under the Act (see s. 32: 'Appointment of Inspectors' of the *Security Providers Act*).

However, officers may have occasion to enforce certain provisions of the *Security Providers Act* and the Security Providers Regulation (the Regulation) and in doing so, may use general investigative powers conferred by the *Police Powers and Responsibilities Act*. For example, an officer can demand name and address of a person if the officer finds the person committing an offence or reasonably suspects the person has committed an offence against the *Police Powers and Responsibilities Act* (see ss. 40 and 41 of the *Police Powers and Responsibilities Act*).

In addition, the *Security Providers Act* is a relevant law (see 'relevant law' in Schedule 6 of the *Police Powers and Responsibilities Act* and s. 21: 'Relevant laws' of the Police Powers and Responsibilities Regulation) and officers may exercise certain powers under ss. 22: 'Power to enter etc. for relevant laws' of the *Police Powers and Responsibilities Act*.

See also s. 13.13.9: 'Authority to issue infringement notices for Fair Trading Offences' of this Chapter.

Identification to be worn by crowd controllers

When acting as a crowd controller, a licensed crowd controller must wear identification on their chest so that it is clearly visible (see s. 47: 'Identification to be worn by crowd controllers' of the *Security Providers Act*).

The identification must consist of a number no smaller than 3 cm in height and 4 mm in thickness, and the word 'SECURITY' in letters no smaller than 1 cm in height and 2 mm in thickness (see s. 25: 'Crowd controller's identification' of the Security Providers Regulation).

The numbers and letters of identification must be black on a white background and each crowd controller at a public place must bear a different number (see s. 25(4) and (5) of the Security Providers Regulation).

This section does not apply to a person who is acting as a bodyguard.

Security provider not to wear or display chequerboard hat

In carrying out the security provider's functions, a security provider must not wear, display, or permit to be displayed, a chequerboard hat. A 'chequerboard hat' means a hat displaying a chequerboard design, and includes a hat that has a chequerboard hatband (see s. 24: 'Security provider not to wear or display chequerboard hat' of the Security Providers Regulation).

POLICY

Officers who detect offences against s. 25A: 'Production of licence' and s. 47 of the *Security Providers Act* and s. 18: 'Liquor licensee to keep register of crowd controllers', s. 20: 'Security firm to keep register of security providers', s. 21: 'Security firm to keep register of crowd controllers', s. 23: 'Security firm's duties about functions and supervision of restricted licensee' or s. 24: 'Security provider not to wear or display chequerboard hat' of the *Security Providers Regulation* should, if appropriate, prosecute any person who commits such offence or where authorised, issue an infringement notice.

Commissioner may give investigative information

Under s. 12B: 'Commissioner may give investigative information' of the *Security Providers Act*, if the Commissioner reasonably suspects a person is the holder of, or an applicant for a security provider's licence, the commissioner may give information about an investigation relating to the possible commission of a disqualifying offence (see Schedule 2: 'Dictionary' of the *Security Providers Act*) to the Chief Executive. The Commissioner's power under s. 12B of the *Security Providers Act* has been delegated to all officers in charge of regions or commands (See Delegation No. D 3.3 of the Handbook of Delegations and Authorities).

Pursuant to s. 12B(3) of the *Security Providers Act*, investigational information about a person is not to be provided where:

- (i) giving the information may prejudice or otherwise hinder an investigation;
- (ii) giving the information may lead to the identification of an informant;
- (iii) giving the information may affect the safety of a police officer, complainant or other person;
- (iv) for an investigation that has been completed, the investigation has not led and is not likely to lead to a reasonable suspicion that the person committed a disqualifying offence; or
- (v) for an investigation that has been completed, the person has been charged with a disqualifying offence (this information has already been provided to the chief executive) see s. 3.4.29: 'Notification of Office of Fair Trading regarding Property Agents and Motor Dealers Act and Security Providers Act' of this Manual; or
- (vi) for an investigation that has not been completed, the investigation is unlikely to lead to a reasonable suspicion that the person committed a disqualifying offence.

POLICY

Where an investigating officer reasonably suspects a person is a holder of, or an applicant for a security provider's licence, and the officer has information about that person relating to the possible commission of a disqualifying offence listed in the Schedule contained in the *Security Providers Act*, where the information does not fall within categories (i) to (vi) above, officers are to submit a report to the officer in charge of the region or command, outlining the relevant information.

Officers in charge of regions or commands are to assess the information in terms of the conditions as set out in s. 12B(3) of the *Security Providers Act* and, if suitable, forward the details direct to the Manager, Licensing Branch, Business Services Division, Office of Fair Trading (see Service Manuals Contact Directory).

Fingerprinting of Security Providers

Section 27: 'Fingerprints to be taken' of the *Security Providers Act* provides each relevant person submitting an:

- (i) application for a licence; or
- (ii) application for the renewal of an unrestricted licence,

should allow their fingerprints to be taken for the application to be considered, unless their fingerprints are already held for that specific purpose (see ss. 10(8): 'Application' and 20(7): 'Renewal of unrestricted licence' of the *Security Providers Act*).

POLICY

Officers or suitably qualified Station Client Service Officers are to fingerprint applicants for licenses under the Act in accordance with s. 2.26.5: 'Fingerprinting' of this Manual and with the Security Applicant Fingerprint Procedures Manual (see the 'help' tab of the 'Security Provider Licensing' link on the QPS Corporate Intranet).

PROCEDURE

Officers or suitably qualified Station Client Service Officers fingerprinting applicants for licences under the *Security Providers Act* are to ensure that:

- (i) the identity of applicants are checked and verified before the fingerprints are taken;
- (ii) Livescan fingerprints of applicants are to be taken at the Beenleigh, Broadbeach, Cairns, Dutton Park, Gladstone, Goodna, Mackay, Maroochydore, Maryborough, Mount Isa, Rockhampton, Stafford, Toowoomba and Townsville Police Stations only, and may be taken by sworn officers or Station Client Service Officers at those locations;

(iii) 'wet print' fingerprints are to be taken at all other locations by sworn officers, and are to be forwarded to 'Security Provider Processing, Fingerprint Bureau, Police Headquarters, 200 Roma Street, Brisbane, Qld 4000'; and

(iv) no fee is to be charged for taking the fingerprints of applicants.

ORDER

Under no circumstances are the fingerprints of applicants to be taken at a watchhouse.

13.4.7 Receiving a complaint in relation to moveable dwelling (caravan/manufactured home) parks

PROCEDURE

Officers who receive a complaint of a serious nuisance being caused at a moveable dwelling park are to record the following details and advise the officer(s) responding to the incident:

- (i) the name, address and contact telephone number of the informant;
- (ii) the exact location of the incident;
- (iii) the identity if known, or the description, of the persons involved in the incident;
- (iv) the nature of the disturbance (i.e. the type of serious nuisance being caused); and
- (v) if any hazardous or dangerous situations exist that attending officers should be made aware of prior to their arrival.

Officers receiving a complaint are to establish from records in the register which is required to be maintained whether an initial or final nuisance direction has previously been given, and advise the officers responding to the complaint accordingly.

Investigating a complaint

PROCEDURE

Before exercising any of the powers granted under the *Police Powers and Responsibilities Act* responding officers should take up personally with the complainant to satisfy themselves reasonable grounds exist to suspect that a serious nuisance, as outlined by s. 59: 'Behaviour in moveable dwelling park causing serious nuisance' of the *Police Powers and Responsibilities Act* is occurring or has just occurred. They should ascertain that:

- (i) the person to whom the serious nuisance is being or has been caused is a resident of or anyone else in the park;
- (ii) the behaviour complained of is of the same or similar nature to those behaviours given as examples of a serious nuisance in s. 592 of the *Police Powers and Responsibilities Act*; and
- (iii) the behaviour complained of is occurring or has just occurred in the park.

Section 592 of the *Police Powers and Responsibilities Act* provides the following examples of serious nuisances:

- (i) a person assaults a resident or someone else;
- (ii) a person uses threatening or abusive language towards a resident or someone else;
- (iii) a person behaves in a riotous, violent, disorderly, indecent, offensive or threatening way towards a resident or someone else;
- (iv) a person causes substantial, unreasonable annoyance to a resident or someone else;
- (v) a person causes substantial, unreasonable disruption to the privacy of a resident or someone else; and
- (vi) a person wilfully damages property of a resident or someone else.

Officers who have satisfied themselves that a serious nuisance is occurring or has just occurred at a moveable dwelling park may, in accordance with the *Police Powers and Responsibilities Act*, exercise the following powers:

- (i) enter a moveable dwelling in a moveable dwelling park without warrant if the officer reasonably suspects there is a person in the dwelling who is causing or has just caused a serious nuisance (s. 593: 'Power to enter moveable dwelling' of the *Police Powers and Responsibilities Act*);
- (ii) issue an initial nuisance direction, either orally or by written notice, to a person to stop causing and/or not cause another serious nuisance in the park (s. 594: 'Initial direction about serious nuisance' of the *Police Powers and Responsibilities Act*);
- (iii) issue a final nuisance direction if the person has contravened within twenty-four hours the initial nuisance direction, either orally or by written notice, to a person to leave and not re-enter the park for a period not longer than twenty-four hours for non-compliance with an initial nuisance direction (s. 595: 'Direction to leave park' of the *Police Powers and Responsibilities Act*); and

(iv) require persons to whom an initial nuisance direction or final nuisance direction is about to be given, is being given or has been given to state their name and address or provide evidence of the correctness of their stated name and address (ss. 40: 'Person may be required to state name and address' and 41: 'Prescribed circumstances for requiring name and address' of the *Police Powers and Responsibilities Act*).

Initial nuisance direction

PROCEDURE

Officers who:

- (i) find a person causing a serious nuisance occurring in a moveable dwelling park; or
- (ii) suspect on reasonable grounds that a person has just caused a serious nuisance in a moveable dwelling park;

may issue an initial nuisance direction to that person to immediately stop causing the nuisance (if applicable) and/or not cause another serious nuisance in the park. This direction may be given in writing or orally.

This direction should generally be given in the form:

I have found you causing (or I suspect on reasonable grounds that you have just caused) a serious nuisance by (outline offending behaviour). I now direct you to immediately stop that serious nuisance and not to commit another serious nuisance in the park (or in cases where the person is not found causing a serious nuisance, not to commit another serious nuisance in the park). If you contravene this direction you may be directed to leave this park.

Officers who give persons an initial nuisance direction should warn the persons concerned that if they contravene that direction they may be directed to leave the park.

Final nuisance direction

PROCEDURE

Officers attending to a complaint of a serious nuisance at a moveable dwelling park where the person causing the serious nuisance has previously been given an initial nuisance direction within the preceding twenty-four hours should:

- (i) establish that a serious nuisance is being or has just been caused by the person in that park subsequent to the initial direction being given; and
- (ii) establish from their local police communications centre, or station and by questioning of the persons involved whether the person suspected of causing the serious nuisance has been given an initial nuisance direction under s. 594 of the *Police Powers and Responsibilities Act* within the previous twenty-four hours.

Officers who suspect on reasonable grounds that a person who has been given an initial nuisance direction has contravened that direction within twenty-four hours of that direction being given may then give the person a final nuisance direction requiring the person to leave the park and not re-enter it for a period of up to twenty-four hours.

A final nuisance direction may be given orally or in writing.

Officers giving a final nuisance direction should generally give the direction in the following form:

I suspect on reasonable grounds that you have contravened an initial nuisance direction given to you within the preceding twenty-four hours. I direct you to leave this park and not re-enter it for a period of up to twenty-four hours commencing from now. If you contravene this direction you will be committing an offence for which you may be prosecuted.

Officers who give a person a final nuisance direction should warn the person that it is an offence to contravene a direction.

Requiring name and address

PROCEDURE

Officers may require persons to state their name and address or provide evidence of the correctness of their name and address under ss. 40 and 41 of the *Police Powers and Responsibilities Act*.

Entering a moveable dwelling

PROCEDURE

Officers who reasonably suspect that a person in a moveable dwelling in a moveable dwelling park:

- (i) is causing a serious nuisance in the park; or
- (ii) has just caused a serious nuisance in the park;

may without warrant, enter that moveable dwelling (see s. 593 of the *Police Powers and Responsibilities Act*).

Records and registers

ORDER

Officers who give an initial nuisance direction to a person under the provisions of s. 594 of the *Police Powers and Responsibilities Act* or a final nuisance direction under s. 595 of the *Police Powers and Responsibilities Act* are to record, in their official police notebook or on their activity log (QP 0161), the following particulars:

- (i) the name and address of the person;
- (ii) the moveable dwelling park where the serious nuisance was caused;
- (iii) the time and date of giving the direction;
- (iv) the substance of the direction; and
- (v) the nature of the behaviour causing the serious nuisance.

Officers who give a person an initial nuisance direction under the provisions of s. 594 of the *Police Powers and Responsibilities Act* or a final nuisance direction under s. 595 of the *Police Powers and Responsibilities Act* are to notify their local police communication centre or, if in an area not served by a police communications centre, the officer in charge of their station and provide:

- (i) the information that is required to be recorded by the officer giving an initial or final nuisance direction; and
- (ii) their name, rank, number and station or establishment.

Officers in charge of police communication centres are to maintain a register of initial and final nuisance directions recording information with respect to directions given under the *Police Powers and Responsibilities Act*.

Officers in charge of stations not served by a police communications centre are to maintain a register of initial and final nuisance directions given by officers under their control in the same form as for police communications centres.

The register in which these details are to be kept is to be of a form decided by the relevant officer in charge.

Contravention of officers' directions and tribunal's orders

Where a person has been given a final nuisance direction and that person has contravened that final direction either by failing to leave the park or by re-entering the park within the relevant stated periods, that person may commit an offence under s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act*.

Section 456(6): 'Order of tribunal excluding person from park' of the *Residential Tenancies and Rooming Accommodation Act* provides an offence for a contravention of an order made by a tribunal prohibiting a person from entering or being in a moveable dwelling park without reasonable excuse.

PROCEDURE

Officers investigating a complaint that a person has contravened an order of a tribunal by entering or being in a moveable dwelling park should take up with the owner of the park and sight a copy of the order before commencing any enforcement action.

Proceedings for offences

POLICY

Officers should supply details of the time, date and place of a proceeding for an offence against s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act* to the owner of the moveable dwelling park at which the offence occurred upon the request of that owner.

Section 511(1): 'Attempts to commit offences' of the *Residential Tenancies and Rooming Accommodation Act* provides an offence for attempting to commit an offence against that Act. Section 41: 'Attempts to commit offences' of the Criminal Code applies to the *Residential Tenancies and Rooming Accommodation Act*.

Officers taking enforcement action against persons for breaches of:

- (i) s. 456(6) of the *Residential Tenancies and Rooming Accommodation Act* (A person must not contravene an order of a tribunal prohibiting the person from entering, or being in, a moveable dwelling park, unless the person has a reasonable excuse for not complying with it); and/or
- (ii) s. 791 of the *Police Powers and Responsibilities Act* (contravening direction or requirement of police officer);

should proceed by notice to appear or complaint and summons unless they believe on reasonable grounds that such a course would be ineffective. In such cases, officers may arrest the offender without warrant.

Warrants of possession

POLICY

Where officers are approached by an authorised person to assist in the execution of a warrant of possession, which is not directed to a police officer, they should accompany the authorised person to ensure that no breaches of the peace occur (see s. 13.4.9: 'Breaches of the peace' of this chapter).

ORDER

Where a warrant of possession is directed to a police officer, the officer is to comply with s. 13.18.25: 'Warrants of possession' of this chapter.

Assisting lessors to gain entry to premises

POLICY

Pursuant to s. 192(1)(l): 'Grounds for entry' of the *Residential Tenancies and Rooming Accommodation Act*, a lessor or a lessor's agent may enter premises, which include residential premises, caravans, manufactured homes, houseboats and the sites upon which these may be situated if the lessor or lessor's agent believes on reasonable grounds that the entry is necessary to protect the property or its inclusions (things supplied with the premises) from imminent or further damage. In these circumstances, and in accordance with s. 194(2): 'Entry by lessor or lessor's agent with another person' of the *Residential Tenancies and Rooming Accommodation Act*, an officer may accompany the lessor or the lessor's agent.

PROCEDURE

Officers who are requested to accompany a lessor or a lessor's agent to enter premises, under circumstances where the lessor or the lessor's agent believes on reasonable grounds that entry to the premises is necessary to protect it and any inclusions from imminent or further damage, should:

- (i) satisfy themselves that the person seeking to gain entry is the lessor or the lessor's agent;
- (ii) satisfy themselves that the premises is one to which a residential tenancy agreement under the *Residential Tenancies and Rooming Accommodation Act* applies;
- (iii) satisfy themselves as to the reasonableness of the grounds for suspecting that the entry is necessary; and
- (iv) if so satisfied, accompany the lessor into the premises to ensure no breach of the peace occurs.

Officers who assist a lessor or lessor's agent in entering a premises under the provisions of s. 194(2) of the *Residential Tenancies and Rooming Accommodation Act* should not cause any damage or actually effect a forcible entry.

Other offences and processes under the Residential Tenancies and Rooming Accommodation Act

In addition to the matters specifically applicable to officers, the *Residential Tenancies and Rooming Accommodation Act* deals with residential tenancy agreements, rooming accommodation agreements, rental bonds, rights and obligations of parties for residential tenancies and rooming accommodation, ending of agreements, resolution of tenancy and rooming accommodation disputes, enforcement and other related matters.

PROCEDURE

Officers receiving complaints regarding breaches or inquiries under the *Residential Tenancies and Rooming Accommodation Act* should refer complainants and inquirers to the Residential Tenancies Authority. However, officers may be required to take action in relation to ss. 192(1)(l), 194(2) and 456(6) of the *Residential Tenancies and Rooming Accommodation Act*.

POLICY

Officers should direct all public enquiries relating to the *Residential Tenancies and Rooming Accommodation Act* to the Residential Tenancies Authority (see Service Manuals Contact Directory).

Offences under other Acts

POLICY

Any action taken in relation to moveable dwelling (caravan/manufactured home) parks under the *Police Powers and Responsibilities Act* or the *Residential Tenancies and Rooming Accommodation Act* should be in addition to the investigation and prosecution of other statutory offences that may be discovered.

13.4.8 Accommodation disputes

Definitions

For the purposes of this section a number of definitions have been included. Most of these definitions reflect meanings given to terms in the *Residential Tenancies and Rooming Accommodation Act* and the *Residential Services (Accreditation) Act*.

Accommodation dispute

means police are called to attend at an accommodation facility where the owner or occupier of that place may request the removal of a person from that place who has or has had some type of agreement (verbal or written) with the owner or occupier of the place to reside at that place.

Aged rental scheme

is a scheme under which:

- (i) accommodation in return for the payment of rent, is provided mainly to older members of the community or retired persons; or
- (ii) the accommodation is provided to at least 4 persons who have a right to occupy 2 or more self-contained units either jointly or separately; and
- (iii) a food service or personal care service is provided to the persons mentioned in paragraph (ii).

See s. 6A: 'Meaning of aged rental scheme and scheme operator' of the *Residential Services (Accreditation) Act*.

Boarder or lodger

a person who occupies a room or rooms in a house which is under the control of another. Boarders receive food and the use of room in return for regular payment, lodgers receive only the use of a room.

Lessor

is a person who gives the right to occupy residential premises under a residential tenancy agreement and includes the person who is to give the right to occupy residential premises under a proposed residential tenancy agreement and a tenant who has given, or is to give, the right to occupy residential premises to a subtenant, see ss. 8: 'Lessor' and s. 20: 'Reference to lessors and tenants' of the *Residential Tenancies and Rooming Accommodation Act*.

Licence to occupy

means the granting of limited occupancy rights for the occupant ('the licensee'). A licensee has a personal right to occupy premises, but no property rights or control over the premises. A licence to occupy premises may be in writing or may be made verbally. A licence to occupy and a residential tenancies or rooming accommodation agreement are to be considered mutually exclusive. E.g. a person residing at a place can have either a licence to occupy or a residential tenancies agreement or a rooming accommodation agreement but not any combination at the same time.

Premises

for a residential tenancy, includes a part of premises and land occupied with premises and also includes a caravan or its site, or both the caravan and site; and a manufactured home in, or intended to be situated in, a moveable dwelling park or its site, or both the manufactured home and site; and a houseboat. See s. 9: 'Premises' of the *Residential Tenancies and Rooming Accommodation Act*.

Provider (for rooming accommodation)

is a person who provides rooming accommodation to residents. See s. 17: 'Provider' of the *Residential Tenancies and Rooming Accommodation Act*.

Residential premises

are premises used, or intended to be used, as a place of residence or mainly as a place of residence. See s. 10: 'Residential premises' of the *Residential Tenancies and Rooming Accommodation Act*.

Residential service

means a residential service under s. 41 of the *Residential Services (Accreditation) Act*;

Resident (for rooming accommodation)

means a person who, in rental premises, occupies 1 or more rooms as the person's only or main residence and who is not the provider; or a relative of the provider. See s. 14: 'Resident' of the *Residential Tenancies and Rooming Accommodation Act*.

Resident in a service

is a person who, in the course of the service, occupies 1 or more rooms as the person's only or main residence; and who is not the service provider; or a relative of the service provider; or a person employed in the service by the service provider. See s. 51: 'Meaning of resident' of the *Residential Services (Accreditation) Act*.

Residential tenancy

is the right to occupy residential premises under a residential tenancy agreement. See s. 11: 'Residential tenancy' of the *Residential Tenancies and Rooming Accommodation Act*.

Residential tenancy agreement

is an agreement under which a person gives to someone else a right to occupy residential premises as a residence, this agreement may be written or oral, see s. 12: 'Residential tenancy agreement' of the *Residential Tenancies and Rooming Accommodation Act*.

Rooming accommodation

is accommodation occupied or available for occupation by residents, in return for the payment of rent, if each of the residents has a right to occupy 1 or more rooms; and does not have a right to occupy the whole of the premises in which the rooms are situated; and does not occupy a self-contained unit; and shares other rooms, or facilities outside of the resident's room, with 1 or more of the other residents. It is immaterial whether or not the rooms are in the same premises; or the resident is provided with a food service, personal care service or other service. See s. 15: 'Rooming accommodation' of the *Residential Tenancies and Rooming Accommodation Act*.

Rooming accommodation agreement

is an agreement under which a provider provides rooming accommodation to a resident in rental premises. The agreement may be entirely or partly in writing, entirely or partly oral, entirely or partly implied; or both of the other forms. However, an agreement is not a rooming accommodation agreement if it is taken to be a residential tenancy agreement under section 18: 'Opting in as residential tenancy agreement' of the Act. See s. 16: 'Rooming accommodation agreement' of the *Residential Tenancies and Rooming Accommodation Act*.

Service provider

The service provider for a service is:

- (i) for a residential service registered under the *Residential Services (Accreditation) Act*, the person registered as the service provider for the service; or
- (ii) for a service that is not registered under the *Residential Services (Accreditation) Act*:
 - (a) if the service is being conducted under an aged rental scheme, the scheme operator, or
 - (b) if the service is being conducted other than under an aged rental scheme, the person conducting the service; or
 - (c) if the service is no longer being conducted, the person who was the service provider immediately before the service stopped.

See s. 6: 'Meaning of service provider' of the *Residential Services (Accreditation) Act*.

Tenant

is the person to whom the right to occupy residential premises under a residential tenancy agreement is given and includes the person to whom the right to occupy residential premises is to be given under a proposed residential tenancy agreement and a subtenant of a tenant. See ss. 13: 'Tenant' and 20 of the *Residential Tenancies and Rooming Accommodation Act*.

Purpose of this section

POLICY

The purpose of this section is to outline provisions relevant for police under the *Residential Tenancies and Rooming Accommodation Act* and *Residential Services (Accreditation) Act* and give officers guidance when called to accommodation disputes. The issues for officers to consider when called to accommodation disputes are many and are complex.

The priority for officers called to incidents that involve accommodation disputes are to preserve peace, to prevent crime and detect offences. To assist occupiers or be present whilst occupiers of a place remove persons in accommodation disputes should not be considered unless the officer is satisfied a clear legislative authority to do so exists. The *Residential Tenancies and Rooming Accommodation Act* for example, gives clear legislative authority pursuant to s. 375: 'Power to remove resident' for police to be present whilst providers remove residents under rooming accommodation agreements and pursuant to s. 350: 'Issue of warrant of possession' for police to remove tenants under residential tenancy agreements. These sections are outlined below.

Unless a clear legislative authority to remove a person in an accommodation dispute exists, officers could try to resolve these disputes by seeking an agreement from one of the parties to leave the premises voluntarily or refer participants involved to appropriate agencies for legal advice and dispute resolution.

Assisting the occupier of a place to remove other parties (as a trespasser) in accommodation disputes except where a clear legislative authority exists, should only be as a last resort. Officers should request advice from the RDO, DDO, patrol group inspector or shift supervisors based on the specific circumstances of the situation prior to taking this course of action.

Officers are not to provide legal advice to the parties involved in any accommodation dispute.

Residential tenancy or rooming accommodation agreements

The *Residential Tenancies and Rooming Accommodation Act* provides for a lessor and a tenant to enter into a residential tenancy agreement or for a provider and a resident to enter into a rooming accommodation agreement. These agreements may be entirely in writing, entirely oral or entirely implied, or partly in one of these forms and partly in one or both of the other forms.

The *Residential Tenancies and Rooming Accommodation Act* further provides for the giving of notices in approved forms to:

- (i) remedy breaches of agreements see ss. 280, 301, 368, 378 of the *Residential Tenancies and Rooming Accommodation Act*; and
- (ii) require the tenant/resident to leave the rental premises for failing to remedy a breach see ss. 281, 302, 369, 379 of the *Residential Tenancies and Rooming Accommodation Act*.

The *Residential Tenancies and Rooming Accommodation Act* further provides for applications to be made for termination of residential tenancy or rooming accommodation agreements for:

- (i) failure to remedy breaches see ss. 309 and 379 of the *Residential Tenancies and Rooming Accommodation Act*; and
- (ii) repeated breaches see s. 299, 315, 376, 382 of the *Residential Tenancies and Rooming Accommodation Act*.

Rooming accommodation agreements and removal of residents

Section 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act* makes it lawful for a provider and anyone helping the provider to use necessary and reasonable force to remove the resident and the resident's property from the rental premises. Necessary and reasonable force can only be used if:

- (i) the provider has given the resident a written notice under Chapter 5, Part 2: 'Ending of rooming accommodation agreements' of the *Residential Tenancies and Rooming Accommodation Act*;
 - (a) requiring the resident to leave the rental premises and the due day for leaving has passed; or
 - (b) terminating the rooming accommodation agreement and the agreement has ended;
- (ii) the resident refuses to leave the premises;
- (iii) a police officer is present; and
- (iv) the force used does not include force that is likely to cause bodily harm to the resident or damage to the resident's property.

Specifically applying to rooming accommodation agreements as defined in s. 16: 'Rooming accommodation agreements' of the *Residential Tenancies and Rooming Accommodation Act*, s. 611: 'Attendance at rental premises while person or property is removed' of the *Police Powers and Responsibilities Act*, provides that at the request of a provider, a police officer may enter and stay in a person's room in rental premises while the provider, or someone helping the provider, exercises a power under s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act* to remove the person or the person's property from the rental premises.

This entry power is subject to a request from the provider for police assistance and the existence of all criteria required in s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act*.

As outlined in s. 611(2) of the *Police Powers and Responsibilities Act*, s. 611(1) does not limit any other power of a police officer under another Act or law. As such police may be required to use other powers in accordance with other legislation while monitoring the removal of a resident including arrest and search powers. Officers should also consider using their power under s. 52: 'Prevention of offences – general' of the *Police Powers and Responsibilities Act* where appropriate.

Under Chapter 6, Part 1: 'Conciliation process for residential tenancy disputes and rooming accommodation disputes' and Part 2: 'Applications to tribunals' of the *Residential Tenancies and Rooming Accommodation Act*, residents and providers may use conciliation, dispute resolution processes and ultimately the Queensland Civil and Administrative Tribunal to rectify disputes.

POLICY

Officers tasked to attend and be present while a provider exercises a power under s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act*, are to make inquiries with a view to ascertaining that the provisions of the Act apply. In particular officers should establish that:

- (i) the provider has given the resident a written notice under Chapter 5, Part 2 of the *Residential Tenancies and Rooming Accommodation Act*;
 - (a) requiring the resident to leave the rental premises and the due day for leaving has passed; or
 - (b) terminating the rooming accommodation agreement and the agreement has ended; and

(ii) the resident refuses to leave the premises.

Providers are able to obtain an approved 'Notice to leave' document from the Residential Tenancies Authority, Queensland.

Officers should be mindful that a provider might not have a copy of the written notice that was provided to the resident. *Residential Tenancies and Rooming Accommodation Act* does not require the provider to retain a copy of the notice. As such the inability of a provider to produce a copy of the notice does not in itself show the notice has not been given to the resident. In these instances officers should look to other corroborating evidence that the notice has been given to the resident (e.g. copies of rent receipts, copies of periodic rental agreements, information from other residents, etc.).

In accordance with the provisions of s. 611: 'Attendance at rental premises while person or property is removed' of the *Police Powers and Responsibilities Act*, at the request of the provider, a police officer may enter and stay in the resident's room in the rental premises while the provider, or someone helping the provider, exercises a power under s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act*.

Officers should not become involved in the removal of residents or residents' property. Attending officers should remind providers that the primary role of police in these matters is to ensure the safety of all persons and to prevent offences.

When it is established that the provisions of s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act* are not applicable, the officer is not to make an entry of the resident's room under s. 611: 'Attendance at rental premises while person or property is removed' of the *Police Powers and Responsibilities Act*. The provider should be advised to seek advice from the Residential Tenancies Authority about the requirements under s. 375: 'Power to remove resident' of the *Residential Tenancies and Rooming Accommodation Act* (see Service Manuals Contact Directory).

Recording use of entry power

POLICY

Upon making an entry to a resident's room in rental premises under s. 611: 'Attendance at rental premises while person or property is removed' of the *Police Powers and Responsibilities Act* officers should make a record of their entry. If the entry relates to a QPRIME occurrence, then record the details in the general report of the relevant occurrence, otherwise an entry in the officer's official police notebook should be made.

Residential tenancy agreements and removal of tenants

POLICY

A warrant of possession is a warrant issued under s. 350: 'Issue of warrant of possession' of the *Residential Tenancies and Rooming Accommodation Act* which allows the lessor of premises rented under a residential tenancy agreement to regain possession of those premises. See s. 13.18.25: 'Warrants of possession' of this chapter for information on execution of these warrants.

Applicability of the Residential Services (Accreditation) Act

A residential service is defined in s. 4: 'Meaning of residential service' of the *Residential Services (Accreditation) Act*. A residential service can include a service conducted in a boarding house in which each of the residents occupies a room and shares a bathroom, kitchen, dining room and common room with other residents or a service providing rental accommodation to older persons in which each of the residents occupies a self-contained unit and is provided with a food service and personal care service.

However it should be noted that the legislation does not apply to premises providing accommodation where the room or rooms are occupied, or available for occupation, in the course of the service by less than four residents. Additionally s. 4(5): 'Meaning of residential service' of the *Residential Services (Accreditation) Act* specifically identifies a number of services that are not residential services. Services such as an aged care service, hotel, motel, backpacker hostels and the supported accommodation assistance program are not residential services.

The conduct of residential services is regulated by the *Residential Services (Accreditation) Act* through a registration and accreditation system where services must be provided to meet minimum standards. Further, residential services may be regulated by the *Residential Tenancies and Rooming Accommodation Act* as most persons using residential services will also be subject to either a residential tenancy agreement or a rooming accommodation agreement.

Person's who reside in residential services that are not subject to either a residential tenancy agreement or a rooming accommodation agreement, will be covered by some form of a licence to occupy. The person's ability to remain in the place by virtue of the licence to occupy may be subject to control by another Act e.g. the *Retirement Villages Act* or the person may become a resident of rooming accommodation which does not come within a rooming accommodation agreement or may be a boarder or lodger.

Applicability of the Residential Tenancies and Rooming Accommodation Act

Section 32: 'Boarders and lodgers' of the *Residential Tenancies and Rooming Accommodation Act* provides that the *Residential Tenancies and Rooming Accommodation Act* does not apply to a residential tenancy agreement if the tenant is a boarder or lodger.

However, if a rental bond is paid for a residential tenancy agreement under which the tenant is a boarder or lodger, the provisions of the *Residential Tenancies and Rooming Accommodation Act* about rental bonds apply to the agreement.

Section 44: 'Rooming accommodation agreements to which the Act does not apply' of the *Residential Tenancies and Rooming Accommodation Act* provides that the *Residential Tenancies and Rooming Accommodation Act* does not apply to a rooming accommodation agreement relating to the following rooming accommodation:

- (i) accommodation provided by a person in premises if:
 - (a) the premises are the person's only or main place of residence; and
 - (b) not more than three rooms in the premises are occupied, or available for occupation, by residents;
- (ii) aged care accommodation provided by an approved provider under the *Aged Care Act* (Cwlth);
- (iii) accommodation provided at an authorised mental health service under the *Mental Health Act*;
- (iv) accommodation provided in a private hospital under a licence in force under the *Private Health Facilities Act*;
- (v) accommodation for school students:
 - (a) provided as part of, or under an agreement with, a school; or
 - (b) arranged by a school for students of another school; or
 - (c) provided with financial assistance from the education department;
- (vi) accommodation for students within the external boundaries of a university's campus provided:
 - (a) by the university; or
 - (b) by an entity, other than the university, if the accommodation is provided other than for the purpose of making a profit;
- (vii) accommodation provided to holiday makers or travellers (not normally longer than six weeks);
- (viii) accommodation provided under the program known as the Supported Accommodation Assistance Program;
- (ix) accommodation provided under funding given by, or in premises owned by, Aboriginal Hostels Limited ACN 008 504 587;
- (x) accommodation for a person at a retirement village if the person resides in the accommodation under:
 - (a) a residence contract under the *Retirement Villages Act*; or
 - (b) section 70B of the *Retirement Villages Act*; and
- (xi) other accommodation prescribed under a regulation not to be rooming accommodation.

If a rental bond is paid for rooming accommodation within the external boundary of a university's campus, the provisions of the *Residential Tenancies and Rooming Accommodation Act* about rental bonds apply to the agreement.

Attendance at disputes (establish status of person obtaining accommodation)

POLICY

Officers attending accommodation disputes should establish whether the person obtaining the accommodation is a:

- (i) tenant within the meaning of s. 13 of the *Residential Tenancies and Rooming Accommodation Act*;
- (ii) boarder/lodger;
- (iii) resident in rooming accommodation within the meaning of s. 14 of the *Residential Tenancies and Rooming Accommodation Act*;
- (iv) resident in rooming accommodation which does not come within a rooming accommodation agreement and is not regulated by another Act; or
- (v) resident in rooming accommodation regulated by another Act such as the *Private Health Facilities Act*.

In determining whether a person is a:

- (i) tenant, a residential tenancy agreement should exist. Normally these agreements should be in writing, however they can be verbal or even implied and this can complicate making a determination
- (ii) resident for rooming accommodation under the meaning of s. 14 of the *Residential Tenancies and Rooming Accommodation Act* – a rooming accommodation agreement should exist. Normally these agreements should be in writing, however they can be verbal or even implied and this can complicate making a determination;
- (iii) resident of rooming accommodation, to which the *Residential Tenancies and Rooming Accommodation Act* does not apply and may be regulated by another Act – see s. 44(1)(a) to (k) of the *Residential Tenancies and Rooming Accommodation Act*; or

(iv) boarder or lodger – officers should consider:

- (a) whether there is some other type of contract or agreement (not a residential tenancy agreement or rooming accommodation agreement) to occupy the premises, and if so what are the conditions in the agreement, (including any termination clause);
- (b) whether other guests are allowed to stay in the premises;
- (c) the amount of rent, the method of payment and the continuity of occupation;
- (d) the intention of both parties on entering into the agreement;
- (e) whether the occupant has control over the premises or part of the premises or whether control remains with the owner or manager;
- (f) whether the owner/manager resides on the premises;
- (g) the provision of services by the owner/manager, such as cleaning and meals;
- (h) what do the premises consist of, what are the inclusions in the premises as part of the occupancy; and
- (i) whether there are shared facilities such as bathrooms and kitchens.

Generally if the occupant of the premises has control over all of the facilities associated with the accommodation (bedroom, kitchen, shower and toilet) it may well be that the occupant is a tenant and the tenancy of the residential premises is subject to the provisions of the *Residential Tenancies and Rooming Accommodation Act* and a residential tenancy agreement.

Attendance at disputes (action to take once status of person obtaining accommodation is established)

POLICY

When an officer has made a determination about the person obtaining accommodation in an accommodation dispute, and that the person is considered a:

- (i) tenant within the meaning of the *Residential Tenancies and Rooming Accommodation Act* – officers are to see subsection ‘Residential tenancy agreements and removal of residents’ above or refer participants to other agencies listed below for dispute resolution and advice;
- (ii) resident for rooming accommodation under the meaning of s. 14 of the *Residential Tenancies and Rooming Accommodation Act* – officers are to see subsection ‘Rooming accommodation agreements and removal of residents’ above or refer participants to other agencies listed below for dispute resolution and advice;
- (iii) resident of rooming accommodation which does not come within a rooming accommodation agreement but is regulated by another Act – officers are to refer participants to other agencies listed below;
- (iv) resident of rooming accommodation which does not come within a rooming accommodation agreement and is not regulated by another Act or is a boarder/lodger, where:
 - (a) the person’s licence to occupy the premises has been validly revoked; and
 - (b) the person fails to leave after having been asked to by the owner/manager of the premises;

that person may become a trespasser. If so, on the expiration or withdrawal of the licence to occupy, trespassing occupants should be given a reasonable time to leave and to remove their possessions from the premises. The provisions of s. 13.17.2: ‘Requests to remove person(s) from a place, etc. for trespass or disorderly conduct’ of this chapter apply.

Referral agencies

Appropriate referral agencies for dispute resolution or advice may include:

- (i) the Residential Tenancies Authority, (see Service Manuals Contact Directory) for matters that are or are believed to be pursuant to the *Residential Tenancies and Rooming Accommodation Act*;
- (ii) the Tenants Union of Queensland, (see Service Manuals Contact Directory);
- (iii) the Department of Human Services (Cwlth) for aged care accommodation provided by an approved provider under the *Aged Care Act* (Cwlth), (see Service Manuals Contact Directory);
- (iv) Queensland Health – Mental Health Branch for accommodation provided at an authorised mental health service under the *Mental Health Act* (see Service Manuals Contact Directory);
- (v) the Office of Fair Trading (see Service Manuals Contact Directory) for student accommodation;
- (vi) the Department of Social Services (see Service Manuals Contact Directory) for accommodation provided under the program known as the Supported Accommodation Assistance Program (also known as the National Affordable Housing Agreement);

(vii) the Department of Housing and Public Works, Aboriginal and Torres Strait Islander Partnership (ATSIP) or the Office of Fair Trading (see Service Manuals Contact Directory) for accommodation provided under funding given by, or in premises owned by, Aboriginal Hostels Limited; and

(viii) the Department of Communities, Child Safety and Disability Services, Seniors Legal and Support Service Centres or the Office of Fair Trading (see Service Manuals Contact Directory) for accommodation for a person at a retirement village if the person resides in the accommodation under the *Retirement Villages Act*.

13.4.9 Breaches of the peace

What constitutes a breach of the peace will generally depend on the conduct of the person(s), the location where the conduct is occurring and the circumstances surrounding the conduct taking place. In 11 Halsbury's Laws of England (4th ed.) para 108 it is stated: 'for the purpose of the common law powers of arrest without warrant, a breach of the peace arises where there is an actual assault, or where public alarm and excitement are caused by the person's wrongful act. Mere annoyance and disturbance or insult to a person or abusive language, or great heat and fury without personal violence, are not generally sufficient.'

In *R v Howell* [1982] 1 QB 416 at 427 it was held: '...there is a breach of the peace whenever harm is actually done or is likely to be done to a person, or, in his presence, to his property, or a person is in fear of being so armed through an assault, an affray, a riot, unlawful assembly or other disturbance...'

In a memorandum of advice on 22 September 2005, the Queensland Solicitor-General alluded to the fact that courts have been reluctant to undertake a precise definition of a breach of the peace. The Solicitor-General, however stated that it was possible to extract relevant principles for determining what conduct the courts have held to amount to a breach of the peace. These include:

- (i) conduct amounting to a breach of the peace need not be criminal although often it will be, however its occurrence will need to be proved to the criminal standard;
- (ii) in relation to an imminent breach of the peace a person may be detained for threatening conduct that does not itself amount to a criminal offence. For example a person's angry words may indicate that he is about to commit an assault and would do so if he is not restrained;
- (iii) conduct generally involving danger of physical injury to someone or behaviour that is likely to lead to violence;
- (iv) for the conduct complained of, it is unnecessary that the public disturbance created should be of a general nature;
- (v) rioting, fights between persons, or an assault by one person on another;
- (vi) direct action falling well short of actual violence, for example where a person who is lawfully carrying out the person's work is unlawfully and physically prevented by another from doing it;
- (vii) lawful, though provocative action. For example, a police officer fearing an angry reaction from a crowd opposed to orange and all it stood for, forcibly removed an orange lily, a symbol of Protestant ascendancy, worn by a person who was walking through an Irish town; or
- (viii) lawful, albeit profoundly anti-social behaviour. An example of this conduct has been included in s. 50: 'Dealing with breach of the peace' of the *Police Powers and Responsibilities Act*.

Conduct classified by the courts as not amounting to breaches of the peace includes:

- (i) shouting and swearing alone with no other associated conduct;
- (ii) the mere making of a noise in a public place, even if it caused some interference with the comfort of others; or
- (iii) disturbing a public meeting in non-violent way with no other associated conduct.

Section 50: 'Dealing with breach of the peace' of the *Police Powers and Responsibilities Act* applies if a police officer reasonably suspects:

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

POLICY

Where action is being considered to be taken for a breach of the peace under s. 50(2) of the *Police Powers and Responsibilities Act*, officers are to ensure that they have the reasonable suspicion required under s. 50(1) of the *Police Powers and Responsibilities Act*.

When a person has been detained under s. 50, the detention will be lawful providing that the required reasonable suspicion under s. 50(1) continues to exist. Also it is lawful in appropriate circumstances for a person detained under s. 50 to be taken to a watch house or other place (e.g. holding cell) providing that the watch house manager or other officer in charge holds the required reasonable suspicion.

However, once the relevant breach of the peace has been prevented from happening or continuing, or the conduct that is the breach of the peace has been prevented from again happening, the person is to be released from detention.

Where a person is detained under s. 50 of the *Police Powers and Responsibilities Act* and taken to a watchhouse or other place (e.g. holding cell), an entry is to be made on QPRIME. See s. 16.8: 'QPRIME custody, search and property reports' of this Manual.

Where a person is detained under s. 50 of the *Police Powers and Responsibilities Act* and taken to a watchhouse or other place (e.g. holding cell), no clear authority exists to search such person, unless by consent. (Section 443: 'Police officer may search person in custody of the *Police Powers and Responsibilities Act* does not apply.)

Persons detained under s. 50 of the *Police Powers and Responsibilities Act* are:

- (i) to be detained for the minimum time necessary;
- (ii) to be monitored/supervised constantly;
- (iii) not to be placed with other prisoners who have been searched; and
- (iv) to be segregated where possible from all other prisoners;

until released from custody or arrested for an offence.

13.4.10 Deleted

13.4.11 Issuing of infringement notices for public nuisance, public urination and associated offences

For the purpose of this section the following definitions apply:

prescribed public nuisance offence means an offence against ss. 6(1): 'Public nuisance' or 7(1): 'Urinating in a public place' of the *Summary Offences Act*, unless the offence also involves an offence against the person.

associated offence, in relation to a prescribed public nuisance offence, means an offence against either or both of the following provisions, unless the offence also involves an offence against the person:

- (i) s. 790(1): 'Offence to assault or obstruct police officer' of the *Police Powers and Responsibilities Act*, but only to the extent that it relates to obstructing a police officer in the performance of a police officer's duties in relation to a prescribed public nuisance offence;
- (ii) s. 791(2): 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act*, but only to the extent that it relates to a requirement to state a person's correct name and address in relation to a prescribed public nuisance offence.

Prescribed public nuisance offence

POLICY

Whenever practical, officers should use their discretion when dealing with prescribed public nuisance offences and focus on de-escalation of the incident. This is particularly important when the person committing the prescribed public nuisance offence has a special need, e.g. mental illness, chronic alcoholism, impaired capacity.

For assistance in determining whether a person may have a special need see ss. 6.3.1: 'Circumstances which constitute a special need' and 6.3.2: 'Establishing whether a special need exists' of this Manual.

Officers should consider alternatives to issuing an infringement notice or commencing a proceeding against a person suspected of having committed a prescribed public nuisance offence, particularly if the person has a special need, e.g. mental illness. See also s. 6.6.9: 'Persons with a mental illness suspected of having committed or charged with offences' of this Manual.

Depending on the circumstances of the prescribed public nuisance offence committed and where applicable the associated offence, officers may:

- (i) where available, refer the person to an appropriate agency.

See also ss. 6.3.11: 'Homeless persons', 6.5.4: 'Alcohol and/or drug dependency', 6.5.5: 'Potentially harmful things (volatile substance misuse)', 6.6: 'Mentally ill persons' and 16.6.3: 'Drunkenness' of this Manual;

- (ii) give a verbal caution to the person;
- (iii) give a move on direction to the person. See s. 13.23: 'Move-on power' of this Manual;
- (iv) issue an infringement notice to the person; or
- (v) commence a proceeding against the person.

Where an officer refers the person to an appropriate agency, officers should also give the person a verbal caution for the prescribed public nuisance offence and where applicable the associated offence.

PROCEDURE

Where an officer gives a verbal caution for a prescribed public nuisance offence, and where applicable an associated offence, the officer should:

- (i) obtain the alleged offender's name and address; and
- (ii) record in their official notebook or activity log the full particulars of the alleged offender together with the time, date, location, type of offence and any other relevant particulars.

POLICY

Officers are only to issue an infringement notice to a person for a prescribed public nuisance offence and where applicable an associated offence, in circumstances where the person would have otherwise been issued with a notice to appear, served with a complaint and summons or arrested for the offence.

Associated offence

POLICY

Officers are only to issue an infringement notice for an associated offence where an infringement notice is also to be issued for the prescribed public nuisance offence.

An associated offence does not include an offence against the provisions of s. 791(2): 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act* that relates to a requirement the person give evidence of the correctness of the stated name and address in accordance with s. 40(2): 'Person may be required to state name and address' of the *Police Powers and Responsibilities Act*.

Examples of when an infringement notice for an associated offence, in addition to an infringement notice for a prescribed public nuisance offence, may be issued include:

- (i) when the person obstructs a police officer dealing with that person's prescribed public nuisance offence;
- (ii) when the person disobeys a requirement by a police officer to state their correct name and address in relation to the prescribed public nuisance offence; and
- (iii) when the person is arrested for a prescribed public nuisance offence and later obstructs a police officer at a watchhouse (see 'Receiving custody of persons arrested for prescribed public nuisance offences' of this section).

Issuing an infringement notice

POLICY

Where an officer is to issue an infringement notice for a prescribed public nuisance offence, and where applicable, an associated offence, each infringement notice is only to refer to one offence. Separate infringement notices are to be issued for a prescribed public nuisance offence and an associated offence.

Where a person commits a number of prescribed public nuisance offences in the one set of circumstances, officers should only issue one infringement notice for the most relevant prescribed public nuisance offence.

An infringement notice may only be issued if the alleged offender is able to provide details of their address (see s. 15(2)(c): 'Infringement notices' of the *State Penalties Enforcement Act*. Where a person has no address, alternatives to issuing an infringement notice should be considered.

Where an officer has made the decision to issue an infringement notice to a person for a prescribed public nuisance offence and where applicable, an associated offence, the officer should:

- (i) issue a traffic infringement notice (PT56) in accordance with s. 8.6.4: 'Procedure for issuing Infringement Notices' of the Traffic Manual.

Before issuing an infringement notice, officers should, where possible, ensure the person is positively identified by producing their photographic identification or other suitable identification. Where a driver licence is produced, officers should enter the relevant details on the front of the infringement notice. Where other identification details have been used to identify the person, the information source should be recorded on the front of the infringement notice under the area titled 'Information about the offence';

- (ii) prior to serving the infringement notice, clearly cross out the irrelevant information on the rear of the person's yellow copy of the infringement notice;

- (iii) additionally, officers are to give the person a copy of a Public Nuisance Ticket Information Sheet and explain the contents (see also 'Public Nuisance Ticket Information Sheet' of this section);

- (iv) ensure that prior to submitting the pink and green copies of the infringement notice to their officer in charge, a QPRIME occurrence is created for the offence/s via the Policelink Intranet Occurrence Reporting web page on the QPS Intranet and ensure the 'Infringement Report' is completed on the person in the relevant QPRIME occurrence (see QPRIME User Guide); and

- (v) write the relevant QPRIME occurrence number on the front of the pink copy of the infringement notice under the area titled 'Information about the offence' prior to the notice being forwarded to their officer in charge.

Discontinuing arrest

Section 377: 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act* outlines when police have a duty to release an adult who has been arrested. This duty includes when it is more appropriate to serve an arrested person with an infringement notice, notice to appear or summons for the offence (see s. 377(2) of the *Police Powers and Responsibilities Act*).

POLICY

Where an officer has arrested an adult person for a prescribed public nuisance offence and where applicable, an associated offence, the officer is to consider discontinuing the arrest and issuing an infringement notice to the person for the offence in accordance with s. 377: 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act*.

Interstate residents or overseas visitors committing prescribed public nuisance and associated offences

POLICY

Where overseas visitors and interstate residents commit prescribed public nuisance and associated offences when visiting Queensland they should not be treated any differently to Queensland residents.

The fact that an overseas or interstate resident may commit a prescribed public nuisance offence, and where applicable, an associated offence, and would be due to leave Queensland before such person is required to pay the infringement notice fine should not alone be considered sufficient cause to warrant the arrest of the person.

Officers who detect overseas residents committing prescribed public nuisance and associated offences may consider giving a caution where appropriate.

Where the issue of an infringement notice or caution is not considered appropriate, officers may consider commencing a prosecution by issuing a notice to appear, complaint and summons or making an arrest where justified.

PROCEDURE

Officers who issue infringement notices to interstate residents for prescribed public nuisance and associated offences should ensure that the person's name, address and date of birth are accurately entered on the infringement notice, including any driver licence details. The State Penalties Enforcement Registry (SPER) is unable to process infringement notices issued to interstate residents which do not contain a date of birth. However, it should be noted that there is no legislative power to require a person to state their date of birth.

Officers who issue an infringement notice to an overseas visitor should:

- (i) where possible, show the alleged offender's current Australian address on the face of the notice; and
- (ii) indicate on the prosecution copy of the notice the alleged offender's usual residential address and the date the alleged offender is due to leave Australia.

For offences not dealt with by the SPER, this information will assist if the infringement notice is returned unpaid to indicate whether the notice may be waived without the need for a report from the issuing officer.

Officers should be mindful of the contents of ss. 11.8: 'Diplomatic Privileges and Immunities Act' and 16.7: 'Foreign nationals' of this Manual.

Identifying particulars

POLICY

There are no provisions for the taking of the identifying particulars of a person who has only been issued with an infringement notice for prescribed public nuisance or associated offences.

Officers are to be mindful that authority exists to take identifying particulars for prescribed public nuisance and associated offences in accordance with ss. 467: 'Taking identifying particulars of person in custody' and 468: 'Taking identifying particulars – proceeding started by notice to appear or complaint and summons' of the *Police Powers and Responsibilities Act* (see also s. 2.26.2: 'When to take identifying particulars' of this Manual).

However, where an officer arrests a person for a prescribed public nuisance or associated offence, the officer may discontinue the arrest and issue an infringement notice for the offence in accordance with s. 377(2)(b)(i): 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act*. In this instance, if the identifying particulars of the person have been taken prior to the person's release, officers should determine whether the identifying particulars should be destroyed within a reasonable time in the presence of a justice in accordance with s. 474: 'Destruction of identifying particulars' of the *Police Powers and Responsibilities Act*.

Public Nuisance Ticket Information Sheet

A Public Nuisance Ticket Information Sheet has been developed to assist persons who have been issued with an infringement notice for a prescribed public nuisance offence and where applicable, an associated offence. The Public Nuisance Ticket Information Sheet provides details in relation to infringement notice inquiries, payment options, election for court hearing and contact details for local community support resources.

POLICY

District officers or designated officers are to ensure that an audit of applicable general community support resources is conducted within their district and appropriate contact information is included in the 'Court diversion programs' and the 'Local community support contacts' areas of the Form QP 0871: 'Public Nuisance Ticket Information Sheet' available on QPS Forms Select. Community support contacts may include local drug and alcohol rehabilitation programs, emergency accommodation providers and community legal centres.

District officers are to ensure that an appropriately updated 'Public Nuisance Ticket Information Sheet' is then made available to officers in their district for issue with every public nuisance infringement notice.

When an officer issues an infringement notice to a person for a prescribed public nuisance offence, the officer is to also issue and explain to the person a Form QP 0871: 'Public Nuisance Ticket Information Sheet'.

Repeat offenders

POLICY

Where officers become aware that a person has been issued multiple infringement notices for prescribed public nuisance offences, officers should consider alternatives to issuing further infringement notices.

Receiving custody of persons arrested for prescribed public nuisance offences

POLICY

A prescribed police officer at the police station, police establishment or watchhouse, may as soon as reasonably practicable, where a person has been arrested for a prescribed public nuisance offence, issue and serve an infringement notice on the person in accordance with s. 394(2)(ca): 'Duty of police officer receiving custody of person arrested for offence' of the *Police Powers and Responsibilities Act*. In this instance a prescribed police officer is the officer referred in s. 394(2)(ca) of the *Police Powers and Responsibilities Act*.

A prescribed police officer may issue an infringement notice on behalf of the arresting officer in accordance with s. 394(2)(ca) of the *Police Powers and Responsibilities Act*. For example, a prescribed police officer at the Brisbane City Watchhouse who receives a person arrested for a prescribed public nuisance offence committed in the Brisbane Central district may issue the person an infringement notice in accordance with s. 394(2)(ca).

Where the person issued the infringement notice elects to have the matter dealt with by a court, the original arresting officer is responsible for commencing court proceedings as if they were the issuing officer of the infringement notice.

PROCEDURE

Where a prescribed police officer determines that an infringement notice for a prescribed public nuisance offence, and where applicable an associated offence, is to be issued in accordance with s. 394(2)(ca) of the *Police Powers and Responsibilities Act* on behalf of the arresting officer, the prescribed police officer is to:

- (i) complete and issue the infringement notice in accordance with this section;
- (ii) make appropriate notes on the rear of the pink copy of the infringement notice indicating the infringement notice has been issued on behalf of the arresting officer;
- (iii) ensure a QPRIME supplementary report is created advising of the action taken;
- (iv) ensure that the 'Infringement Report' is completed on the person in the relevant QPRIME occurrence (see QPRIME User Guide);
- (v) send a QPRIME task to the arresting officer's organisational unit advising of the action taken;
- (vi) forward the pink and green copies of the infringement notice for processing to the officer in charge of their station or establishment; and
- (vii) where any identifying particulars have been taken of the person in relation to the offence prior to the issuing of an infringement notice, determine whether the identifying particulars should be destroyed within a reasonable time in the presence of a justice in accordance with s. 474: 'Destruction of identifying particulars' of the *Police Powers and Responsibilities Act*.

Court election

As is the current practice with infringement notices issued for traffic offences, the Department of Transport and Main Roads will provide predetermined police districts/establishments with a Prosecution Pending List advising of certain types of unpaid infringement notices issued by officers.

PROCEDURE

Where the officer in charge of a district/establishment receives a Prosecution Pending List that refers to a prescribed public nuisance or associated offence infringement notice, the officer is to refer the matter to the officer in charge of the station or establishment from where the infringement notice was issued for finalisation.

POLICY

Officers in charge of stations or establishments who receive advice that a person has elected to have their infringement notice for a prescribed public nuisance or associated offence dealt with in a court are to refer the matter to the officer who issued the infringement notice to consider commencing a proceeding against the person.

Where a prescribed police officer, who has issued an infringement notice on behalf of the arresting officer in accordance with s. 394(2)(ca) of the *Police Powers and Responsibilities Act*, receives notification that the person has elected to have the matter dealt with in court, such officer should forward the notification to the officer in charge of the arresting officer to consider commencing a proceeding against the person.

PROCEDURE

Officers who receive advice that a person has elected to have their infringement notice dealt with in a court should comply with ss. 3.4.2: 'The decision to institute proceedings' and 3.4.3: 'The discretion to prosecute' of this Manual.

See also s. 3.5: 'The institution of proceedings' of this Manual.

See also 'Waiving and cancellation of infringement notices' of this section.

Children

POLICY

Officers considering issuing an infringement notice to persons under 17 years of age for prescribed public nuisance and, where applicable, associated offences, are to follow the policy and procedures contained in s. 8.6.1: 'Infringement Notice issued to persons under age of 17 years' of the Traffic Manual.

Officers in charge to forward issued infringement notices to the Department of Transport and Main Roads

POLICY

Officers in charge of stations and establishments should ensure that infringement notices issued by officers under their control for public nuisance and associated offences are forwarded to Queensland Transport in accordance with s. 8.6.7: 'Officers in charge to forward issued Infringement Notices to Queensland Transport' of the Traffic Manual.

Waiving and cancellation of infringement notices

POLICY

Officers in charge of stations or establishments seeking to waive or cancel infringement notices issued in relation to prescribed public nuisance and where applicable associated offences, are to follow the policy and procedures provided for in s. 8.7: 'Waiving and cancellation of Infringement Notices' of the Traffic Manual.

Where the issuing officer proposes that an infringement notice should be waived on the grounds that any further prosecution of the matter would not satisfy the 'sufficiency of evidence' and where applicable 'public interest' tests set out in s. 3.4.3: 'The discretion to prosecute' of this Manual, the issuing officer should set out their reasons for this course of action in a report to their supervising commissioned officer.

This report is to be prepared whether the proposed course of action arises from an election by the alleged offender to have the matter dealt with by a court or as a result of written representation made by or on behalf of the person to whom the notice as issued.

The commissioned officer is to determine whether the infringement notice is to be waived and no further enforcement action taken.

PROCEDURE

Where the officer in charge of a station or establishment receives advice to waive or cancel an infringement notice issued in relation to prescribed public nuisance, and where applicable associated offence, the officer is to add a supplementary report to the relevant QPRIME occurrence advising of the action taken.

Where an infringement notice is waived or cancelled, the officer in charge is to also ensure that the 'Status' and 'Withdrawal Authorisation' fields within the 'Infringement Report' in the QPRIME occurrence are updated accordingly.

13.4.12 Neighbourhood disputes

The *Neighbourhood Disputes (Dividing Fences and Trees) Act* provides options for neighbours to resolve issues about trees and fences. This section will provide officers with information to assist the involved parties when attending disputes relating to dividing fences and overhanging trees.

Disputes in relation to pool barriers which make up the common boundary are managed under Chapter 8, Part 2A: 'Neighbours' rights and responsibilities for particular dividing fences' of the *Building Act*.

In all instances the adjoining neighbours need to agree on the common boundary or arrange for a qualified surveyor to identify the boundary. Officers should be aware fences may not be constructed on the true boundary line.

POLICY

Officers should advise the involved parties of the options to resolve the dispute through the provisions of the *Neighbourhood Disputes (Dividing Fences and Trees) Act* in appropriate circumstances. It is not the role of the Service to act as mediators or decision-makers between neighbours as dividing fence and tree disputes are resolved through QCAT.

Information to assist and guide neighbours:

- (i) relating to dividing fences (which do not make part of a pool barrier) and overhanging trees is available on the Department of Justice and Attorney-General website and includes:
 - (a) contact advice about free mediation services provided by Dispute Resolution Centres;
 - (b) contact advice about free legal advice through Legal Advice Queensland or a local Community Legal Centres; and
 - (c) guidance on the *Neighbourhood Disputes (Dividing Fences and Trees) Act*; or
- (ii) relating to pool barriers which make part of a dividing fence is available on the Department of Housing and Public Works website within the Construction tab.

13.4.13 Out-of-control events

For the purposes of this section:

senior officer

is an officer of the rank of sergeant or above.

event authorisation

means authority is provided by the senior officer for out of control event powers to be enacted.

POLICY

Out-of-control events typically involve a large gathering of people whose conduct results in persons fearing physical violence or damage to property.

For an event to be an out-of-control event there must be:

- (i) twelve or more persons gathered together;
- (ii) three or more persons associated with the event, either collectively or individually, engaging in out-of-control conduct (see s. 53BC: 'What is *out-of-control conduct*' of the *Police Powers and Responsibilities Act*); and
- (iii) out of control conduct that would cause a person, at or near the event, reasonable fear of violence, damage to property or suffer substantial interference to rights, freedoms, peaceful passage or enjoyment in a public place.

It is immaterial whether a person is present to suffer fear or interference.

Events held on premises subject to specified licensed events, political, industrial or protest actions are not out-of-control events.

Cost orders maybe sought in relation to reasonable costs for an out of control event, against a person, including a child, either by application or upon the courts own initiative.

Initial response

PROCEDURE

An officer attending a suspected out-of-control event:

- (i) is to assess the situation to satisfy themselves that the event has become, or is likely to become, an out-of-control event; and
- (ii) where the officer is satisfied the event has or is likely to become an out-of-control event, the officer (if not a sergeant or above) is to contact a senior officer and seek an event authorisation.

When a senior officer receives a request for an event authorisation, the senior officer is to satisfy themselves the event has become or is likely to become an out of control event. Where the senior officer believes the event has or is likely to become an out-of-control event, the senior officer is to:

- (i) advise the senior on scene officer at the event location (either in person or by radio, telephone etc.):
 - (a) that an event authorisation has been issued;
 - (b) the duration of the event authorisation; and
 - (c) any restrictions on the use of powers available under s. 53BG: 'Taking action for out-of-control events' of the *Police Powers and Responsibilities Act*;

(ii) create a written record of the event authorisation at the earliest opportunity, which may be recorded in the QPRIME 'Out of control event' occurrence [1680]. The record is to include as a minimum:

- (a) time and date of the event authorisation;
- (b) the location of the event;
- (c) the duration of the event authorisation;
- (d) the basis for declaring the event to be an out-of-control event; and
- (e) any restrictions included in the event authorisation on how the out-of-control event powers would be used.

ORDER

To ensure compliance with s. 678: 'Register of enforcement acts' of the *Police Powers and Responsibilities Act*, the authorising officer is to ensure a QPRIME 'Out of control event' occurrence [1680] is entered as soon as reasonably practicable.

Out-of-control event powers

When an event authorisation has been issued, officers have additional powers under s. 53BG: 'Taking action for out-of-control events' of the *Police Powers and Responsibilities Act*, namely:

- (i) the power to stop a vehicle or enter a place without a warrant;
- (ii) give a person or group of persons a direction to:
 - (a) stop any conduct;
 - (b) immediately leave a place; or
 - (c) not to return to a place within a stated period of not more than twenty four hours, unless the person or group resides at the place; and
- (iii) take any other steps reasonably necessary,

to stop or prevent the out-of-control event from continuing.

ORDER

An officer is not to use out-of-control event powers unless an event authorisation has been issued by a senior officer.

Out-of-control event directions

PROCEDURE

Where an officer is authorised to use out-of control-event powers and they intend to give a person or a group of persons a direction under s. 53BG(2)(b) of the *Police Powers and Responsibilities Act*, the officer should, where practical use the following template:

I am [name, rank] of [name of police station/establishment].

An out of control event authorisation has been issued regarding this location.

I now direct you [indicate person or group or name of person if known] to immediately:

- (i) stop [identify out of control conduct];*
- (ii) leave/move [distance] from [identify place/location] and*
- (iii) you are not to [return/be within (distance) of place/location] for a period of [not longer than 24 hours],*

(as appropriate to resolve the event).

If you fail to comply with this direction you will be committing an offence for which you may be arrested.

Officers who give a person or group of persons a direction are to:

- (i) provide the following details to the communications officer for logging against the job number; and
- (ii) at the earliest opportunity, include the following details in a supplementary report within the relevant QPRIME occurrence created by the authorising senior officer to record the out-of-control event authorisation, the:
 - (a) time and date the direction was given;
 - (b) location of the person or group when the direction was given;
 - (c) name and address, if known, of the person or persons given the direction or a description of the person given the direction, including age, sex and ethnic background; and
 - (d) terms of the direction given.

Failure to comply with out-of-control event directions

PROCEDURE

Prior to taking any enforcement action against a person who is reasonably suspected of having contravened a direction, officers should satisfy themselves that the person:

- (i) is a person to whom a direction was given;
- (ii) has contravened the direction;
- (iii) has been warned, where practicable, that it is an offence to fail to comply and that they may be arrested for the offence;
- (iv) has been given a reasonable opportunity to comply with the direction; and
- (v) has no reasonable excuse for contravening the direction,

see s. 633: 'Safeguards for oral directions or requirements' of the *Police Powers and Responsibilities Act*.

Out-of-control event related offences

Where an out-of-control event occurs, a person may commit an offence by:

- (i) organising an out-of-control event (see s. 53BH: 'Organising an out of control event' of the *Police Powers and Responsibilities Act*);
- (ii) causing an event to become out-of-control (see s. 53BI: 'Causing an out of control event' of the *Police Powers and Responsibilities Act*); or
- (iii) disobeying an out-of-control event direction (see s. 53BJ: 'Offence to contravene direction' of the *Police Powers and Responsibilities Act*).

The officer responsible for investigating an offence under s. 53BH of the *Police Powers and Responsibilities Act* should be the:

- (i) senior officer who issued the event authorisation; or
- (ii) most senior officer at the event scene where the event authorisation was provided remotely.

Costs associated with an out-of-control event

Where an offender is found guilty of an offence under ss. 53BH, 53BI, or 53BJ of the *Police Powers and Responsibilities Act*, the person may be ordered by a court to pay some or all of the Service's costs associated with policing the out of control event.

PROCEDURE

Where a person is charged with an out-of-control event related offence:

- (i) the investigating officer should consider whether it is appropriate to make an application for costs against the person if they are found guilty of the offence; and
- (ii) the commissioned officer directly supervising the investigating officer should prepare the quantum of any costs associated with an out of control event.

The costs should be calculated for the actual time officers were involved in managing the incident, as per the 'QPS Schedule of Fees and Charges' special service rates (available on the Finance and Business Support Division webpage on the QPS Corporate Intranet (Bulletin Board)). Officers should also consider other reasonable costs incurred e.g. police helicopter or police vehicles. The time periods should be obtained from the CAD/IMS records or the individual ITAS patrol logs.

Wherever practicable, the Service's costs should be calculated and included in the relevant QPRIME occurrence on the same shift where the event occurred. In any instance, the costs are to be calculated prior to the offender(s) first court appearance.

13.5 Correctional centres and incidents involving Queensland Corrective Services

All correctional centres in Queensland are under the control of Queensland Corrective Services (QCS) whether they are operated by the QCS or by private contractors.

13.5.1 Definitions

For the purposes of this section:

Chief executive

means the chief executive, Queensland Corrective Services.

Escape

See s. 4: 'Definitions' and Schedule 4 of the *Corrective Services Act*.

Parole order

See s. 4: 'Definitions' and Schedule 4 of the *Corrective Services Act*.

Prisoner

means a person who is in the chief executive's custody.

See s. 7: 'When a person is taken to be in the chief executive's custody' of the *Corrective Services Act*.

Unlawfully at large

See s. 4: 'Definitions' and Schedule 4 of the *Corrective Services Act*.

13.5.2 Offences under the Corrective Services Act

There are numerous offences under the *Corrective Services Act*. Those offences more likely to come to the attention of police are:

- (i) s. 84: 'Prisoner's duties while on leave': The prisoner must comply with the conditions stated in the order, unless the prisoner has a reasonable excuse;
- (ii) s. 124(a): 'Other offences': A prisoner must not prepare to escape from lawful custody;
- (iii) s. 124(e): 'Other offences': A prisoner must not threaten to do grievous bodily harm to anyone;
- (iv) s. 124(k): 'Other offences': A prisoner must not without reasonable excuse, be unlawfully at large;
- (v) s. 126: 'Helping prisoner at large': A person must not aid someone that the person knows, or ought reasonably know, is a prisoner who is unlawfully at large;
- (vi) s. 128: 'Taking prohibited thing into corrective services facility or giving prohibited thing to prisoner' (1)(c): A person must not give or attempt to give a prohibited thing to a prisoner in a corrective services facility or to a prisoner of a court (a prohibited thing is defined in s. 20 of the *Corrective Services Regulation*); and
- (vii) s. 126: 'Taking prohibited thing into corrective services facility or giving prohibited thing to prisoner' (1)(d): a person must not cause or attempt to cause, a prohibited thing to be given to a prisoner in a corrective services facility or to a prisoner of the court.

These offences are simple offences.

Criminal Code s. 142: 'Escape by persons in lawful custody', is also applicable to offences in this chapter and is classified as a crime.

The *Police Powers and Responsibilities Act* s. 365: 'Arrest without warrant' and s. 366: 'Arrest of escapees etc.' specifically, 366(2) provides the power of arrest for offences relating to prisoners unlawfully at large within the meaning of the *Corrective Services Act*.

See s. 3.4.19: 'Charges against prisoners' of this Manual when further charges are to be preferred against a prisoner who is currently serving a term of imprisonment.

13.5.3 Corrective Services Investigation Unit to be advised

POLICY

First response officers are to contact the Corrective Services Investigation Unit when a:

- (i) major incident occurs within a Queensland correctional centre, including where a death occurs;
- (ii) correctional services officer or other staff member of a correctional centre is involved in any criminal activity;
- (iii) correctional services officer or other staff member of a correctional centre is involved in any corrupt conduct;
- (iv) breach of a work order under s. 66(1): 'Work order' of the *Corrective Services Act* relating to security and supervision has occurred;
- (v) criminal offence has been committed by a prisoner, and Queensland Corrective Services is not required to be notified under s. 13.5.4: 'Queensland Corrective Services to be advised' of this chapter; or
- (vi) prisoner escapes.

See s. 3.4.19: 'Charges against prisoners' of this Manual when further charges are to be preferred against a prisoner who is currently serving a term of imprisonment.

The Officer in Charge, Corrective Services Investigation Unit, is to notify the relevant district officer or equivalent as to whether any of the above matters are to be investigated by officers from the Corrective Services Investigation Unit or

local officers. Officers who are detailed to investigate a matter involving a correctional centre or a prisoner in accordance with such notification are to keep both the Corrective Services Investigation Unit and the relevant district officer informed of the progress of the investigation.

13.5.4 Queensland Corrective Services to be advised

Queensland Corrective Services provides the Service with information from their Integrated Offender Management System (IOMS), concerning persons who are subject to:

- (i) a parole order;
- (ii) a probation order;
- (iii) a community service order;
- (iv) an intensive correction order; or
- (v) an intensive drug rehabilitation order under s. 19 of the *Drug Court Act*.

This IOMS information is transferred electronically to the Service and is entered onto QPRIME as a 'Flag' (see 'Flags/Cautions' in the QPRIME User Guide).

POLICY

Officers who commence a prosecution against a person who has IOMS information on QPRIME are to contact Queensland Corrective Services, by telephoning the General Manager, Probation and Parole (see Service Manuals Contact Directory).

Officers who otherwise deal with such a person in circumstances where they consider Queensland Corrective Services should be notified, are to contact Queensland Corrective Services via e-mail, to the General Manager, Probation and Parole (see Service Manuals Contact Directory) and provide the following information:

- (i) name and date of birth of the subject person;
- (ii) the Correctional Information System (CIS) ID number of the person, which is recorded on QPRIME; and
- (iii) contact details of the responsible officer.

13.5.5 Requests for information from Queensland Corrective Services

POLICY

The Corrective Services Investigation Unit should be the first contact point for officers to make official inquiries with Queensland Corrective Services. A State Intelligence Group analyst is permanently stationed at the Corrective Services Investigation Unit and has access to the Queensland Corrective Services database and prison network systems.

13.5.6 Supply of information impacting on the security classification, protection or security of prisoners and/or the security and good order of correctional facilities to Queensland Corrective Services

Officers may on occasions be required to provide information to Queensland Corrective Services which may impact on the security classification, protection or security of prisoners or the security or good order of correctional facilities.

POLICY

Where an officer has information which may relate to:

- (i) the safety, security classification or placement of a prisoner; and/or
- (ii) the security and good order of a correctional facility (including threats to Queensland Corrective Services staff),

the officer is to ensure this information is provided to Queensland Corrective Services.

PROCEDURE

All information provided to Queensland Corrective Services which may relate to the security classification, protection or security of prisoners, and or the security or good order of correctional facilities, is to be:

- (i) entered on QPRIME as an intelligence submission; and
- (ii) assigned as a task by the relevant intelligence office to the organisational unit, Corrective Services Investigation Unit.

The Inspector, Corrective Services Investigation Unit, is to ensure any information received in this manner is provided to the appropriate person within Queensland Corrective Services.

In emergent circumstances, a commissioned officer may authorise that such information be provided directly to Queensland Corrective Services. However, information thus provided should be entered on QPRIME as an intelligence submission and tasked to Corrective Services Investigation Unit at the first available opportunity.

To contact the Queensland Corrective Services, Intelligence Group, see [Service Manuals Contact Directory](#). If it is after hours, contact the 'on call officer'. If it is after hours and officers are unable to contact Queensland Corrective Services, the 'on call' Corrective Services Investigation Unit officer may be contacted. These numbers can be obtained by contacting the reception officer at State Crime Command, or after 12 midnight through the Police Communications Centre.

See ss. 3.4.18: 'Supply of information where court outcome requires action by Queensland Corrective Services or Youth Justice Services' and 3.4.36: 'Notification of Chief Executive, Queensland Corrective Services, regarding committal, conviction, etc. of relevant person' of this Manual when information is to be supplied to Queensland Corrective Services other than information relating to the security classification, protection or security of prisoners.

Queensland Corrective Services may request information about a current criminal investigation of a QCS employee for disciplinary purposes. Such requests are to be directed to the Office of the Director, Right to Information and Privacy Unit, PSBA (see s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual).

13.5.7 Where a prisoner is unlawfully at large or escapes from a correctional centre

ORDER

In addition to the provisions contained in Chapter 2: 'Investigative Process' of this Manual, first response officers receiving a complaint that a prisoner is unlawfully at large or has escaped from a correctional centre are responsible for:

- (i) the initial inquiries and circulation of the prisoner's description, etc.; and
- (ii) recording the offence with Policelink as required in s. 1.11.2: 'Recording an offence on QPRIME' of this Manual.

13.5.8 Where a prisoner who is unlawfully at large or escapee is located

ORDER

Officers who locate, or are assigned responsibility for a located prisoner who is unlawfully at large or an escapee, are to ensure that the prisoner is returned to safe custody as soon as practicable and to ensure the relevant QPRIME occurrence is updated as required in s. 1.11.7: 'Prosecution of offender' of this Manual. Officers who locate a prisoner are to ensure advice of the prisoner's recapture, by e-mail message, is forwarded as soon as possible to the:

- (i) Officer in Charge, Corrective Services Investigation Unit (CSIU) at SCOC CSIU; and
- (ii) Duty Officer, Police Communications Centre (PCC) at PCC Duty Officer [OSC].

The Duty Officer, Police Communications Centre, is to advise the on-call officer, Corrective Services Investigation Unit, by pager as soon as practicable after that prisoner has been recaptured.

13.5.9 Copy of occurrence report to be forwarded to Corrective Services Investigation Unit

ORDER

When an officer submits an occurrence report or any other documentation which relates to a prisoner, a correctional centre or personnel of Queensland Corrective Services and the original is not sent to the Corrective Services Investigation Unit for attention, shift supervisors or officers in charge of stations or establishments are to ensure that a copy of the occurrence report or other relevant documentation is promptly forwarded to the Officer in Charge, Corrective Services Investigation Unit.

13.5.10 Offences committed by prisoners prior to their admission to prisons

POLICY

Criminal offences committed by prisoners prior to their admission to prison should continue to be investigated by local police unless circumstances warrant the attention of the Corrective Services Investigation Unit.

13.5.11 Declaration of emergency under the Corrective Services Act

The Chief Executive, Queensland Corrective Services may with the Minister's approval in certain circumstances under s. 268: 'Declaration of Emergency' of the *Corrective Services Act* declare that an emergency exists in relation to a prison for a stated period, not more than three days. While the declaration is in force, the Chief Executive may authorise officers to perform a function or exercise a power of a corrective services officer, under the direction of the senior officer present.

Section 797: 'Helping during declaration of emergency under Corrective Services Act' of the *Police Powers and Responsibilities Act*, further states that the police officer authorised by the Chief Executive must perform the function or exercise the power of a corrective services officer under the direction of the senior officer present at the prison for which the corrective services emergency declaration is in force.

POLICY

Where officers are authorised to perform a function or exercise a power of a corrective services officer under the direction of a senior police officer, senior police officers are to inform police officers of their functions and powers under the *Corrective Services Act* before police officers are required to perform those functions and powers.

See Chapter 2: 'Prisoners', Chapter 3: 'Breaches of discipline and offences' and Chapter 4: 'Corrective services facilities' of the *Corrective Services Act* for the functions and powers performed by corrective services officers.

13.5.12 Visiting a Queensland Corrective Services correctional centre

POLICY

A member wishing to visit a Queensland Corrective Services correctional centre for business purposes is to contact the facility a minimum of 24 hours before to arrange a visit. In exceptional circumstances, applications providing less than 24 hours' notice may be approved. Officers from the Corrective Services Investigation Unit are not subject to providing minimum notice on visits to correctional centres, and are to visit as required.

All visitors to correctional centres will be subject to security clearance and must complete and sign an appropriate form before entry is permitted. Visitors may also be required to submit to a search before entering a corrective services facility. All members visiting correctional centres for business purposes are to be in possession of their official photographic identification.

Chapter 3, Part 3: 'Breaches of discipline and offences' of the *Corrective Services Act*, outlines a number of offences which may be committed at correctional centres. All members who visit correctional centres are to comply with all provisions of the *Corrective Services Act*, and comply with all directions given by any corrective services officer, where the directions are given for the security or good order of the centre or for a person's safety.

Officers are reminded of the provisions of s. 128: 'Taking prohibited thing into corrective services facility or giving prohibited thing to prisoner' of the *Corrective Services Act*, and are not:

- (i) to take, or attempt to take a prohibited thing into a corrective services facility; or
- (ii) give or attempt to give a prisoner in a corrective services facility a prohibited thing.

A prohibited thing is defined in s. 20 of the Corrective Services Regulation, and includes such articles as weapons, money, telephones (including mobile phones), modems etc.

Law enforcement visitor

Section 167: 'Law enforcement visitor' of the *Corrective Services Act* allows a police officer to visit a corrective services centre to interview a prisoner, where a prisoner consents (in writing) to the interview. Officers visiting QCS correctional centres to interview prisoners are to comply with all Queensland Corrective Services procedures, including:

- (i) completing any forms required by Queensland Corrective Services;
- (ii) not allowing a prisoner unsupervised access to any communication device; and
- (iii) the monitoring, recording and/or authorisation of all telephone calls made by prisoners.

Brisbane Women's Correctional Centre

Officers have been granted general approval, by the General Manager, Brisbane Women's Correctional Centre, to use audio recording devices within the Brisbane Women's Correctional Centre for the purposes of recording an interview with a prisoner. It is no longer necessary to obtain written approval in every instance.

On entry to the centre, officers are to declare to gate staff that they have a recording device and are to present the device to gate staff on exiting the centre.

Use of an audio recording device is limited to recording of interviews within the Brisbane Women's Correctional Centre's designated interview rooms and does not extend to any other purpose or area within the centre.

13.6 Unlawful taking of electricity

Police officers are not authorised persons under the provisions of the *Electricity Act* and have no powers under that Act. Officers do, however, have general powers under the *Police Powers and Responsibilities Act* to investigate offences.

POLICY

Offences relating to the unlawful taking of electricity and other related offences should be investigated and prosecutions commenced by electricity officers of the local electricity authority.

In cases involving clandestine illicit drug laboratories or hydroponic cannabis crops, police officers should investigate the possible fraudulent appropriation of power and commence proceedings under the Criminal Code where appropriate. In instances where offences against the *Electricity Act* are investigated by officers, the provisions of the *Police Powers and Responsibilities Act* are to be complied with. Wherever required, the expert assistance of electricity officers of the local electricity authority should be sought.

PROCEDURE

Except for cases of fraudulent appropriation of power suspected of being committed by persons in conjunction with clandestine illicit drug laboratories or hydroponic cannabis crops or instances where the offence is of a non-technical

nature e.g. a breach of s. 235: 'Unlawful taking of electricity' of the *Electricity Act*, officers who become aware of offences relating to the *Electricity Act* should refer the matter to electricity officers from the relevant electricity authority for investigation and prosecution by that authority.

See also ss. 2.6.6: 'Clandestine illicit drug laboratories' and 2.6.7: 'Illicit drug crops' of this Manual.

13.7 Deleted

13.8 Marine environment

13.8.1 Definitions

For the purposes of this section the following definitions apply.

Assistant Search and Rescue Mission Coordinator (ASARMC)

is an officer who has successfully completed the 'State Search and Rescue Coordinators Course' or 'The Diploma of Search and Rescue Coordination Course' and is appointed by the appropriate assistant commissioner.

The General Manager

means the General Manager, Maritime Safety Queensland.

Marine environment

includes but is not limited to coastal areas, canals, inland waterways and land abutting, boat ramps, wharves, marinas, islands and boat mooring areas.

Marine incident

is as defined in s. 123: 'What is a marine incident' of the *Transport Operations (Marine Safety) Act*.

Marine towing incident

results where a ship:

(i) becomes adrift or disabled; or

(ii) is unable to reach a safe haven without creating a risk of injury to persons or damage to property:

and requires towing to a safe haven.

MIN(s)

is an abbreviation for Marine Infringement Notice(s).

MSQ

is an abbreviation for Maritime Safety Queensland.

Offence Processing Unit

refers to the Offence Processing Unit, Transport Services Division of the Department of Transport and Main Roads.

The Regulation

refers to the Transport Operations (Marine Safety) Regulation.

The relevant harbourmaster

refers to the nearest regional harbourmaster to the location in which a marine incident happened.

Safe haven

includes a place where there is access to a suitable safe anchorage, mooring or berth and, where applicable, the necessities of life and communications.

Search and Rescue Mission Coordinator (SARMC)

is an officer who has successfully completed the National Police Search and Rescue Coordinators Course, or an Assistant Search and Rescue Mission Coordinator performing the duties of a SARMC and is appointed by the appropriate Regional Assistant Commissioner.

Ship

see *Transport Operations (Marine Safety) Act* s. 10: 'Meaning of 'ship'.

13.8.2 Maritime Safety Queensland

Maritime Safety Queensland (MSQ) is a Queensland Government law enforcement agency. Its key strategic outcomes are the safety of:

- (i) vessels and their operations;
- (ii) vessel movements; and
- (iii) the environment through the prevention of marine pollution.

Among other things, MSQ regulates the marine industry to ensure marine safety and administers the:

- (i) *Transport Operations (Marine Safety) Act* ;
- (ii) *Transport Operations (Marine Safety) Regulation*;
- (iii) *Transport Operations (Marine Pollution) Act*;
- (iv) *Transport Operations (Marine Pollution) Regulation*.

Maritime Safety Queensland has specialist personnel that may be able to assist the Service in the investigation of maritime incidents, for example:

- (i) determining the seaworthiness of vessels;
- (ii) conducting stability tests;
- (iii) ship surveys or advice on safety standards;
- (iv) navigation and navigational aides; and
- (v) the presentation of court cases.

Service requests for such assistance are to be directed to the Manager, Maritime Safety Queensland Compliance Unit or the Director, Executive Services and Compliance (see Service Manuals Contact Directory).

Maritime Safety Queensland shipping inspectors have the power to board, enter, search, inspect, remove items, make enquiries and seize evidence concerning a ship, vehicle or place pursuant to the provisions of *Transport Operations (Marine Safety) Act* .

Maritime Safety Queensland authorised officers have the power to board, enter, search, inspect, remove items, make enquiries and seize evidence concerning a ship, vehicle or place pursuant to the provisions of *Transport Operations (Marine Pollution) Act*.

POLICY

Where a Maritime Safety Queensland shipping inspector or authorised officer seeks assistance from the Service to exercise these powers, in accordance with s. 16: 'Helping public officials exercise powers under other Acts' of the *Police Powers and Responsibilities Act*, officers are to assist to the extent they are able.

Liaison and consultation

POLICY

Maritime Safety Queensland and water police officers are jointly responsible for conducting operations and ongoing consultation with regard to marine safety and enforcement.

The Service and Maritime Safety Queensland should conduct:

- (i) an annual management review of jointly operated enforcement and safety processes;
- (ii) a monthly reporting of data relevant to marine law enforcement including the number of:
 - (a) ship intercepts;
 - (b) marine incidents investigated;
 - (c) marine incidents prosecuted, including results; and
 - (d) Marine Infringement Notices (MIN) issued (see s. 13.8.6: 'Issue of marine Infringement Notices under the *Transport Operations (Marine Safety) Act* and the Regulation'),
- (iii) consultation regarding the development and implementation of:
 - (a) policies and procedures;
 - (b) enforcement strategies; and

(c) education and technical training strategies for both officers and the general public, relating to marine safety and maritime enforcement; and

(iv) marine incident investigations in consultation between the organisations whenever appropriate (see s. 13.8.3: 'Investigation of offences and marine incidents under the *Transport Operations (Marine Safety) Act* or *Transport Operations (Marine Safety) Regulation*').

ORDER

An officer in charge of a water police establishment or an area with marine enforcement responsibilities is to, whenever appropriate or possible, work in consultation with the relevant regional Maritime Safety Queensland office.

13.8.3 Investigation of offences and marine incidents under the *Transport Operations (Marine Safety) Act* or the *Transport Operations (Marine Safety) Regulation*

Shipping Inspectors

Investigations into offences under the *Transport Operations (Marine Safety) Act* are to be carried out by persons appointed as shipping inspectors under the *Transport Operations (Marine Safety) Act*.

Pursuant to s. 157: 'Appointment of shipping inspectors' of the *Transport Operations (Marine Safety) Act*, the General Manager may appoint police officers, or a class of police officers, and other persons as shipping inspectors. Such appointments may only be made with the written approval of the Commissioner (see s. 131 of the *Police Powers and Responsibilities Act*).

Police officers attached to water establishments will generally be individually appointed as shipping inspectors and may perform all functions of that role, including the investigation of marine incidents.

Other police officers, who have completed an approved training course, may be appointed as a shipping inspector, but are generally restricted from investigating marine incidents (see s. 156: 'Limitation on powers of a shipping inspector' of the *Transport Operations (Marine Safety) Act*).

All Queensland Boating and Fisheries Patrol officers, many Maritime Safety Queensland officers and certain Department of Transport and Main Roads officers are appointed as shipping inspectors.

POLICY

Only officers who have been appointed as shipping inspectors under the *Transport Operations (Marine Safety) Act* should conduct investigations which require the exercising of powers of a shipping inspector.

Marine offences

PROCEDURE

Officers appointed as shipping inspectors who detect an offence against the provisions of the *Transport Operations (Marine Safety) Act* or the *Regulation* and are of the opinion that a prosecution should be considered, should:

- (i) if appropriate, issue a TMR Form F3463: 'Infringement Notice (Marine)' (see s. 13.8.6: 'Issue of marine infringement notices under the *Transport Operations (Marine Safety) Act* and the *Transport Operations (Marine Safety) Regulation*' of this Manual); or
- (ii) commence proceedings in relation to an offence against *Transport Operations (Marine Safety) Act* or *Transport Operations (Marine Safety) Regulation* by way of notice to appear, complaint and summons or by arrest, where authorised under the provisions of the *Police Powers and Responsibilities Act*. A copy of the Court Brief (QP9) is to be forwarded to the Manager, Compliance Unit, Maritime Safety Queensland (see *Service Manuals Contact Directory*).

Officers not appointed as shipping inspectors who detect an offence against the provisions of the *Transport Operations (Marine Safety) Act* or *Transport Operations (Marine Safety) Regulation* and are of the opinion that a prosecution should be considered, should furnish a report outlining the circumstances surrounding the offence through their officer in charge for referral to:

- (i) if practicable, the nearest water police establishment within their region, if further investigations requiring the powers of a shipping inspector are required; or
- (ii) otherwise, the Manager, Compliance Unit, Maritime Safety Queensland.

The report should include:

- (i) the identity of any witnesses;
- (ii) any conversation with the offender in relation to the specific offence, related in the third person;
- (iii) the circumstances of the offence; and
- (iv) full details of vessel(s) used in the commission of the offence, which may include make, size, type of vessel and motor and registration number.

Where an officer is unsure whether an offence has been committed against the provisions of *Transport Operations (Marine Safety) Act*, enquiries should be conducted with a water police establishment, Maritime Safety Queensland regional office or the Manager, Compliance Unit, Maritime Safety Queensland (see Service Manuals Contact Directory).

POLICY

It is permissible for officers not appointed as shipping inspectors to commence proceedings in relation to an offence against the *Transport Operations (Marine Safety) Act* or the *Transport Operations (Marine Safety) Regulation* by way of notice to appear, complaint and summons or by arrest, where authorised under the provisions of the *Police Powers and Responsibilities Act* and if the circumstances necessitate such action.

PROCEDURE

If time permits, officers should liaise with officers attached to the Compliance Unit, Maritime Safety Queensland prior to commencing such prosecutions. Officers commencing proceedings against a person for an offence under the *Transport Operations (Marine Safety) Act* or the *Transport Operations (Marine Safety) Regulation* should:

- (i) notify the Manager, Compliance Unit, Maritime Safety Queensland or
- (ii) if the proceedings relate to an offence(s) detected during an investigation of a marine incident – the relevant harbourmaster;

of any action taken within twenty-eight days. Officers should also forward to this person a copy of the relevant Court Brief (QP9) endorsed with the court result at the conclusion of any proceeding commenced under this policy.

Marine incidents

Marine incidents relate to incidents involving ships. Section 10(1): 'Meaning of ship' of the *Transport Operations (Marine Safety) Act* defines the term 'ship' as:

'...any kind of boat or other vessel used, or intended to be used, in navigation by water or for any other purpose on water.'

The broad application of the term 'ship' under the *Transport Operations (Marine Safety) Act* means that a marine incident may involve a minor collision between two dinghies being used for recreational fishing, or a life endangering collision between two commercial ships, such as a fuel tanker and a container or car carrier, of many thousands of tons displacement each.

Officers should be aware that an incident on any watercourse in the State is deemed to be a **marine incident**. A boating incident on an inland waterway requires the same reporting to Maritime Safety Queensland as an incident on Moreton Bay.

Because of the broad range of circumstances which may constitute a marine incident, the investigation of them may involve a number of different state and commonwealth agencies. Cooperation with these agencies is essential to ensure every aspect of a marine incident is thoroughly investigated.

POLICY

Officers who attend marine incidents when:

- (i) the incident involves:
 - (a) the loss of a person from a ship;
 - (b) a death or when there is a likelihood of death resulting from injuries received;
 - (c) injuries where grievous bodily harm is caused or likely to be caused; or
- (ii) the incident involves or may involve indictable criminal offences; or
- (iii) Maritime Safety Queensland shipping inspectors request assistance,

are to create an occurrence in QPRIME.

Any investigations involving the Service and Maritime Safety Queensland shipping inspectors are to:

- (i) be conducted in liaison with the shipping inspector; and
- (ii) include regular briefings with the shipping inspector outlining of the status of any investigations and prosecutions undertaken.

Officers requiring information on the status of any investigation or prosecution undertaken by Maritime Safety Queensland shipping inspectors should contact the:

- (i) relevant shipping inspector conducting the investigation;
- (ii) Maritime Safety Queensland Regional Office conducting the investigation; or
- (iii) Manager, Compliance Unit or the Director, Executive Services and Compliance.

Pursuant to s. 126: 'Investigation process into marine incident' of the *Transport Operations (Marine Safety) Act*, the General Manager may require a shipping inspector to investigate a marine incident. Upon such a requirement, after finishing the investigation the shipping inspector must report the results of the investigation to the General Manager.

ORDER

A police officer appointed as a shipping inspector should only investigate marine incidents:

- (i) involving the loss of a person from a ship;
- (ii) involving a death or when there is a likelihood of death resulting from injuries received;
- (iii) involving injuries where grievous bodily harm is caused or likely to be caused;
- (iv) where the incident involves or may involve indictable criminal offences; or
- (v) where the Service has determined an investigation is to be conducted by a police officer.

POLICY

If it is not considered appropriate for an officer appointed as a shipping inspector to conduct an investigation into a marine incident, the investigating officer is to ensure, wherever practicable, that an officer appointed as a shipping inspector assists in such investigation.

If it is not practicable for an officer appointed as a shipping inspector to assist in the investigation of a marine incident, the investigating officer is to ensure that the officer in charge of the nearest regional water police establishment to the location where the incident occurred is advised of the investigation as soon as practicable after the decision to conduct the investigation has been made.

Officers who become aware of marine incidents where any person has been killed, injured, lost at sea, or where there has been damage to property, are to ensure that the following agencies are advised of the incident:

- (i) the respective regional harbour master (contact through the relevant Maritime Safety Queensland regional office) and/or the Manager, Compliance Unit Maritime Safety Queensland if the incident involves a ship connected to Queensland (see s. 6: 'Meaning of ship connected with Queensland' of the Act). Maritime Services Queensland Regional Office boundaries are listed on the MSQ website (see Service Manuals Contact Directory);
- (ii) the Duty Officer, Australian Transport Safety Bureau (see Service Manuals Contact Directory), if the incident involves an interstate or overseas trading vessel (Marine Safety Investigation in Australia);
- (iii) the Duty Officer, Australian Maritime Safety Authority (see Service Manuals Contact Directory) if the marine incident (including pollution incidents) occurs in the outer adjacent area (see s. 2.5.9: 'Offences committed at sea' of this Manual) and involve an Australian or foreign flagged ship;
- (iv) if the marine incident may have occurred at a workplace (see s. 8: 'What is a workplace' of the *Work Health and Safety Act*), a local work health and safety inspector.

PROCEDURE

The Service is responsible for the investigation of marine incidents involving death, serious injury or criminal offences. Maritime Safety Queensland will provide support and technical assistance to the Service as required throughout the investigation. Through negotiation, Maritime Safety Queensland may assume the primary investigation role of marine incidents involving serious injury or fire where no criminality or other police investigation is required.

When advised by a member of the Service, the:

- (i) regional harbour master or Manager, Compliance Unit Maritime Safety Queensland;
- (ii) Duty Officer, Australian Transport Safety Bureau;
- (iii) Duty Officer, Australian Maritime Safety Authority; and
- (iv) local work health and safety inspector, Department of Justice and Attorney-General,

will notify the member, as to whether they will be conducting an investigation into the incident.

Where an external investigator advises they will attend the incident, officers are to ensure the scene of the incident is preserved.

Where an external investigator is unable to attend the marine incident site within a reasonable time, officers are to undertake preliminary investigations on behalf of the relevant investigator, if requested. Preliminary investigations may include the collection of photographs of the scene, witness statements, collection of evidence and notations on observations of the scene. What constitutes a reasonable time will depend on the individual circumstances of the incident and location.

POLICY

The respective regional harbour master and/or the Manager, Compliance Unit Maritime Safety Queensland will:

- (i) advise the Service whether they will be conducting a complementary and/or a separate investigation into the incident;

(ii) as is reasonably practicable, provide the Service with assistance including post incident investigative and specialist advice and maritime support services;

(iii) in order to optimise resources, to ensure public safety and to best serve the interests of the community, consideration may be given to the Service and Maritime Safety Queensland conducting a conjoint investigation. For example, a fatal marine incident where a coronial inquest is likely will include potential maritime safety as well as criminal liability factors.

The Australian Transport Safety Bureau has the function of investigating the circumstances surrounding any marine incident to prevent the occurrence of other incidents. In practice, the Australian Transport Safety Bureau reviews the nature and circumstances of any marine accident or incident reported to it and determine the probable safety value in conducting an on-site investigation. Australian Transport Safety Bureau investigators do not investigate marine incidents with a view to apportioning blame or liability. Consequently the report of an Australian Transport Safety Bureau investigator may not address the issues of interest to an investigating police officer. Australian Transport Safety Bureau investigators may assist officers with advice, but they cannot be compelled to appear in court, or provide 'restricted information' to investigators (see s. 60: 'Limitations on disclosure etc. of restricted information' of the *Transport Safety Investigation Act* (Cwlth)).

The Australian Maritime Safety Authority (AMSA):

- (i) administers and regulates marine safety legislation on the Commonwealth waters which border Queensland waters;
- (ii) monitors compliance with marine environment protection and response to marine environment pollution; and
- (iii) provides maritime and aviation search and rescue services.

Its powers lay in the *Navigation Act* (Cwlth) and the *Protection of the Sea (Prevention of Pollution from Ships) Act* (Cwlth);

See s. 8.5.6: 'Workplace or electrical incidents causing or likely to cause grievous bodily harm or death' of this Manual for policy and procedures relating to conducting investigations in liaison with work health and safety inspectors.

See s. 2.5.9: 'Offences committed at sea' of this Manual for policy, procedures and intergovernmental agreements relating to the investigation of offences occurring at sea.

PROCEDURE

Officers intending to investigate a marine incident should:

- (i) if the incident involves a commercial or recreational ship:
 - (a) if it is considered that the incident can be adequately investigated by a police officer appointed as a shipping inspector – investigate the matter, taking any necessary enforcement action, and ensure that the relevant harbour master is notified of the incident as soon as practicable; or
 - (b) if it is considered that aspects of the incident require investigation by persons with particular skills and/or authority not available to police (e.g. Maritime Safety Queensland officers investigate the aspects which can be adequately investigated by police (e.g. suspect UIL); and
 - (c) make preliminary inquiries into the remaining aspects and ensure that the relevant harbour master is notified of the incident as soon as practicable. In such a case, and if appropriate, the relevant harbour master may refer the matter for investigation to a suitable agency or agencies; and
- (ii) in addition to conducting any investigations and taking any necessary enforcement action with respect to the marine incident, advise the owner or master of the vessel concerned that they are required to complete a Form F3071: 'Marine Incident Report' and deliver it to a Maritime Safety Queensland regional office (see Service Manuals Contact Directory) within 48 hours of the incident.

A Form F3071 can be downloaded from www.msq.qld.gov.au/Safety/Marine-incidents.aspx or is available at all water police establishments, Queensland Boating and Fisheries Patrol stations, and Maritime Safety Queensland regional offices.

Additionally, if the marine incident involves (a 'Category 1 marine incident'):

- (i) total loss or theft of any ship more than 15 metres long;
- (ii) stranding, collision or major fire on board a passenger ship or any ship more than 24 metres long;
- (iii) missing persons, or serious injury or death of any person;
- (iv) a ship under the command of a marine pilot, harbour master, or master exempted from requiring a marine pilot whilst the ship is in a marine pilotage area; or
- (v) any other incident considered to be of major significance;

officers becoming aware of the incident should, as soon as possible, notify the relevant harbourmaster, by telephone or email (during business hours), of the marine incident.

In such a case, notification to a work health and safety inspector may also be required (see s. 8.5.6: 'Workplace or electrical incidents causing or likely to cause grievous bodily harm or death' of this Manual). For a marine incident involving the death of a person, see s. 8.5.7: 'Deaths on board vessels' of this Manual.

Officers not appointed as shipping inspectors who detect or become aware of a marine incident should ensure that the officer in charge of the water police establishment and Maritime Safety Queensland regional office (MSQ regional office boundaries) nearest to the location where the incident happened is advised of the marine incident:

- (i) within forty-eight hours after they become aware of the incident happening; or
- (ii) if the incident is a Category 1 marine incident – as soon as possible after becoming aware of the marine incident happening.

Where a marine incident involves a police officer or Service vessel see s. 13.8.5: 'Investigation of marine incidents involving officers or Service vessels' of this chapter.

Information exchange

POLICY

In the course of an investigation of a marine incident, Maritime Safety Queensland shipping inspectors may request information held by the Service. Information held by the Service must be accessed for official purposes only. When supplying information to Maritime Safety Queensland, officers are to comply with s. 5.6.15: 'Requests for information from other law enforcement agencies' of the Management Support Manual and s. 13.8.2: 'Maritime Safety Queensland' of this Manual.

PROCEDURE

Material relating to an investigation that may be requested includes:

- (i) witness' statements;
- (ii) photographs of the scene;
- (iii) sketches and notes made at/of the scene;
- (iv) police officer's statements;
- (v) measurements and other tests/examinations performed;
- (vi) any other facts relating to the incident;
- (vii) documents obtained that are required to be kept under any Service policy, procedures or legislation;
- (viii) legal, statutory or other privileged documents, e.g. expert reports (legal advice of Legal Services, Public Safety Business Agency (PSBA) release to be approved by Deputy Commissioner (Special Operations));
- (ix) commercially sensitive material, e.g. tender documents, project specifications, contracts and safety plans;
- (x) documents that have been received from another department or agency; and
- (xi) documents that contain statements provided 'In confidence', e.g. where a person wants their confidentiality to be maintained.

PROCEDURE

Generally, any material that contains facts relating to a marine incident (items (i) to (vi) listed above) can be forwarded directly through the officer in charge of the station or establishment to the MSQ shipping inspector requesting the material.

If information sought by Maritime Safety Queensland is confidential, likely to impact on Service operations in some adverse manner or subject to legal, statutory or other privilege, (material in items (vii) to (xi) above) or in the situation where the Service is the employer in relation to the marine incident, the officer in charge of the region or command must give approval for the information to be released.

Both the Service and Maritime Safety Queensland shipping inspectors have power to seize property as evidence during an investigation. Reasonable access to the evidence seized by the Service during the course of investigating a marine incident is to be granted to Maritime Safety Queensland shipping inspectors when requested. Members of the Service wanting to access exhibits held by Maritime Safety Queensland are to contact the relevant Maritime Safety Queensland inspector.

Evidence seized from a marine incident may require an external examination or test to be performed for investigative or court purposes. If the Service requires the examination, the Service is to pay the associated costs.

If Maritime Safety Queensland shipping inspectors require the external examination, the costs are to be met by their agency regardless of the fact the Service may hold possession of the evidence.

If the Service and Maritime Safety Queensland shipping inspectors require an external examination on any evidence, the cost may be shared between agencies.

13.8.4 Fisheries management (offences detected)

Pursuant to s. 140: 'Appointment' of the *Fisheries Act* the chief executive may appoint police officers and other persons as Inspectors under the *Fisheries Act*.

Police officers may only exercise the powers of an Inspector under the *Fisheries Act* if they:

- (i) have been appointed as an Inspector pursuant to s. 140 of the *Fisheries Act*; and
- (ii) that appointment has been approved by the commissioner pursuant to s. 13: 'Appointment of police officers as public officials for other Acts' of the *Police Powers and Responsibilities Act*.

Police officers however may exercise their general powers under the *Police Powers and Responsibilities Act* when investigating offences against the *Fisheries Act*.

POLICY

Investigations and prosecutions should normally be undertaken by officers of the Department of Agriculture, Fisheries and Forestry or police officers who are appointed as Inspectors under the *Fisheries Act*.

When police officers detect an offence committed against the provisions of the *Fisheries Act* and are of the opinion that a prosecution should be considered, they are to furnish a Court Brief (QP9) through their officer in charge to the Manager, Contracts and Compliance Section, Department of Agriculture, Fisheries and Forestry. The Court Brief (QP9) should include:

- (i) the identity of any witnesses;
- (ii) any conversation with the offender in relation to the specific offence, related in the third person;
- (iii) the circumstances of the offence; and
- (iv) details of any instruments seized.

The matter will be considered with further action being taken by Department of Agriculture, Fisheries and Forestry officers, where applicable.

Generally, police officers should liaise with staff from the Contracts and Compliance Section, Department of Agriculture, Fisheries and Forestry prior to instituting any proceedings. However, it is permissible for police officers to institute proceedings if circumstances necessitate such action. Such circumstances may include instances where the suspect is transient and/or is being arrested for other matters.

Where circumstances necessitate action to be taken by police prior to appropriate liaison with the Contracts and Compliance Section, officers are to notify the Contracts and Compliance Section, Department of Agriculture, Fisheries and Forestry of such action, as soon as practicable and prior to the first court appearance of the defendant.

13.8.5 Investigation of marine incidents involving officers or Service vessels

POLICY

Investigations of marine incidents involving Service vessels are to be overseen by the officer in charge of the region or command to which the involved vessel is attached.

The oversight of an investigation into a marine incident may be delegated by an officer in charge of a region or command to a commissioned officer.

Officers in charge of regions and commands should ensure that local instructions are established within their area of responsibility to provide procedures for the attendance, where practicable, of officers at marine incident scenes and for the investigation of marine incidents involving Service vessels. Such procedures should include a list of persons with suitable marine qualifications or experience who may be relied upon to conduct and/or assist in such investigations (e.g. officers appointed as shipping inspectors).

Members who are in charge of Service vessels which are involved in marine incidents are to:

- (i) in the case of incidents occurring in areas where a Police Communications Centre exists, advise the relevant Police Communications Centre of the nature and location of the incident as soon as practicable; or
- (ii) in the case of incidents occurring in other locations, advise their officer in charge of the nature and location of the incident as soon as practicable.

Members who receive advice that a Service vessel has been involved in a marine incident are to arrange for a commissioned officer to be notified of the incident.

Commissioned officers who are notified of marine incidents involving Service vessels are to ensure that:

- (i) an investigation of the incident is commenced forthwith (see s. 13.8.3: 'Investigation of offences and marine incidents under the *Transport Operations (Marine Safety) Act* or the Regulation' of this chapter);
- (ii) offences pursuant to s. 79: 'Vehicle offences involving liquor or other drugs' of the *Transport Operations (Road Use Management) Act* are appropriately investigated; and

(iii) the incident is reported to MSQ within 48 hours of occurring pursuant to s. 125: 'Marine incidents must be reported' of the *Transport Operations (Marine Safety) Act*.

Officers investigating marine incidents involving Service vessels are to ensure a completed copy of the Transport and Main Roads (TMR) Form F 3071: 'Marine Incident Report' (available from <http://www.msq.qld.gov.au/Safety/Marine-incident.aspx>) is provided to the relevant overseeing officer, as part of the investigation report into the incident.

Commissioned officers who receive reports involving Service vessels are to:

- (i) ensure that any disciplinary breaches committed by officers are investigated; and
- (ii) make recommendations to the relevant assistant commissioner as to any further action which should be taken in respect of the incident.

Investigation of serious marine incidents involving officers or Service vessels

POLICY

The provisions of s. 1.16: 'Fatalities or serious injuries resulting from incidents involving members (Police related incidents)' of this Manual apply in cases of marine incidents involving Service vessels in which a person is killed or seriously injured.

The provisions of s. 17.5: 'Search and Rescue' of this Manual relating to marine search and rescue incidents may also apply in cases of marine incidents involving Service vessels.

13.8.6 Issue of Marine Infringement Notices under the Transport Operations (Marine Safety) Act and the Transport Operations (Marine Safety) Regulation

Department of Transport and Main Roads Form F3463: 'Infringement Notice (Marine)', referred to as a 'Marine Infringement Notice', is available to officers appointed as shipping inspectors for detected offences against the Act and the Regulation (see s. 13.8.3: 'Investigation of offences and marine incidents under the *Transport Operations (Marine Safety) Act* or the Transport Operations (Marine Safety) Regulation' of this chapter).

The Chief Executive, Department of Transport and Main Roads, is the administering authority for 'Marine Infringement Notices'.

Offences for which a Marine Infringement Notice may be issued

Part 3: 'Infringement Notices' of the *State Penalties Enforcement Act* outlines the legislation which refers to infringement notices generally.

Authority to issue a Marine Infringement Notice

POLICY

Only officers appointed as shipping inspectors may issue a 'Marine Infringement Notice'.

Supply of Marine Infringement Notice books

The Offence Processing Unit, Department of Transport and Main Roads supplies 'Marine Infringement Notice' books at no cost to stations and establishments where officers appointed as shipping inspectors are stationed.

Requests for 'Marine Infringement Notice' books are to be made direct to the Offence Processing Unit, Department of Transport and Main Roads.

Issuing a Marine Infringement Notice

POLICY

No more than three 'Marine Infringement Notice' are to be issued to an offender at any one time. If more than three offences are detected for which a 'Marine Infringement Notice' can be issued to an offender, the officer may determine, depending on the circumstances, to either:

- (i) issue three 'Marine Infringement Notice' and issue caution notices for all the other offences (see the subsection titled 'Issuing cautions for marine offences' of this section); or
- (ii) commence proceedings for all offences detected by way of notice to appear, complaint and summons or by arrest, where authorised under the provisions of the *Police Powers and Responsibilities Act*. A copy of the Court Brief (QP9) is to be forwarded to the Compliance Unit, Maritime Safety Queensland where court proceedings are commenced.

When a caution notice is given, no other enforcement action should be taken for that particular offence.

Confirmation of identification

POLICY

When issuing a 'Marine Infringement Notice', officers should ensure that the name and address of the alleged offender are confirmed by some means of identification before commencing the process. Appropriate notes about identification should be made on the rear of the 'Marine Infringement Notice' book copy. Sections 40 and 41 of the *Police Powers*

and Responsibilities Act provide a power to require a person to state the person's name and address and to provide evidence of the correctness of a stated name and address under certain circumstances.

Marine Infringement Notice issued to a youth

POLICY

Marine Infringement Notices may be issued to youth in circumstances where the commencement of a proceeding would be justified (see s. 68: 'Infringement notices' of the *Youth Justice Act*).

The issuing of a 'Marine Infringement Notice' does not in itself commence a proceeding against a youth.

PROCEDURE

In cases where a 'Marine Infringement Notice' is issued to a youth and that youth does not pay the monetary penalty associated with the 'Marine Infringement Notice', the matter does not progress to the State Penalties Enforcement Registry (SPER).

In these cases the issuing officer will be advised by the Offence Processing Unit, Department of Transport and Main Roads that the penalty associated with the 'Marine Infringement Notice' has not been paid.

An issuing officer receiving such advice should commence a proceeding in relation to the offence in accordance with the provisions of Chapter 5: 'Children' of this Manual.

Issuing cautions for marine offences

POLICY

Cautions for minor offences under the *Transport Operations (Marine Safety) Act* and Regulation are an integral part of the management and policing of marine related matters. Officers may issue cautions in cases where they believe that course of action is appropriate having regard to:

- (i) the severity of the offence;
- (ii) consistency of approach; and
- (iii) the ultimate aim of deterring a repetition of the offence.

Officers should consider commencing a proceeding against a person who has received repeated cautions for the same type of offence. Such a decision should take into account the potential seriousness of the offence and the time period between each caution issued.

PROCEDURE

Marine Infringement Notice forms are to be used to record the issuing of cautions.

Officers who determine that a caution would be more appropriate than a financial penalty (given the circumstances of the offence) are to record the issuing of a caution by the issue of a 'Marine Infringement Notice' by;

- (i) entering the code 'MW99' (marine warning 99) in the offence 'Code Number' section of the 'Marine Infringement Notice';
- (ii) in the adjoining 'Identifying Particulars of the Offence' section, officers should enter a handwritten description of the action taken e.g. 'warned for inadequate safety equipment'; and
- (iii) draw a line through the adjacent 'Penalty' box indicating that a penalty is not applicable.

When a 'Marine Infringement Notice' is used to issue a caution, the person's traffic history, available in QPRIME will record all cautions for marine offences.

Distribution of a Marine Infringement Notice

PROCEDURE

Distribution of a 'Marine Infringement Notice' is as follows:

- (i) pink original (prosecutions) copy to be forwarded by the relevant officer in charge to the Offence Processing Unit, Department of Transport and Main Roads within seven days of issue;
- (ii) green duplicate (office) copy to be retained in the 'Marine Infringement Notice' book; and
- (iii) yellow triplicate copy to be given to offender.

Cancelling a Marine Infringement Notice

POLICY

Officers who wish to cancel a 'Marine Infringement Notice' are to:

- (i) write the word 'CANCELLED' clearly on the original and each copy of the 'Marine Infringement Notice';
- (ii) briefly describe the reason for the cancellation on the rear of the original (prosecutions) copy of the 'Marine Infringement Notice'; and

(iii) forward the original and each copy of the 'Marine Infringement Notice' to their officer in charge, accompanied by a detailed report outlining the reason(s) for the cancellation.

Officers in charge are to ensure a cancelled 'Marine Infringement Notice' is forwarded to the Offence Processing Unit, Department of Transport and Main Roads accompanied by a copy of the cancelling officer's report.

Withdrawal of a Marine Infringement Notice

A MIN may only be withdrawn by the administering authority.

POLICY

Officers seeking withdrawal of a 'Marine Infringement Notice' issued by them are to submit a detailed report to their officer in charge setting out the circumstances surrounding the request for withdrawal of the 'Marine Infringement Notice'.

Officers in charge, upon satisfying themselves of the reasons for the request for withdrawal of a 'Marine Infringement Notice', are to forward the requesting officer's report to the Offence Processing Unit, Department of Transport and Main Roads (see Service Manuals Contact Directory).

Complaints concerning the issue of a Marine Infringement Notice

POLICY

When an alleged offender lodges a complaint at a police station or establishment about the circumstances surrounding the issue of a 'Marine Infringement Notice', the complaint should be assessed by the officer in charge of that station or establishment.

If the substance of the complaint is that the offender denies committing the offence, requests leniency in view of the circumstances or alleges any defect in the completion of the 'Marine Infringement Notice', the officer in charge receiving the complaint should forward the complaint to the Offence Processing Unit, Department of Transport and Main Roads.

All further inquiries and action regarding the 'Marine Infringement Notice' will be undertaken by the Offence Processing Unit, Department of Transport and Main Roads.

A complaint which alleges a possible breach of discipline, misconduct or corrupt conduct is to be dealt with in accordance with the discipline process as shown in 'Complaints Management' of the Human Resources Policies.

PROCEDURE

Members who receive a complaint from a member of the public concerning the issue of a 'Marine Infringement Notice' by telephone or orally should:

- (i) if the complaint relates only to the clarification of a particular such as penalty, etc. attempt to satisfy the inquiry; or
- (ii) where the matter does not reveal any allegation of a breach of discipline or misconduct, advise the person making the complaint to write to the Offence Processing Unit, Department of Transport and Main Roads.

Officers issuing a MIN who receive a complaint from a member of the public, concerning the issue of that 'Marine Infringement Notice', should advise the person that:

- (i) the person has the right to contest the matter in a magistrates court in accordance with the information outlined on the rear of the 'Marine Infringement Notice';
- (ii) if the person does not wish to contest the matter, details for payment of the 'Marine Infringement Notice' are recorded on the rear of the notice; and
- (iii) any other inquiry in relation to the 'Marine Infringement Notice' is to be directed to the Offence Processing Unit, Department of Transport and Main Roads.

When a letter of complaint concerning the issue of a 'Marine Infringement Notice' is received at a police station or establishment, the officer in charge should:

- (i) forward a letter of acknowledgement to the alleged offender, advising that the matter has been referred to the Offence Processing Unit, Department of Transport and Main Roads;
- (ii) as soon as practicable, request the Offence Processing Unit, Department of Transport and Main Roads to suspend processing of the MIN; and
- (iii) forward the alleged offender's letter of complaint, or a copy of the letter if allegations of a possible breach of discipline, misconduct or corrupt conduct are contained in the letter, to the Offence Management Unit, Department of Transport and Main Roads.

Defended actions

Commencement of proceedings and subsequent prosecutions for defended actions as a result of an issue of a 'Marine Infringement Notice' are performed by prosecution officers attached to the Offence Processing Unit, Department of Transport and Main Roads.

POLICY

Officers who receive a request from a Department of Transport and Main Roads prosecution officer for information relating to a defended action are to ensure that available requested information is forwarded as soon as practicable.

Evidentiary notes required for particular offences

PROCEDURE

Officers issuing a 'Marine Infringement Notice' should make notes in relation to the alleged offences, including relevant conversations and other relevant details. These notes may be made on the rear of the duplicate copy of the 'Marine Infringement Notice'.

13.8.7 Marine towing incidents

POLICY

The provisions of this section do not apply to any incident which constitutes a marine search and rescue operation (see s. 17.5: 'Search and rescue' of this Manual).

Requests to tow a ship

ORDER

Police vessels are not to be used for towing ships which are not subject of a marine towing incident.

POLICY

Members, other than members attached to a water police establishment, who receive a request for assistance to tow a ship, are to relay the details of the request to their local police communications centre as soon as practicable after receiving the request.

The officer in charge of a police communications centre, or a member attached to a water police establishment who, receives a request for assistance to tow a ship are to ensure that information is relayed as soon as practicable to:

- (i) the officer in charge of the water police establishment;
- (ii) the shift supervisor or district duty officer of the water police establishment;
- (iii) the master of a police vessel; or
- (iv) a Search and Rescue Mission Coordinator (SARMC), or Assistant Search and Rescue Mission Coordinator (ASARMC) (see s. 17.5: 'Search and rescue' of this Manual);

with responsibility for the area in which the ship requiring a tow is located (the 'relevant officer').

A relevant officer who receives a request to tow a ship is to, as soon as practicable after receiving the request, ensure that a suitable response to the request is undertaken or, if considered necessary, relay the details of the request to a more appropriate relevant officer for suitable response.

A relevant officer responding to a request to tow a ship is to decide whether the incident constitutes a marine towing incident.

Where a marine towing incident exists, the relevant officer is to:

- (i) decide whether to use police or other suitable resources to respond to the request; and
- (ii) take any necessary action to ensure appropriate assistance is provided to the ship and/or persons on board as soon as practicable.

In determining the level of response to a marine towing incident, relevant officers are to consider:

- (i) the danger or potential danger to the ship or any person on board the ship;
- (ii) the current and forecast weather and sea conditions;
- (iii) the time of day, including amount of remaining daylight;
- (iv) whether the ship is at anchor or drifting;
- (v) the location of the ship;
- (vi) the condition of the ship;
- (vii) the experience of the persons on board the ship; and
- (viii) the proximity of the ship to available assistance.

Where it is decided that a request to tow a ship does not constitute a marine towing incident, the relevant officer is to ensure that the person making the request is advised to make private arrangements for the tow.

Responsibility for determining extent of tow

POLICY

Generally, a ship that is to be towed by a police ship is to be towed to a safe haven nearest to the location where the tow commenced.

Where a tow of a ship is being, or is to be performed by a police vessel, the master of the police vessel is responsible for determining:

- (i) whether to commence or continue with the tow; and
- (ii) whether to tow the ship to a safe haven other than the safe haven nearest to the location at which the tow commenced. In making such a determination, the officer is to consider, in addition to environmental and physical factors already considered with respect to the incident:
 - (a) whether the additional time taken for the tow will interfere with operational requirements;
 - (b) the financial cost to the Service; and
 - (c) whether the tow from the nearest safe haven to another safe haven could be readily performed by a suitable volunteer or commercial organisation.

Recovery of costs for tows

POLICY

Costs incurred by volunteer marine rescue organisations which respond to marine towing incidents as a result of information received from members of the Service are the responsibility of those organisations.

Recovery of costs by the Service associated with towing of ships by police vessel should be considered in circumstances where:

- (i) there is no danger or potential danger to the ship and/or any person on board the ship to be towed; and
- (ii) the tow:
 - (a) involves a response to a marine towing incident where the services of a police vessel have been requested in preference to other available towing services; or
 - (b) is to a safe haven nominated by the master or owner of the ship towed which is not the nearest safe haven to the location at which the tow commenced.

Calculation of costs for towing of a ship by a police vessel is to be made using the special services charge out rate for officers involved (see s. 10.1.7: 'Accounting for special services revenue' of the Financial Management Practice Manual) and operating costs for the police vessel as per the Schedule of Fees as approved annually by the Commissioner and published on the QPS website and the Business Services Division, Public Safety Business Agency (PSBA) intranet site.

PROCEDURE

Prior to commencing the tow of a ship by a police vessel, the master of the police vessel is to consider if the tow should be subject to cost recovery. Where it is considered that the tow should be subject to cost recovery, before commencing the tow the master of the police vessel should:

- (i) advise the person making the request for the tow of an estimate of the cost of the tow; and
- (ii) obtain a signed written agreement in their official police notebook from that person to pay all reasonable costs associated with the tow.

As soon as practicable after conducting a tow considered to be subject of cost recovery, the master of the police vessel is to submit a report to their officer in charge outlining the circumstances of the tow and including a calculation of the costs incurred.

Where considered suitable, officers in charge should seek recovery of costs for a tow by a police vessel.

District or local instructions

POLICY

Officers in charge of stations or establishments responsible for policing marine environments are to ensure that district or local instructions are developed for responding to requests to tow ships within their area of responsibility. Such procedures are to include:

- (i) contact details for volunteer marine rescue organisations and marine salvage operators; and
- (ii) identification of safe havens;

within the relevant area of responsibility, and where applicable, current costs of special services charge out rates and operating costs of police ships.

13.9 Secret ballots

POLICY

The district officer or supervising commissioned officer should be notified of any police attention or police action contemplated, considered or required for the purpose of keeping law and order in connection with the holding of secret ballots in terms of the *Industrial Relations Act* prior to any action being taken.

Any subsequent police action should be directed and supervised by a commissioned officer.

Relevant legislative provisions are contained in s. 235: 'Secret ballot on strike action' and s. 285: 'Conducting a secret ballot' of the *Industrial Relations Act*.

13.10 Objectionable literature, films and computer games

The *Classification of Publications Act*, the *Classification of Films Act* and the *Classification of Computer Games and Images Act* (the Classification Acts), control the censorship, distribution, sale and possession of publications, computer games and films in Queensland. These Classification Acts contain offences relating to the production, sale and possession of objectionable material, including child pornography and abuse. However, offences relating to obscene publications and exhibitions and the production, sale and possession of child exploitation material are also contained in the Criminal Code.

13.10.1 Officers not to act as censors

POLICY

Officers should not act as a censor of community standards in respect to publications, computer games and films.

13.10.2 Classification Act offences

POLICY

Officers who receive a complaint or suspect an offence has been committed under the Classification Acts should:

- (i) contact Strategic Policy, Department of Justice and Attorney-General, which is the agency responsible for the administration and enforcement of the Classification Acts; and
- (ii) generally not investigate the offence unless the complaint involves suspected child exploitation material (e.g. a child abuse film, publication or computer game).

13.11 Prostitution

The purpose of the *Prostitution Act* is to regulate prostitution in Queensland. The *Prostitution Act* establishes the Prostitution Licensing Authority whose functions are to:

- (i) decide licence applications;
- (ii) decide approved manager applications;
- (iii) monitor the provision of prostitution through licensed brothels;
- (iv) conduct disciplinary inquiries in relation to licensees and approved managers;
- (v) discipline licensees and approved managers;
- (vi) receive complaints about prostitution;
- (vii) liaise with the Service and other agencies prescribed under a regulation with a view to helping them in carrying out their functions in relation to prostitution;
- (viii) to collect fees under the *Prostitution Act*;
- (ix) to inform relevant government departments and agencies about possible offences that are detected while carrying out its functions; and
- (x) advise the Minister about ways of promoting and coordinating programs that:
 - (a) promote sexual health care; or
 - (b) help prostitutes to leave prostitution; or
 - (c) divert minors and other vulnerable persons from prostitution, especially opportunistic prostitution; or

(d) raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution;

(xi) advise the Minister about the development of codes of practice for licensed brothels; and

(xii) to raise, in prostitutes, judicial officers, police, community workers and the community, awareness of issues about prostitution.

Two licensing systems are created by the *Prostitution Act*. Licensing of individuals to hold a licence for a particular brothel and approved manager certificates allowing a person to manage a brothel. The intention of the legislation is to allow for 'lawful prostitution'.

Part 6, ss. 73 to 99: 'Offences' of the *Prostitution Act* create a number of offences covering the operation of a licensed brothel, prostitutes working in licensed brothels, advertising and offences of making false or misleading statements and providing false or misleading documents to the Prostitution Licensing Authority.

This Part also creates general offences relating to prostitution including public soliciting for the purposes of prostitution.

The Criminal Code provisions dealing with prostitution still exist. These Code provisions will allow an independent operator to provide prostitution at a place. Additionally the Code's provisions continue to address organised 'illegal prostitution'.

The policies contained herein will address unlawful prostitution and brothel policing as well as issues relating to prohibited brothels.

Office of the Prostitution Licensing Authority

The function of the Office of the Prostitution Licensing Authority is to help the Authority in the performance of its functions. The office may do anything necessary or convenient to be done in performing its function.

13.11.1 Information requests

PROCEDURE

Members receiving requests for information about prostitution-related matters and the inquirer is:

- (i) a licensee or certificate holder and the inquiry relates to prostitution;
- (ii) seeking information about the licensing/certificate scheme; or
- (iii) seeking an opinion in regards to the application of the *Prostitution Act*,

the member should refer the inquirer should to the Prostitution Licensing Authority.

ORDER

Members are not to provide an interpretation of the *Prostitution Act* to inquirers. Such persons should be directed to their own legal advisors, or the Prostitution Licensing Authority. Members are not to offer an opinion as to whether a proposed course of action by an inquirer is lawful or otherwise.

13.11.2 Presence at brothel

POLICY

Officers are encouraged to foster good relations with business operators including attending business premises for the purpose of liaising with business operators. Because of the nature of the prostitution industry, members should not enter brothels while on duty unless there is a specific reason to do so. This includes an authorised entry for the purpose of an inspection aimed at identifying any breaches of the *Prostitution Act*, or in response to a call for assistance which necessitates the entry. Members should not enter a brothel simply to familiarise themselves with the operators, staff or the business.

This does not preclude the operational requirements to police brothels and the vicinity of these areas in accordance with Service policy.

When attending a brothel, officers of both sexes should be present. See also s. 13.11.1: 'Entry to and search of licensed brothels and places or premises for the purposes of detecting prostitution offences' of this chapter.

ORDER

While on duty, members are not to attend brothels other than for official purposes.

13.11.3 Power of arrest

The provisions of Chapter 14, ss. 365 to 395: 'Arrest and custody powers' of the *Police Powers and Responsibilities Act* apply with respect to prostitution offences.

13.11.4 Brothel policing responsibility

Section 2.7.4: 'Drug and Serious Crime Group' of this Manual, refers to the Licensing Enforcement Unit and regional responsibilities.

13.11.5 Prostitution related offences

PROCEDURE

When officers detect an offence or suspect an offence of unlawful prostitution has been committed, they should investigate the complaint as part of their normal policing duties.

Any member receiving information concerning offences of prostitution is to cause the Officer in Charge, Licensing Enforcement Unit, State Crime Command, to be notified through the regional crime coordinator.

When members become aware of information relating to unlawful prostitution, they are to record an intelligence submission (see 'Intelligence Submission: Record Intelligence Submission' of the QPRIME User Guide). Intelligence officers assigned an intelligence submission are to enter such information on the Australian Criminal Intelligence Database (ACID).

Regional crime coordinators are responsible for ensuring that all referred matters relating to prostitution are attended to in accordance with the policies contained herein. Additionally regional crime coordinators are required to liaise with and assist the Officer in Charge, Licensing Enforcement Unit to enable the undertaking of appropriate responses to prostitution-related matters.

13.11.6 Target groups regarding prostitution offences

POLICY

An act of prostitution involving an independent prostitute or within a licensed brothel is outside the framework of the criminal law. In policing unlawful prostitution priority is to be given to three specific groups of people, namely those persons:

- (i) who organise and profit from the unlawful prostitution of others;
- (ii) involved in organised unlawful prostitution activity; and
- (iii) who seek to coerce, procure or involve children and intellectually impaired persons into unlawful prostitution.

13.11.7 An independent prostitute

POLICY

Officers who are making inquiries into allegations of unlawful prostitution and suspect that a person against whom allegations are made is an independent prostitute, may make discreet inquiries about the allegations of prostitution and if practicable, interview the person concerned to:

- (i) establish the bona fides of the person, and whether any other person has an interest in the prostitution;
- (ii) establish if that person has any knowledge of prostitution involving two or more prostitutes;
- (iii) determine if any young persons or intellectually impaired persons are involved in prostitution in subparagraph (ii);
- (iv) determine if the person is advertising prostitution; or
- (v) establish if the prostitution activity is causing a nuisance.

No action should be taken against an independent prostitute for prostitution when undertaken within the confines of the legislation. However, a prostitute may commit prostitution-related offences or other offences in which case the appropriate action should be taken.

13.11.8 Security providers for prostitution

POLICY

A person or organisation providing security for prostitutes does not necessarily fall within the provisions of ss. 229H: 'Knowingly participating in provisions of prostitution', 229HA: 'When section 229H does not apply to a person', 229HB: 'Carrying on business of providing unlawful prostitution', or 229HC: 'Persons engaging in or obtaining prostitution through unlawful prostitution business' of the Criminal Code. Prostitutes are entitled to have a security system for their personal protection and the protection of their property to the same extent as other members of the community. The security must be related to the protection of the prostitute as an individual and not for the purposes of protecting the business of prostitution.

The security system may provide for a prearranged signal to summon help, or advising of the location or the activity being undertaken pursuant to s. 229HA(5) of the Criminal Code, or the engaging of a security provider to provide security (pursuant to s. 229HA(4)(b)(ii) of the Criminal Code), or the engaging of a security provider to provide services as a

driver (pursuant to s. 229HA(4) of the Criminal Code) for premises (in the case of a licensed brothel in accordance with the brothel licence) or the individual (when the prostitution is not unlawful prostitution).

However, the security provider, other than pursuant to ss. 229H, 229HA, 229HB and 229HC of the Criminal Code, must not be involved in the provision of prostitution services or receive benefits in addition to those payable by other members of the community for a similar service.

Security systems which are designed to specifically obstruct, hinder or prevent officers from carrying out their responsibilities under the legislation may result in a prosecution being initiated.

Security providers, other than at a licensed brothel in accordance with the brothel licence or pursuant to s. 229HA(4)(5) of the Criminal Code for prostitution which is not unlawful prostitution, who are engaged in activities additional to security and providing services as a driver in respect of the prostitute may be liable to prosecution (e.g. a security provider who in addition to and not as part of the provision of security, answers telephones for a prostitute or takes bookings).

13.11.9 Specialist investigation (Prostitution)

See ss. 2.7: 'State Crime Command' and 2.9: 'Covert operations' of this Manual.

POLICY

The provisions of s. 2.9: 'Covert operations' of this Manual dealing with controlled operations and controlled activities apply to the investigation of prostitution-related offences.

Officers who receive information in relation to places used for the purposes of unlawful prostitution are to record an intelligence submission (see 'Intelligence Submission: Record Intelligence Submission' of the QPRIME User Guide).

PROCEDURE

Information to be included in an intelligence submission should include:

- (i) whether the operator is operating a brothel, an escort agency or both;
- (ii) the name and location of the brothel, etc.;
- (iii) description of the building;
- (iv) whether clients pay by credit card/cash;
- (v) any business name on credit card vouchers;
- (vi) phone numbers of brothels, etc.;
- (vii) hours of operation;
- (viii) number and working names of prostitutes;
- (ix) advertisements (where/how the brothel is advertised);
- (x) vehicles used by the brothel, etc.;
- (xi) persons involved and descriptions; and
- (xii) any other general comments.

POLICY

Intelligence officers assigned an intelligence submission are to enter such information on the Australian Criminal Intelligence Database (ACID).

Officers are not to obtain evidence of prostitution by personally disrobing or by engaging in physical contact with a suspected prostitute, unless specifically authorised by a commissioned officer of or above the rank of superintendent.

PROCEDURE

Investigative responsibilities of officers include:

- (i) obtaining evidence of the suspect's correct place of abode. This is to enable those premises to be searched at a later stage for the purpose of obtaining further evidence;
- (ii) identifying the suspect's solicitor and accountant, if possible. This is to assist with searches of the suspect's premises (in relation to proceeds of crime) at a later stage of the investigation;
- (iii) checking the movements of the suspect having them put under surveillance (where practicable);
- (iv) identifying organised drug connections;
- (v) identifying the main offenders (the person running the business may not always be the owner);
- (vi) ascertaining:
 - (a) who owns the premises;
 - (b) who pays any rent;

- (c) what name the company is in;
 - (d) in whose name the business is registered;
 - (e) who pays any rates;
 - (f) who pays the telephone bill; and
 - (g) in whose name each of the utilities are listed and who had them connected;
- (vii) checking newspapers, yellow pages and other sources for advertisement of prostitution. Having all telephone numbers identified and ascertaining to what premises they relate;
- (viii) tracing the banking account details and transactions of the suspects in an attempt to link the receipt and flow of monies;
- (ix) investigating the laundering of money. Money laundering can be done in a number of ways buying property, vehicles, boats, yachts, animals, investing in another business;
- (x) having photographs taken of clients entering and leaving the premises to secure evidence of their involvement with those premises;
- (xi) evidence should be obtained from clients who attend those premises for sexual services for the payment of money by tracing the client's credit card and obtaining a statement in relation to the services received at those premises.

Officers should ask the following questions:

- (a) introduce yourself as being a member of the Queensland Police Service. Outline the nature of the inquiry;
 - (b) obtain the client's name, address, date and place of birth, occupation, etc.;
 - (c) ask the client to outline the events that took place in the suspect premises;
 - (d) it is assumed that clients pay money for 'services' to the receptionist upon entry. The full amount may be paid to the receptionist or may be paid once in a room with a suspect. This should be clarified with the client. If the receptionist accepts all monies upon entry, officers should ascertain from the client what services the receptionist outlines (if any);
 - (e) ask the client what name was given by the client at the door and whether the receptionist wrote anything down in a book at the front counter;
 - (f) ask what the receptionist did with the money;
 - (g) ask whether the client knows the receptionist's name. The client should be asked to describe what the receptionist was wearing;
 - (h) ask how many people were there, the name of the person seen and about peculiarities of the person seen;
 - (i) ask whether the client was aware of the names of any other persons present;
 - (j) ask whether the client would be able to identify any of the persons seen (if a photo kit is available show same);
 - (k) ask the client to describe the room used for sex;
 - (l) ask the client to detail all conversations had;
 - (m) pay particular attention to slang terms used by the person chosen and any reference to 'house rules';
 - (n) detail any services the client chose;
 - (o) detail how much the client paid and request the client provide any copies of vouchers received as a result of services rendered at the premises;
 - (p) the client should be asked about the act;
 - (q) male clients should be asked whether they ejaculated;
 - (r) ask whether the client had been there before? If so, how many times? When was the first time the client visited the premises?;
 - (s) how did the client learn of the premises? e.g. advertising; and
 - (t) ask what services were obtained on those other occasions;
- (xii) ensuring that when a search warrant is being executed the aim of the search is to gather evidence related to the operation of the prostitution business. The documents listed below should be seized:
- (a) evidence showing the premises are advertised for massage;

- (b) client work sheets;
 - (c) balance sheets and books of accounting;
 - (d) certificates of business registration;
 - (e) business cards;
 - (f) banking, credit card documents and credit card printing machines;
 - (g) accounts and receipts relating to payment of business accounts;
 - (h) rental agreements;
 - (i) telephones;
 - (j) pay vouchers; and
 - (k) tax forms, etc.;
- (xiii) ensure allegations made by an informant are not the sole grounds for a search warrant as evidence of organised prostitution is required;
- (xiv) money located should be photographed or videoed and counted in front of the suspect; and
- (xv) consideration should be given as to whether a prosecution should be commenced against such clients as they may have committed an offence.

13.11.10 Offences relating to participating in, carrying on the business of, engaging in or obtaining prostitution through unlawful prostitution

POLICY

Unlawful prostitution means prostitution by 2 or more prostitutes, other than at a licensed brothel in accordance with a brothel licence for the brothel. See s. 229C: 'Definitions for ch 22A' of the Criminal Code.

To carry on a business a person must at least provide finance for the business and either take part in the management of the business or control the business. See s. 229F: 'Meaning of carry on a business' of the Criminal Code.

The legislation in relation to unlawful prostitution is designed to target organised unlawful prostitution and persons who benefit from the unlawful prostitution of others. The Service will not automatically commence a prosecution against trade and professional persons who are merely providing a service which would be normally available to other members of the community unless the provision of such service involves facilitating, promoting or organising unlawful prostitution.

The offences relating to unlawful prostitution relevant to this section are:

- (i) s. 229H: 'Knowingly participating in provision of prostitution';
- (ii) s. 229HB: 'Carrying on business of providing unlawful prostitution'; and
- (iii) s. 229HC: 'Persons engaging in or obtaining prostitution through unlawful prostitution business';

of the Criminal Code.

Section 229HA: 'When section 229H does not apply' of the Criminal Code, sets out those circumstances when an offence under s. 229H does not apply.

The exceptions under s. 229HA(2), (3), (4) and (5) of the Criminal Code are:

- (i) where the prostitution happens at a licensed brothel in accordance with the brothel licence for the brothel, and the prostitute is an adult and is not a person with an impairment of the mind;
- (ii) the activity constituting the prostitution is an activity mentioned in s. 229E(1)(d): 'Meaning of prostitution' of the Criminal Code, and the person engaging in the activity is providing adult entertainment under an adult entertainment permit and is an adult and is not a person with an impairment of the mind, and the activity is authorised under the permit; and
- (iii) the provision of the prostitution does not take place at a licensed brothel, and the prostitution is not unlawful prostitution and the suspected participant is either:
 - (a) the holder of a current licence issued under the *Security Providers Act* for carrying out the functions of a bodyguard and the participant participates in the provision of the prostitution no more than to the extent necessary for providing services as a bodyguard for only one person; or
 - (b) the holder of a current licence issued under the *Security Providers Act* for carrying out the functions of a crowd controller and the participant participates in the provision of the prostitution no more than to the extent necessary for providing services as a driver for only one person and no one else;

(see also s. 13.11.8: 'Security providers for prostitution'); and

(iv) the provision of the prostitution does not take place at a licensed brothel, and the prostitution is not unlawful prostitution and the suspected participant:

- (a) directly receives a message from the other person about the other person's location, or the activity being undertaken by the other person, in relation to the provision of prostitution by the other person; and
- (b) participates in the provision of the prostitution no more than the extent necessary for ensuring the safety of the other person; and
- (c) participates in the provision of the prostitution by the other person and no one else; and
- (d) does not engage in prostitution.

Significant issues to be considered in determining whether a prosecution should be commenced for offences of unlawful prostitution include:

- (i) the degree of involvement of the person;
- (ii) whether any retainer, contract or special benefits exist;
- (iii) whether the actions of a person can be interpreted as promoting or initiating an arrangement leading to unlawful prostitution;
- (iv) whether the remuneration for the service is provided at a higher rate in comparison to fees charged to other members of the community; or
- (v) in the case of trade or professional persons executing their trade or professional function, whether the provision of service is obvious or extreme in supporting unlawful prostitution.

Should one or more of the above criteria exist, consideration should be given to the commencement of action against any person, business, firm or company providing the service.

The following examples may assist in the interpretation of this policy:

- (i) a decision not to prosecute would be justified on the grounds that the service provided by a trades or professional person is similar to that provided to any other individual member of the community, and the actions of the trade/professional person do not imply obvious support which is knowingly intended to facilitate, promote or assist unlawful prostitution. For example a plumber who repairs a spa bath or a painter who paints premises in the line of normal employment would not, unless other factors exist, be prosecuted;
- (ii) financial institutions supplying services, such as credit card instruments will be excluded from prosecution action unless the institution knowingly provided or continued to provide financial assistance for use in connection with prostitution; and
- (iii) it is not intended to commence a prosecution against a driver, operator or hirer of a vehicle who provides transport for prostitutes or clients of prostitutes unless it can be proven that the driver/operator/hirer of a vehicle undertakes, at the time of providing the service, to promote or facilitate arrangements leading to unlawful prostitution, or the service was provided for additional benefit under a retainer or contractual arrangement. Carrying out of a hirer's direction to provide transport from one point to another is unlikely to be sufficient for a prosecution even if the driver/operator/hirer knew the destination to be a place where unlawful prostitution took place.

13.11.11 Persons found in places reasonably suspected of being used for unlawful prostitution

POLICY

The meaning of the term 'place' used and defined in s. 229C: 'Definitions for ch 22A' of the Criminal Code is not intended to be used to justify prosecution action against persons in separate premises not related to the place where unlawful prostitution is occurring. For example where an 'unlawful brothel' is operating out of a unit within a block of units. Other residents within that unit block are not liable for prosecution unless they are also involved in the organised prostitution. Enforcement action is only to be commenced in respect of persons directly or indirectly involved in unlawful prostitution.

Persons found in, or leaving after having been in a 'place', suspected on reasonable grounds of being used for the purposes of unlawful prostitution by two or more prostitutes commit a crime, unless those persons have a reasonable excuse for their presence. The onus is on a person so found to provide a reasonable excuse for being in or leaving after having been in the 'place'. Once a reasonable excuse has been provided, it is then the responsibility of the investigating officer to negate that excuse prior to commencing a prosecution.

PROCEDURE

When an officer suspects on reasonable grounds that a 'place' is being used for the purposes of unlawful prostitution, a search warrant should be obtained under the provisions of s. 150: 'Search warrant application' of the *Police Powers and Responsibilities Act* to gain entry to the premises.

See s. 13.11.14: 'Prohibited brothels Prohibited brothels and persons having an interest in premises used for the purposes of prostitution' for procedures to declare a premise a prohibited brothel. It is an offence for a person to be

found in, entering or leaving a prohibited brothel (s. 69: 'Offence of being in or entering or leaving prohibited brothel' of the *Prostitution Act*).

13.11.12 Permitting young person, etc. to be at place used for prostitution

POLICY

Where a person who is not an adult or who has an impairment of the mind, is found at a place used for the purposes of prostitution by two or more prostitutes (unlawful or otherwise), officers should initiate a prosecution against offenders who knowingly cause or permit to be at that place any such child or person with an impairment of the mind.

Where two or more prostitutes operate a place for the purposes of prostitution and children or persons with an impairment of the mind are located at that place, it is immaterial that prostitution is not occurring at that time.

Officers should not initiate a prosecution against a person for causing or permitting a person who is not an adult or who is a person with an impairment of the mind to be at a place used for the purposes of prostitution by two or more prostitutes under circumstances where no connection exists between the person and the prostitution. Some examples include a child or person with an impairment of the mind who:

- (i) provides a service to the premises which is not connected with prostitution; or
- (ii) is at the place to retrieve a lost item or carry out an action totally unrelated to prostitution where the child or person with an impairment of the mind enters the place for a legitimate reason.

See s. 13.11.17: 'Requiring a person to state name, address, age and evidence of their correctness' of this chapter regarding name, address and age provisions, and removal of person who is not believed to be an adult.

13.11.13 Certificate of discharge for particular offences

PROCEDURE

Section 229J: 'Certificate of discharge for particular offences' of the Criminal Code allows for persons charged with an unlawful prostitution offence or unlawful presence offence under s. 229I: 'Persons found in places reasonably suspected of being used for prostitution etc.' of the Criminal Code to be discharged. A person once discharged cannot afterwards be convicted or further prosecuted for the unlawful prostitution offence or unlawful presence offence if they make a full and true disclosure of all material particulars within their knowledge relevant to the application made by them to a court at any time before being found guilty.

When officers commence a prosecution against a person under s. 229I of the Criminal Code, and after the prosecution has been commenced that person is prepared to provide additional information in respect of prostitution activities, officers conducting the investigation should, where possible obtain a statement or further statement from the defendant and attempt to verify the circumstances of the additional information. Investigating officers should then advise the prosecutor of that fact and all of the circumstances surrounding the initial prosecution.

ORDER

When the defendant provides evidence on oath, prosecutors are to:

- (i) liaise with the officer in charge of the investigation so as to obtain proper and relevant instructions; and
- (ii) cross examine the defendant with a view to obtaining direct evidence of the commission of any other offences in accordance with instructions received.

Where a certificate of discharge has been issued, the prosecutor is to record that fact on the Court Brief (QP9) and is to cause the investigating officer to be notified as soon as practicable of the circumstances of the issue of the certificate.

Investigating officers are to then continue investigations in the normal manner, including obtaining a transcript of the evidence from the court, where such transcript is required.

POLICY

The certificate of discharge refers to an unlawful prostitution offence or unlawful presence offence against the person charged in whose favour the certificate has been given. Evidence which discloses other offences should be investigated by the arresting officer with a view to commencing further prosecutions.

Where a person has committed an offence, other than an unlawful prostitution offence or unlawful presence offence and that person is willing to provide additional information or indemnified evidence, officers may make application in the normal manner to the Director of Public Prosecutions (State) as they would for any other criminal offence. (See s. 3.9.14: 'Indemnities against prosecution' of this Manual.)

Where the defendant provides evidence under s. 229J(5) of the Criminal Code to the satisfaction of the prosecutor, the prosecutor may, if it is believed that the defendant has truthfully disclosed all material particulars, support the issue of the certificate of discharge.

Prosecutors should be aware that defendants may make an application for an order prohibiting the publication of identifying matter in relation to them. That prohibition on publication does not relate to information provided in relation to the commission by any other person of an offence against the Criminal Code in relation to the premises.

Where they believe that a defendant is going to disclose information which may result in further police action, prosecutors are to endeavour to have the defendant give evidence in chambers so that publication of the information in the media will not potentially affect a police investigation.

13.11.14 Prohibited brothels and persons having an interest in premises used for the purposes of prostitution

The Criminal Code and the *Prostitution Act* provide similar provisions in dealing with unlawful brothels. Section 229K: 'Having an interest in premises used for prostitution etc.' of the Code is aimed specifically at interested persons (owners, lessees, occupiers or users of premises). This section allows a police officer to serve a written warning to an interested person in relation to a premises that is not a licensed brothel and is being used for the purpose of prostitution by two or more prostitutes.

Under Part 5, ss. 65 to 72: 'Prohibited brothels' of the *Prostitution Act* a court, satisfied on the balance of probabilities, may declare premises to be a prohibited brothel. Under this part, a person found in or entering or leaving a prohibited brothel other than for a lawful purpose commits an offence as does the owner or occupier of the premises who is found in or entering or leaving the premises without a court order.

Criminal Code

POLICY

Officers who complete such a written warning must actually know that the premises are being used for the purposes of prostitution by two or more prostitutes. Officers are not to prepare a written warning merely on suspicion that prostitution is occurring. See Appendix 13.2: 'Written warning to interested person (s. 229K of the Criminal Code)' of this chapter for an example of the warning.

PROCEDURE

Criteria for determining whether prostitution is occurring at certain premises can be:

- (i) the persons on those premises have been convicted of prostitution offences;
- (ii) statements have been taken from prostitutes or clients in relation to the prostitution activity; or
- (iii) evidence has been given on oath to a court concerning the prostitution activity at a premises.

A written warning should be completed and signed in duplicate for each of the interested persons upon whom it is to be served. One copy is for service on each of the interested persons (e.g. owner and the real estate agent), the other copy for endorsement as to service.

Service of a notice on an interested person may be affected either:

- (i) personally;
- (ii) by leaving a copy of the warning with a person at the registered office of the company (where a company is the interested person). In addition the warning should be served on each director or principal of the company; or
- (iii) by forwarding a copy of the written warning by Registered Post A.R. (Acknowledge and Receipt) to the interested person.

(Note: Registered Post A.R. will result in the warning being delivered directly to the person or a person in authority in a company to whom the envelope is addressed. The A.R. card is returned to the sender after service. If service is not affected within one month the posted item is returned to the sender. Members can be satisfied, for the purposes of future prosecution, that the notice has been served.)

The reason a copy of the warning should be served on each of the principals or directors of a company, is that several companies involved in prostitution may have the same principals or directors. This will assist in identifying networks of prostitution organised by the same people. The identity and address of the interested person may be obtained by:

- (i) interviewing the prostitute or person connected with the prostitution;
- (ii) conducting a search of local council records;
- (iii) conducting a search of the Titles Office; or
- (iv) application of the *Criminal Proceeds Confiscation Act* where applicable.

ORDER

The rear of the second copy is to be endorsed by the officer serving the warning with the:

- (i) time, date and place;
- (ii) name of the person upon whom it was served;
 - (a) whether it was served personally or otherwise; and
 - (b) identifying particulars of the Registered Post A.R. (Acknowledge and Receipt);

- (iii) signature of the officer who served the warning; and
- (iv) name, rank, registered number and station of the officer who served the warning.

When a warning has been served on an interested person, the endorsed copy of the warning is to be forwarded by the officer serving the warning to the relevant intelligence officer where the prostitution premises are located within seven days of the service of the warning. The relevant intelligence officer is to retain the copy of that warning for a minimum period of two years. The relevant intelligence officer is to cause the ACID system to be updated with information concerning the warning.

Where a warning is given to a registered company, the relevant intelligence officer is to ensure that the identifying particulars of directors or principals of the company are recorded on the ACID system.

Prostitution Act

PROCEDURE

Officers intending to make applications under Part 5, ss. 65 to 72: 'Prohibited brothels' of the *Prostitution Act* should, by way of written report, obtain approval from the regional crime coordinator to commence an application under s. 65: 'Application to Magistrates Court' of the *Prostitution Act*. The regional crime coordinator should liaise with the Officer in Charge, Licensing Enforcement Unit and consider the application and if appropriate, approve the application.

Once receiving approval, officers are to:

- (i) advise the Officer in Charge, Licensing Enforcement Unit by e-mail or facsimile transmission, who will notify the Prostitution Licensing Authority;
- (ii) prepare officer affidavits outlining the officer's beliefs about s. 66(1): 'Declaration that premises are a prohibited brothel' of the *Prostitution Act*;
- (iii) prepare witness affidavits;
- (iv) complete a Form 5: 'Originating Application' (Uniform Civil Procedure Rules);
- (v) obtain a certificate from the executive director of the Prostitution Licensing Authority stating that the premises was not a licensed brothel;
- (vi) lodge the form and affidavits ('the application') with the appropriate Clerk of the Magistrates Court and obtain a hearing date;
- (vii) ensure that at least seventy-two hours before the hearing date a copy of the application, together with a notice of an application for an order declaring premises a prohibited brothel, is served on the owner and the occupier of the premises subject of the application (see ss. 66(3) and 72(1): 'Service of notices in relation to prohibited brothels' of the *Prostitution Act*);
- (viii) endorse a copy of the served notice of an application as to service of the notice on the owner and the occupier;
- (ix) submit the endorsed forms together with affidavits and certificate(s) to the relevant Police Prosecutions Corps;
- (x) ensure the required witnesses attend court; and
- (xi) personally attend the court.

Forms and affidavits held by the police prosecutor are to be forwarded upon completion of the hearing to the Officer in Charge, Licensing Enforcement Unit for filing.

Where a court has issued a declaration that a premises is a prohibited brothel, the applicant officer as soon as practicable should:

- (i) cause to be published in a newspaper sold and generally circulating in the locality in which the premises was situated, a notice of the making of the declaration. This is to be published for a minimum of two consecutive days. A copy of the advertisement is to be attached to the correspondence file;
- (ii) give a notice of the making of the declaration to:
 - (a) the occupier of the premises, and if the occupier is not the owner of the premises, the owner; and
 - (b) if the premises are subject to a registered mortgage, the registered mortgagee;
- (iii) cause to be posted at or near the entrance to the premises, a copy of the declaration so that it is visible and legible to any person entering the premises. Care should be taken to minimise damage to the premises caused by the posting; and
- (iv) forward a copy of the notice and newspaper advertisement to the Officer in Charge, Licensing Enforcement Unit.

POLICY

Generally the Police Service will not be making applications for rescission of a declaration for a prohibited brothel.

Any officer receiving a notice to rescind a declaration of a prohibited brothel, where a police officer is not the applicant, is to forward the notice to the officer in charge of the district. The officer in charge of the district is to forward a copy to the regional crime coordinator for forwarding to the Officer in Charge, Licensing Enforcement Unit.

The Officer in Charge, Licensing Enforcement Unit is to consider the application for rescission and institute appropriate action where required in liaison with the Prostitution Licensing Authority.

13.11.15 Public soliciting for purposes of prostitution

Section 73: 'Public soliciting for purposes of prostitution' of the *Prostitution Act* creates the offence of publicly soliciting for the purposes of prostitution.

POLICY

Service objectives in relation to the offence of soliciting for the purposes of prostitution are intended to reduce the active promotion of prostitution, limit the potential for expansion of organised unlawful prostitution activities and prevent unacceptable publicity of prostitution.

ORDER

No officer is to engage in soliciting for the purposes of s. 73 of the *Prostitution Act* without the express written consent of the regional crime coordinator, and in compliance with the provisions of s. 2.9: 'Controlled activities' of this Manual.

Move-on powers

Where an officer reasonably suspects a person is soliciting for prostitution in any public place to which the public has access, whether on payment of a fee or otherwise, that officer may give any direction that is reasonable in the circumstances to that person.

A public place does not include any area in a licensed brothel that cannot be viewed from outside the brothel.

See s. 13.23: 'Move-on power' of this chapter.

13.11.16 Advertising prostitution services

POLICY

Part 6, Division 4, ss. 92 to 96C: 'Advertising offences' of the *Prostitution Act* creates a number of offences relating to advertising and publishing statements, including internet websites and advertising, dealing with prostitution.

Prosecution action should not be commenced against the following persons, without first obtaining advice from the relevant regional crime coordinator or in the case of State Crime Command, the Superintendent, State Crime Command:

- (i) the publisher, proprietor or owner of the printing or publishing enterprise when the publishing and printing of an advertisement for prostitution occurred outside of Queensland and is not associated or connected with a person, business, firm or company in Queensland; or
- (ii) a distributor or newsagent who sells or distributes in Queensland a newspaper or periodical which is a recognised publication in another State and is not used solely for the purposes of advertising prostitution.

A prosecution can however be commenced against a prostitute or any person located in Queensland who has an advertisement published on their behalf, regardless of whether the advertisement is published in Queensland or elsewhere. Action could also be taken against the person or company who publishes in Queensland the availability of prostitution services in other States.

13.11.17 Requiring a person to state name, address, age and evidence of their correctness

Section 40 'Person may be required to state name and address' of the *Police Powers and Responsibilities Act* provides a general power for officers to require a person to state the person's correct name and address in prescribed circumstances (see s. 41: 'Prescribed circumstances for requiring name and address' of the *Police Powers and Responsibilities Act* for prescribed circumstances, s. 22: 'Prescribed circumstances for requiring name and address', Schedule 3: 'Acts for which name and address may be required' of the *Police Powers and Responsibilities Regulation*).

Section 40(2) of the *Police Powers and Responsibilities Act* provides that an officer may require the person to give evidence of the correctness of the stated name and address if in the circumstances it would be reasonable to expect the person to be in possession of such evidence. It is an offence to fail to comply with a requirement made under s. 40 of the *Police Powers and Responsibilities Act* without a reasonable excuse.

However, it may sometimes be necessary for an officer to discover a person's age when making investigations into suspected prostitution offences. Section 42: 'Power for age-related offences and for particular motor vehicle related purposes' of the *Police Powers and Responsibilities Act* provides power to require a person to state the person's correct date of birth and to give evidence of the correctness thereof, if in the circumstances, it would be reasonable to expect the person to be in possession of such evidence or to otherwise be able to give the evidence, under certain conditions associated with a person's entitlement to be at a place or engage in an activity.

Section 42 of the *Police Powers and Responsibilities Act* also enables a police officer, in circumstances where that officer asks a person to give evidence of the person's date of birth and is not satisfied that the person is old enough to

be at the place or to engage in the activity, to direct the person to immediately leave the place, or the part of the place where the person's age is relevant, and not re-enter it, or not to engage in the activity.

A failure, without reasonable excuse, to comply with a requirement or failing to give evidence of the correctness or stating of a false age or the giving of false evidence of the correctness of a person's age is an offence (s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act*).

Whenever the provisions of ss. 40 and 42 of the *Police Powers and Responsibilities Act* are used, a police officer is to give the person a reasonable opportunity to comply with the requirement and must if practicable warn the person:

Pursuant to s. 85: 'Person to state age' of the *Prostitution Act*, in circumstances where a police officer reasonably believes that a person in a licensed brothel may be a minor, that police officer may require the person to give particulars of the person's age. This section also allows a police officer to require the person to give satisfactory evidence of the particulars where the police officer considers that the particulars given by the person may be false. Under this section, a police officer must warn the person that it is an offence to fail without reasonable excuse to comply with the requirements or to give false particulars or evidence.

Under s. 86: 'Licensee and approved manager to state name and address' of the *Prostitution Act* a police officer may require a licensee or approved manager at a licensed brothel to give particulars of the licensee's or manager's name and address. An offence is created under this section for a licensee or approved manager who without excuse fails to comply with a requirement or gives false particulars.

POLICY

When dealing with licensees or approved managers at a licensed brothel, or persons who, a police officer reasonably believes, may be minors in a licensed brothel, where required, the provisions of ss. 85 and 86 of the *Prostitution Act* are to be used.

In relation to all other persons or when dealing with children or licensees or managers not at/in a licensed brothel, the provisions of the *Police Powers and Responsibilities Act* should be used.

Additionally, the provisions of s. 42(4) of the *Police Powers and Responsibilities Act* should be used where appropriate in relation to a child in a licensed brothel. These provisions allow a police officer to direct the child to immediately leave the place or the part of a place where the child's age is relevant and not re-enter it.

ORDER

Officers, whether in uniform or not are to give their rank, surname and station or establishment to a person required to provide particulars of the person's name, address or age (see s. 637: 'Supplying police officer's details' of the *Police Powers and Responsibilities Act*).

Officers who are not in uniform who require a person to provide particulars of the person's name, address or age are to:

- (i) tell the person of whom the requirement is made that the officer is a police officer; and
- (ii) produce their identity card for inspection by the person (see s. 637 of the *Police Powers and Responsibilities Act*).

13.11.18 Entry to and search of licensed brothels and places or premises for the purposes of detecting prostitution offences

POLICY

Generally the Prostitution Licensing Authority is responsible to ensure that 'lawful prostitution' in brothels is provided in accordance with the legislation. Under s. 59: 'Police power to enter licensed brothel' of the *Prostitution Act* a police officer of at least the rank of inspector, or a police officer authorised in writing (see Form QP 0472: 'Application for authority to enter licensed brothel' available on QPS Forms Select) for the particular entry by a police officer of at least the rank of inspector, may at any time when the premises used is a licensed brothel is open for business, enter and inspect the premises and with the written authorisation of the Prostitution Licensing Authority undertake further authorities, as specified in s. 60: 'Powers after entry' of the *Prostitution Act*. An authorised police officer, if asked, is to produce the authority given by the police officer of at least the rank of inspector to the brothel's licensee or approved manager.

Section 61: 'Authority to be given particulars after entry' of the *Prostitution Act* provides that as soon as practicable after a police officer enters a licensed brothel under the *Prostitution Act*, the police officer, or the police officer who authorised the entry, must give the Prostitution Licensing Authority any particulars in relation to the entry. The particulars required to be given to the Authority are contained in s. 7: 'Particulars to be given to Authority after entry – Act, s 61' of the Prostitution Regulation. Form QP 0469: 'Particulars after entry to licensed brothel' available on QPS Forms Select is to be used for this purpose.

The *Police Powers and Responsibilities Act* also contains several provisions which will allow police officers to enter brothels under certain circumstances or to investigate offences (for example, see ss. 19: 'General power to enter to make inquiries, investigations or serve documents', 21: 'General power to enter to arrest or detain someone or enforce warrant', 50: 'Dealing with breach of the peace', 52: 'Prevention of offences – general', and 609: 'Entry of place to prevent offence, injury or domestic violence' of that Act). Whenever entry to a brothel is undertaken under the *Police*

Powers and Responsibilities Act, the commissioned officer having line supervision of the officer making the entry is to be notified by the officer making the entry prior to the entry taking place, or where the circumstances surrounding the entry make it impractical, as soon as possible following the entry. The officer making the entry is to ensure that the Officer in Charge, Licensing Enforcement Unit is advised of the entry.

Whenever the Prostitution Licensing Authority or Licensing Enforcement Unit is required to be notified a Form QP 0469: 'Particulars after entry to licensed brothel' is to be completed and forwarded by facsimile transmission to the Officer in Charge, Licensing Enforcement Unit, State Crime Command as soon as practicable following the entry.

The Officer in Charge, Licensing Enforcement Unit upon receipt of forms is to ensure that forms relating to entries under:

- (i) s. 59 of the *Prostitution Act* are forwarded to the Prostitution Licensing Authority; and
- (ii) the *Police Powers and Responsibilities Act* are forwarded to the Prostitution Licensing Authority where considered appropriate.

Officers who, as part of discharging a function of the Service, enter a licensed brothel or other place used or suspected of being used for purposes of prostitution, are to record in their official police notebooks or diaries and, where appropriate in patrol activity logs, details of such entries.

PROCEDURE

When officers intend to enter and search or inspect premises for the purposes of establishing whether prostitution offences have occurred, in addition to the provisions of the *Prostitution Act* (see s. 13.11.19: 'Compliance inspections' of this chapter), they may:

- (i) in respect to unlicensed brothels or independent prostitutes, enter, inspect and/or search on invitation or by consent of the occupants;
- (ii) enter and search on the authority of a search warrant under the provisions of s. 150: 'Search warrant application' of the *Police Powers and Responsibilities Act*, or
- (iii) enter the place and exercise search warrant powers under the provisions of Chapter 7, Part 2, ss. 159 to 163: 'Search of place to prevent loss of evidence' of the *Police Powers and Responsibilities Act* and ss. 4: 'Post-search approval application' and 5: 'Appeal' of the Responsibilities Code.

13.11.19 Compliance inspections

Compliance inspections are visits by police to a licensed brothel for the purpose of ensuring the brothel is being operated in accordance with the requirements of the *Prostitution Act*, and for identifying whether other offences are being committed on the premises, either by the licensee, manager, staff or clients.

POLICY

Generally, compliance inspections are undertaken by the Licensing Enforcement Unit, State Crime Command. However, regions may be requested to assist the Unit with these types of inspections. Requests for assistance involving compliance inspections should be made by the Officer in Charge, Licensing Enforcement Unit to the relevant regional crime coordinator. Wherever practicable, Licensing Enforcement Unit procedures, made available by the Officer in Charge of the Unit, are to be followed.

The relevant authorities pursuant to ss. 59: 'Police power to enter licensed brothel' and 60: 'Powers after entry' of the *Prostitution Act* are to be made available to the officer making the entry by the Officer in Charge, Licensing Enforcement Unit.

Where an authority is given by a regional commissioned officer, a copy is to be forwarded to the Officer in Charge, Licensing Enforcement Unit.

Authorities pursuant to ss. 59 and 60 of the *Prostitution Act* irrespective of the issuer are to be filed at the police establishment where the officer making the entry to the licensed brothel is attached.

13.11.20 Disciplinary action against licensee

POLICY

Officers seeking disciplinary action to be taken against a licensee or approved manager of a brothel are to forward a report to the Officer in Charge, Licensing Enforcement Unit, addressing the areas of concern.

Officers becoming aware that a licensee, a person who has an interest in the licensee's brothel, or approved manager, has been charged with an offence in Queensland or elsewhere, is to advise the Officer in Charge, Licensing Enforcement Unit.

Officers seeking to vary or revoke a condition or restriction of a licence or certificate are to forward a report, outlining the reasons, to the officer in charge of the region, who is to forward the report to the Prostitution Licensing Authority with a copy to Officer in Charge, Licensing Enforcement Unit.

The Officer in Charge, Licensing Enforcement Unit is to consider the contents of any reports received and in appropriate cases apply to the Prostitution Licensing Authority for a disciplinary inquiry.

13.11.21 Certificate for evidentiary purposes

POLICY

Where officers require certificates pursuant to s. 132: 'Evidentiary provision' of the *Prostitution Act*, they are to contact the Officer in Charge, Licensing Enforcement Unit who is to obtain the appropriate certificates in accordance with the request.

13.11.22 Medical practitioners/health service providers for prostitutes

ORDER

Officers conducting investigations into prostitution are not to initiate a prosecution against a medical practitioner or a health services provider merely because the medical practitioner or health services provider either medically examined, treated, or provided advice on health related issues to a prostitute. It is immaterial that the medical practitioner or health services provider has knowledge that the patient is a prostitute and it is immaterial that the prostitute marketed the frequency of the medical examination to attract clients. Such examination or treatment by the medical practitioner or health service provider is not to be regarded by officers as assisting in prostitution on the part of the medical practitioner or health service provider for the purposes of prosecution of an offence.

PROCEDURE

Other than in the case of licensed brothels, where it can be established that the medical practitioner or health services provider is receiving benefits in addition to normal remuneration for medical services paid by a member of the community for a medical examination or treatment, such extra benefit may be sufficient to initiate a prosecution under ss. 229H: 'Knowingly participating in provision of prostitution', 229HB: 'Carrying on business of providing unlawful prostitution' or 229HC: 'Persons engaging in or obtaining prostitution through unlawful prostitution business' of the Criminal Code.

In accordance with s. 229O: 'Non-compellability of health service providers' of the Criminal Code and s. 135: 'Non-compellability of health service providers' of the *Prostitution Act*, a health services provider may, on the ground that it would disclose information gained in providing a health service, refuse to provide any document or information or answer any question in relation to an investigation of, or prosecution for, an offence against Chapter 22A: 'Prostitution' of the Criminal Code or the *Prostitution Act*.

A health professional as defined under the *Prostitution Act* may give to a police officer information about a prostitute and the prostitute's disability if the health professional reasonably believes that a prostitute at a licensed brothel is a person with an intellectual impairment, refer s. 134A: 'Protection of health professionals from liability' of the *Prostitution Act*.

POLICY

Officers should not initiate a prosecution against persons or organisations such as:

- (i) chemists who provide facilities and equipment for safe sex practices (e.g. condoms or lubricants);
- (ii) members from the Self Help for Queensland Workers in the Sex Industry (SQWISI) acting in the capacity of a health services provider; or
- (iii) other health services providers (see s. 135 of the *Prostitution Act*).

13.11.23 Applicant's identifying particulars

POLICY

As part of the licensing process, applicants are required to provide identifying particulars. Upon lodging of an application the Prostitution Licensing Authority will refer the application to the Licensing Enforcement Unit, who will then make the necessary arrangements to have appropriate applicant's identifying particulars taken.

Where identifying particulars are required to be taken, the Officer in Charge, Licensing Enforcement Unit is to advise the applicant to attend a stated police station at a stated time. The officer in charge of the stated police station is to also be notified of the applicant's attendance and of the identifying particulars required to be taken. The Officer in Charge, Licensing Enforcement Unit is to ensure that facilities for taking identifying particulars (using an inked impressions method only) and personnel are available at the nominated police station for the stated date and time.

Upon attendance of the applicant at the nominated police station the officer in charge of that station, or delegate, is to compare the photograph of the applicant supplied by the Licensing Enforcement Unit with the person purporting to be the applicant. Where the officer considers it to be the same person, the officer is to ensure that the required identification particulars are taken using an inked impressions method and not LiveScan technology.

The two fingerprint forms are to be endorsed with the words 'Prostitution Act licence/certificate applicant' in the offence field. Fingerprints taken are to be forwarded to the Licensing Enforcement Unit. The Officer in Charge, Licensing Enforcement Unit is to ensure that all relevant inquiries with respect to the applicant are undertaken and the Prostitution Licensing Authority notified.

ORDER

When an application for a licence or certificate has been refused, identifying particulars taken pursuant to ss. 13: 'Applicant to consent to identifying particulars being taken' and 38: 'Applicant to consent to identifying particulars being taken' of the *Prostitution Act* are to be destroyed, pursuant to s. 136: 'Destruction of identifying particulars etc.' of the *Prostitution Act*.

When notified by the Prostitution Licensing Authority that an application has been refused, the Officer in Charge, Licensing Enforcement Unit is to ensure that any identifying particulars and any record copy of photograph of them in relation to the applicant in the possession of the Service is destroyed following any relevant appeal period.

13.11.24 Criminal Proceeds Confiscation Act (application to prostitution)

POLICY

When officers are conducting an investigation into unlawful prostitution and there is a likelihood of a substantial amount of commercial character involved in the unlawful prostitution, the officer in charge of the investigation should contact the Officer in Charge, Proceeds of Crime Unit, State Crime Command.

The Officer in Charge, Proceeds of Crime Unit, should offer assistance to investigating officers to recover tainted property.

Section 250: 'Money laundering' of the *Criminal Proceeds Confiscation Act* should also be considered in terms of preferring charges of money laundering. If the money from the commission of the offence of unlawful prostitution is being concealed or dealt with in any way by those persons involved with the organisation and control of unlawful prostitution they may commit the offence of money laundering.

13.11.25 Infringement notices for prostitution offences

Officers are empowered by the provisions of Part 3, Division 1: 'Service of infringement notices' of the *State Penalties Enforcement Act* and Schedule 1: 'Infringement notice offences and fines for nominated laws' of the State Penalties Enforcement Regulation to issue infringement notices for prostitution offences.

ORDER

Infringement notices are to only be issued for prostitution offences listed in Schedule 1 of the State Penalties Enforcement Regulation for the *Prostitution Act* and Prostitution Regulation using infringement notices supplied by the Prostitution Licensing Authority.

Prostitution Licensing Authority (administering authority)

The Prostitution Licensing Authority (PLA) is responsible for administering and processing infringement notices issued by police officers for prostitution offences and can provide officers with details of infringement enforcement history.

The PLA has also prepared a list of infringement notice offences including offence codes, descriptions and penalties which are available on the Operations Support web page on the QPS Corporate Intranet (Bulletin Board).

PROCEDURE

When an officer is investigating offences against the *Prostitution Act* or otherwise enforcing relevant provisions and is seeking infringement enforcement history, they may direct a request to the Principle Advisor Compliance at the Prostitution Licensing Authority (see Service Manual Contact Directory) by way of the internal email system.

Officers making a request are to provide:

- (i) the full name of the person or business, the address, and as applicable, a date of birth;
- (ii) the requesting officer's:
 - (a) full name, rank and employee number; and
 - (b) station/establishment and contact details; and
- (iii) the reasons for the request.

Officers in charge of stations and establishments may request infringement notice books direct from the Officer in Charge, Licensing Enforcement Unit, State Crime Command.

Issuing an infringement notice

POLICY

Officers are only to issue an infringement notice to a person for a prostitution offence in circumstances where the person would have otherwise been issued with a notice to appear, served with a complaint and summons or arrested for the offence.

Where an officer is to issue an infringement notice for a prostitution offence, each infringement notice is only to refer to one offence.

Where a person commits a number of prostitution offences in the one set of circumstances, officers should only issue one infringement notice for the most relevant prostitution offence.

The issue of infringement notices to an offender is restricted to a maximum number of three infringement notices for prostitution offences at any one time. If more than three offences are detected for which an infringement notice can be issued, the officer may determine, depending on the circumstances, to either:

- (i) issue three infringement notices and provide a verbal caution for all the other offences; or
- (ii) commence proceedings for all the offences detected as appropriate.

An infringement notice may only be issued if the alleged offender is able to provide details of their address (see s. 15(2)(c): 'Infringement notices' of the *State Penalties Enforcement Act*). Where a person has no address, alternatives to issuing an infringement notice should be considered.

Where an officer has made the decision to issue an infringement notice to a person for a prostitution offence the officer should:

- (i) issue a Prostitution Licensing Authority infringement notice in accordance with s. 8.6.4: 'Procedure for issuing Infringement Notices' of the Traffic Manual, including where possible, ensuring the person is positively identified by producing their photographic identification or other suitable identification;
- (ii) ensure that prior to submitting the white and pink copies of the infringement notice to their officer in charge, a QPRIME occurrence is created for the offence/s via the Policelink Intranet Occurrence Reporting web page on the QPS Corporate Intranet (Bulletin Board) and ensure the 'Infringement Report' is completed on the person in the relevant QPRIME occurrence (see QPRIME User Guide); and
- (iii) write the relevant QPRIME occurrence number on the rear of the white copy of the infringement notice under the area titled 'QPS identification number' prior to the notice being forwarded to their officer in charge.

Issuing infringement notices where additional (non-infringement notice) offences detected

PROCEDURE

An infringement notice should not be issued for an offence which is detected in conjunction with another offence which is not included in the State Penalties Enforcement Regulation. In this case, a summons or notice to appear should be furnished for all the offences detected.

Where an infringement notice has already been issued and an additional offence is identified for which an infringement notice cannot be issued, the particulars of the infringement notice should be noted on the court brief (QP9).

Where an officer considers a verbal caution is appropriate for a particular offence, for which an infringement notice cannot be issued, the officer may still issue infringement notices for the other offences detected.

Repeat offenders

POLICY

Where an officer becomes aware that a person has been issued multiple infringement notices for prostitution offences, officers should consider alternatives to issuing further infringement notices.

Children

Officers considering issuing an infringement notice to persons under 17 years of age for a prostitution offences, are to follow the policy and procedures contained in s. 8.6.1: 'Infringement Notice issued to persons under age of 17 years' of the Traffic Manual.

Evidentiary notes on rear of infringement notice

PROCEDURE

Officers issuing an infringement notice should make appropriate notes on the rear of the white original (prosecutions) copy of the particular infringement notice in relation to the alleged offence (see also s. 8.13: 'Evidentiary notes required for offences' of the Traffic Manual).

Distribution of infringement notices

PROCEDURE

Distribution of infringement notices for offences against the Prostitution Act is as follows:

- (i) white original (prosecutions) and pink (PLA) copies to be forwarded by the relevant officer in charge to the, Prostitution Licensing Authority (see Service Manual Contact Directory) within five days of issue;
- (ii) blue (office) copy to be retained in the book and filed at issuing station/establishment; and
- (iii) yellow (alleged offender's) copy to be given to the offender.

Court election

Where an alleged offender has elected to defend the matter in court, the Prostitution Licensing Authority will advise and forward the white original (prosecutions) copy of the infringement to the Officer in Charge, Licensing Enforcement Unit, State Crime Command. This will then be forwarded to the officer in charge of the issuing officer's station or establishment.

POLICY

Officers in charge who receive notification from the Prostitution Licensing Authority there will be a defended action are to refer the matter to the issuing officer to consider commencing a proceeding against the alleged offender by way of complaint and summons, notice to appear or arrest, as appropriate.

The police prosecutor responsible for prosecution of the matter is to advise the Principal Advisor Compliance, Prostitution Licensing Authority (see Service Manual Contact Directory) of the outcome of such a defended action.

PROCEDURE

Officers who receive advice that a person has elected to have their infringement notice dealt with in a court should reevaluate in accordance with ss. 3.4.2: 'The decision to institute proceedings' and 3.4.3: 'The discretion to prosecute' of this Manual.

See also s. 3.5: 'The institution of proceedings' of this Manual.

Waiving and cancellation of infringement notices

Withdrawal or cancellation of infringement notices in possession of or issued by members of the Service is actioned by the Prostitution Licensing Authority after receiving an appropriate recommendation from the officer in charge of the relevant station or establishment.

PROCEDURE

An officer in charge of a station or establishment should consider cancellation or waiving of an infringement notice submitted by an officer in their work unit for forwarding to the PLA where it contains one or more errors as listed in s. 8.7.1: 'Suitability of infringement notice for cancellation or waiving' of the Traffic Manual.

Advice in relation to waiving and cancelling infringements, should be directed to the Principal Advisor Compliance, Prostitution Licensing Authority (see Service Manual Contact Directory).

An officer in charge of a station or establishment who receives return advice from the PLA to waive or cancel an infringement notice issued is to ensure a supplementary report to the relevant QPRIME occurrence is completed advising of the action taken.

Where an infringement notice is waived or cancelled, the officer in charge is to also ensure that the 'Status' and 'Withdrawal Authorisation' fields within the 'Infringement Report' in the QPRIME occurrence are updated accordingly.

13.12 Railways

Definitions

For the purposes of this section:

Authorised person

is defined in s. 111: 'Appointment of authorised persons generally' of the *Transport Operations (Passenger Transport) Act* and includes every police officer (see s. 14: 'Declaration of police officers as public officials' of the *Police Powers and Responsibilities Act* and Delegation No. D 53.2 of the Handbook of Delegations and Authorities).

Code of conduct

is defined in Schedule 11: 'Dictionary' of the Transport Operations (Passenger Transport) Regulation and means the code of conduct applying in relation to school children travelling on public passenger vehicles and approved under s. 139: 'Code of Conduct for school children' of the Transport Operations (Passenger Transport) Regulation (see 'Code of Conduct for School Children Travelling on Buses').

Public passenger vehicle

is defined in Schedule 3 of the *Transport Operations (Passenger Transport) Act* and includes a fixed track vehicle.

Where an officer is planning to undertake planned policing action or receives information relating to threats to safety on the Queensland Rail City Network see s. 2.19.16: 'Railway Squad' of this Manual.

13.12.1 Removal of offenders from a railway

Powers for the removal of offenders from a railway exist in the *Police Powers and Responsibilities Act*, the *Transport Operations (Passenger Transport) Act* and the Criminal Code (see also s. 2.29: 'Public transport exclusion orders and civil banning orders' of this Manual).

Police Powers and Responsibilities Act

If an officer reasonably suspects:

- (i) a breach of the peace is happening or has happened;
- (ii) there is an imminent likelihood of a breach of the peace; or
- (iii) there is a threatened breach of the peace,

under s. 50: 'Dealing with breach of the peace' of the *Police Powers and Responsibilities Act* the officer can take the steps the officer considered reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening, even though the conduct prevented might otherwise be lawful.

Alternatively, if an officer reasonably suspects an offence has been committed, is being committed, or is about to be committed, the officer may take the steps the officer considers reasonably necessary to prevent the commission, continuation or repetition of an offence (s. 52: 'Prevention of offences – general' of the *Police Powers and Responsibilities Act*).

Officers may also direct persons to 'move-on' from railway stations and surrounding railway land under the provisions of s. 48: 'Direction may be given to person' of the *Police Powers and Responsibilities Act* (see s. 13.23: 'Move-on power' of this chapter).

Transport Operations (Passenger Transport) Act

Section 143AHA: 'Power to require person to leave public transport infrastructure if person committing particular offences' of the *Transport Operations (Passenger Transport) Act*, empowers an authorised person who finds a person committing an offence against:

- (i) ss. 143AC: 'Fare evasion' or 143AE: 'Interfering with public transport infrastructure, service, vehicle or equipment' of the *Transport Operations (Passenger Transport) Act* or any other provision of the Act relating to creating a disturbance or nuisance; or
- (ii) s. 255: 'Interfering with railway' or s. 257: 'Trespassing on railway' of the *Transport Infrastructure Act*, or
- (iii) s.249: 'Interfering with equipment, rail infrastructure or rolling stock' of the *Transport (Rail Safety) Act*,

and who reasonably believes the person may continue to commit or immediately repeat the offence, to direct that person to leave a railway, train or other passenger vehicle being operated by a railway manager or operator. If the person does not obey the direction, the authorised person may use force that is reasonable to get the person to leave.

Alternatively, s. 143AG: 'Direction to leave, or not to enter, vehicle' of the *Transport Operations (Passenger Transport) Act*, provides that if a driver or authorised person reasonably believes that a person who is on, or about to enter, a public passenger vehicle:

- (i) is creating, or is likely to create, a disturbance or nuisance on the vehicle;
- (ii) is causing, or is likely to cause danger to anyone;
- (iii) is contravening, or has just contravened, s. 143AC: 'Fare Evasion' or s. 143AE: 'Interfering with service, vehicle or equipment' of the *Transport Operations (Passenger Transport) Act*, or
- (iv) has paid a fare for travel on the vehicle but over travels the fare paid;

the driver or authorised person may direct the person to leave, or not to enter, the vehicle.

Furthermore, the driver or an authorised person may direct a person to leave, or not to enter, a public passenger vehicle or compartment, pursuant to s. 143AH: 'Direction to leave or not to enter vehicle that is full' of the *Transport Operations (Passenger Transport) Act*, if:

- (i) the person is about to enter, or has just entered, a public passenger vehicle, or a compartment of a public passenger vehicle, that appears already to have its full complement of passengers;
- (ii) the driver or an authorised person tells the person, in a general way, that the vehicle or compartment is full and that the person cannot board the vehicle or compartment or remain on the vehicle or in the compartment; and
- (iii) the person fails to leave, or not to enter, the vehicle or compartment.

A driver or authorised person:

- (i) giving a direction under ss. 143AHA; 143AG or 143AH, must tell in a general way, the person to whom the direction is given:

- (a) the reason that the person has been directed to leave the vehicle; and
 - (b) that it is an offence to fail to comply with the direction, unless the person has a reasonable excuse (s. 143AJ: 'Person given direction to be told particular things' of the *Transport Operations (Passenger Transport) Act*); and
- (ii) must not give a direction under ss. 143AHA; 143AG or 143AH if:
- (a) complying with the direction is likely to endanger the safety of a person; or
 - (b) the direction is given to a school student and is inconsistent with a code of conduct prescribed under a regulation (s. 143AI: 'Direction not to be given in particular circumstances' of the *Transport Operations (Passenger Transport) Act*).

Unless a person has a reasonable excuse, contravening a direction given under ss. 143AHA; 143AG or 143AH is an offence (see s. 143AK: 'Offence to contravene direction' of the *Transport Operations (Passenger Transport) Act*).

However, while an authorised person may use force that is reasonable to get a person to leave if they do not obey a direction given under s. 143AHA, the power to use force is not provided for persons contravening directions under ss. 143AG or 143AH.

Criminal Code

A vehicle is defined in s. 1: 'Definitions' of the Criminal Code and includes a train.

Section 281: 'Discipline of vehicle' of the Criminal Code provides that it is lawful for a person in charge of a vehicle on a journey, and for any person acting by his or her authority to use, for the purpose of maintaining good order and discipline on board the vehicle, such force as the person, or such person acting by his or her authority believes, on reasonable grounds, to be necessary and as is reasonable under the circumstances.

POLICY

When a person has been directed to leave a railway, train or other passenger vehicle, officers should consider prosecuting that person for the offence(s) which warranted the police action in the first place.

The location and the rights of other passengers should be considered in deciding whether to direct a person to leave a railway, train or other passenger vehicle.

13.12.2 Authority to demand ticket

Section 143ADA: 'Power to require production of tickets' of the *Transport Operations (Passenger Transport) Act* empowers the driver or an authorised person to require anyone who is travelling or attempting to travel on a public passenger vehicle to produce to the driver or authorised person the person's ticket for the journey.

If the driver or an authorised person reasonably suspects that a person has just travelled on a public passenger vehicle, the driver or authorised person may require the person to produce to the driver or authorised person the person's ticket for the journey.

If the driver or the authorised person reasonably suspects that the ticket produced to the driver or authorised person is an invalid ticket, the driver or authorised person may require the person to give it to the driver or authorised person'.

13.12.3 Exercise of powers

Transport Operations (Passenger Transport) Act

All police officers may exercise the powers granted to an authorised person under Chapters 11 and 11A, of the *Transport Operations (Passenger Transport) Act*.

These powers include the powers to require a person to:

- (i) provide information about offences against provisions of the Act (see s. 128: 'Power to require information from certain persons');
- (ii) produce a ticket (see s. 143ADA); and
- (iii) leave a train, railway or other passenger vehicle (see ss. 143AHA; 143AG; 143AH).

Police Powers and Responsibilities Act

The provisions of ss. 40: 'Person may be required to state name and address' and 41: 'Prescribed circumstances for requiring name and address' of the *Police Powers and Responsibilities Act* provide a power to require a person to state the person's name and address and to provide evidence of the correctness of the stated name and address.

Section 42: 'Power for age-related offences and for particular motor vehicle related purposes' of the *Police Powers and Responsibilities Act* provides a power to require a person to state their date of birth and to provide evidence of correctness of the stated date of birth under certain circumstances.

The provisions of the *Police Powers and Responsibilities Act*, including those regarding arrest without warrant, discontinuing arrest, directions to 'move-on' and breaches of the peace, apply to offences on railways.

ORDER

Police officers, other than officers wearing uniform, are not to exercise any power under the *Transport Operations (Passenger Transport) Act* in relation to any person unless they first display their police identity card for that person's inspection.

If it is impracticable for officers, not wearing uniform, to display their police identity card prior to exercising a power in relation to any person then they are to produce their identity card to that person as soon as practicable after exercising that power.

Officers, whether in uniform or not, who:

- (i) require a person to state their name and address; or
- (ii) exercise a power as a public official (authorised person for a railway),

are to, as soon as reasonably practicable, give their rank, surname and station or establishment to a person who is the subject of the power (see s. 637: 'Supplying police officer's details' of the *Police Powers and Responsibilities Act*).

Officers who are not in uniform who:

- (i) require a person to state their name and address; or
- (ii) exercise a power as a public official (authorised person for a railway),

are to, as soon as reasonably practicable:

- (i) tell the person of whom the requirement is made that the officer is a police officer; and
- (ii) produce their identity card for inspection by the person (see s. 637 of the *Police Powers and Responsibilities Act*).

13.12.4 Deleted

13.12.5 Deleted

13.12.6 Deleted

13.13 Second-hand Dealers and Pawnbrokers

13.13.1 Application for licenses

ORDER

Officers are not to accept applications for licences under the *Second-hand Dealers and Pawnbrokers Act*. All inquiries in relation to licensing should be directed to the Office of Fair Trading, Department of Justice and Attorney-General.

13.13.2 Licence particulars

PROCEDURE

Officers that require licence particulars under the *Second-hand Dealers and Pawnbrokers Act* are to contact the Dealer Audit and Compliance Coordinator, Property Crime Squad, Fraud and Cyber Crime Group.

13.13.3 Fraud and Cyber Crime, State Crime Command to be advised

The Property Crime Squad, Fraud and Cyber Crime, State Crime Command, performs the function of investigating offences relating to stolen property with the aim of recovering stolen property and reducing trade in stolen goods.

POLICY

When an officer records a QPRIME occurrence for an offence committed by licensees under the *Second-hand Dealers and Pawnbrokers Act* which has not been tasked to Property Crime Squad for investigation, crime managers are to assign a notification task to the Crime Manager, Property Crime Squad for information unless alternative Regional Instructions exist (see QPRIME User Guide).

See also s. 13.13.9: 'Authority to issue infringement notices for Fair Trading offences' of this Manual.

13.13.4 Stolen Property Investigation and Recovery System

The Stolen Property Investigation and Recovery System is a computer system that matches information collected from licensees to information from QPRIME.

The purpose of Stolen Property Investigation and Recovery System is:

- (i) to assist in the identification of stolen property and offenders; and

- (ii) to monitor the compliance of licensees.

POLICY

The Officer in Charge, Property Crime Squad is responsible for the coordination of Stolen Property Investigation and Recovery System state-wide. The granting or removal of access privileges to Stolen Property Investigation and Recovery System is at the discretion and direction of the Officer in Charge, Property Crime Squad.

PROCEDURE

Members may be granted a password to access Stolen Property Investigation and Recovery System upon completion of appropriate training. This training is coordinated by the Training and Development Unit, State Crime Command. Members should apply to their Training and Development Unit, for Stolen Property Investigation and Recovery System training. Members who have access to Stolen Property Investigation and Recovery System should be conversant with the contents of the Stolen Property Investigation and Recovery System (SPIRS) User Guide'.

13.13.5 Collection of data from licensees

Section 22 of the *Police Powers and Responsibilities Act* allows an officer, to ensure compliance with a relevant law by a licensee, to inspect, photograph or copy a document or thing that is required or permitted to be kept under a relevant law at the place where located or at a place with appropriate facilities for photographing or copying the document or thing. The *Second-hand Dealers and Pawnbrokers Act* is a relevant law (see s. 21: 'Relevant laws' of the Police Powers and Responsibilities Regulation).

Licensees are required to maintain records of their business transactions, which may include:

- (i) pawn tickets – copies of pawn tickets on which all relevant data have been entered;
- (ii) register copies – photocopies of the actual register maintained by the licensee; and
- (iii) electronic download – an electronic download of data in the approved form, where the licensee maintains records on a computer-based system.

POLICY

Officers in charge of regions should ensure that Regional Instructions are developed for the collection of transaction records from licensees.

Regional Instructions should include that:

- (i) collections are to be undertaken on a regular basis;
- (ii) irrespective of who actually collects the records, Stolen Property Investigation and Recovery System approved members should be involved to ensure that Stolen Property Investigation and Recovery System is updated to ensure licensees are complying with the act and the records are adequate; and
- (iii) all collected transaction records are forwarded to the Officer in Charge, Property Crime Squad as soon as practicable after collection.

The Officer in Charge, Property Crime Squad is to ensure that the received collections of transaction records are entered onto Stolen Property Investigation and Recovery System.

13.13.6 Stolen Property Investigation and Recovery System integrity

POLICY

The Stolen Property Investigation and Recovery System administrator is responsible for the:

- (i) quality control of data input;
- (ii) maintenance of the Stolen Property Investigation and Recovery System;
- (iii) maintenance of the Stolen Property Investigation and Recovery System (SPIRS) User Guide; and
- (iv) security of the Stolen Property Investigation and Recovery System.

The Stolen Property Investigation and Recovery System administrator is to monitor all aspects of system use to ensure accuracy and compliance within the system and maintain liaison with Stolen Property Investigation and Recovery System approved personnel and licensees supplying data.

Problems identified within the system should be directed to the Stolen Property Investigation and Recovery System administrator.

13.13.7 Stolen Property Investigation and Recovery System property matches

POLICY

The State Crime Command Crime Manager is responsible for the analysis of all matches generated by Stolen Property Investigation and Recovery System. Where a match is verified, the Stolen Property Investigation and Recovery System crime manager should conduct a caveat check on the suspect to identify if the suspect is involved in any current

operation or investigation being conducted in another area. The State Crime Command Crime Manager should then update the relevant occurrence report for allocation.

Where property is matched or suspects identified through Stolen Property Investigation and Recovery System the general report of the relevant QPRIME occurrence is to be updated by the State Crime Command Crime Manager, and assigned through QPRIME to the relevant officer in charge of a station or establishment where the offence occurred for the appointment of a case officer to manage the recovery of the property and the location of the suspect.

Officers assigned occurrences for investigation are to comply with s. 1.11.6: 'Follow-up investigations' of this Manual, paying particular attention to verifying that the property identified by Stolen Property Investigation and Recovery System is the property nominated on the occurrence report, and recovering the property.

13.13.8 Licensee audits

POLICY

Where practicable, audit or compliance checks on licensees should be made by Stolen Property Investigation and Recovery System approved officers. Officers should view the Stolen Property Investigation and Recovery System audit log to ascertain details of the last check on the relevant licensee or place. The Dealer Audit and Compliance Coordinator can also provide advice on the recommended processes involved in conducting the audit and arrange for any expert assistance, if necessary.

Where Stolen Property Investigation and Recovery System approved officers are not available, officers conducting these checks are to forward relevant details to a Stolen Property Investigation and Recovery System approved member. Stolen Property Investigation and Recovery System approved members receiving these details are to cause the details to be entered onto Stolen Property Investigation and Recovery System.

Details to be entered on Stolen Property Investigation and Recovery System include:

- (i) the names, ranks and stations of all officers attending;
- (ii) any warning given with the time set for compliance, and to whom this warning was given; and
- (iii) any infringement notices issued (note – infringement notices are to be entered into the 'Breaches' section of Stolen Property Investigation and Recovery System).

Charges resulting from dealer audits and their results are to be entered onto QPRIME.

Audit guidelines have been prepared by the Officer in Charge, Property Crime Squad in consultation with the Investigation Section of the Office of Fair Trading (the Audit Guidelines are available on the QPS Corporate Intranet). Any audits are to be conducted in accordance with these guidelines. Any request for clarification of these guidelines by officers or licensees should be referred to the Officer in Charge, Property Crime Squad.

Requests for officers attached to Property Crime Squad to assist in the conduct of compliance checks, audits or other offences related to licensees should be directed to the Officer in Charge, Property Crime Squad.

Where an audit is conducted by Property Crime Squad and non-compliance by a licensee is identified by the SPIRS system administrator, the Stolen Property Investigation and Recovery System administrator is to notify the officer in charge of the station or establishment where the licensee's business is located.

13.13.9 Authority to issue infringement notices for fair trading offences

Officers are empowered by the provisions of Part 3, Division 1: 'Service of infringement notices' of the *State Penalties Enforcement Act* and Schedule 1: 'Consumer related legislation' of the State Penalties Enforcement Regulation to issue infringement notices for fair trading offences.

ORDER

Officers are to use infringement notices supplied by the Office of Fair Trading for fair trading offences.

Officers are not to issue infringement notices for fair trading offences unless they have successfully completed the relevant Service-approved training.

POLICY

Pending further advice (following Executive Council approval for an amendment to the Security Providers Regulation), authorised officers who detect an offence against the provisions of s. 18(3)(a): 'Liquor licensee to keep register of crowd controllers' of the Security Providers Regulation, the requirement for a crowd controller to provide their residential address in a register, are to proceed by way of official warning only.

13.13.10 Office of Fair Trading (administering authority)

The Office of Fair Trading is responsible for administering and processing infringement notices issued by police officers for Fair Trading offences and will be using their MACS database for this purpose.

The Office of Fair Trading has prepared administrative guidelines for the issue and processing of infringement notices for use by QPS officers and Office of Fair Trading employees. See OFT Guidelines. These guidelines are to be read in conjunction with this chapter and where any inconsistency exists, the policy contained in this chapter prevails.

The Office of Fair Trading has also prepared a list of infringement notice offences including offence codes, descriptions and penalties which are located on the Operations Support Web-page.

The Office of Fair Trading has agreed to provide details of licensees' enforcement history (warnings/tickets/charges) held by Office of Fair Trading to QPS officers enforcing the provisions of the *Security Providers Act* and *Second-hand dealers and Pawnbrokers Act*.

PROCEDURE

Officers investigating offences against the *Security Providers Act* or *Second-hand Dealers and Pawnbrokers Act*, or otherwise enforcing the provisions of those Acts, who require a licensee's enforcement history, may make a request to the Data Officer, Office of Fair Trading during business hours (9am to 5pm), by way of written request on official Service letterhead or if urgent, by telephone.

Officers making a request are to provide:

- (i) the full name of the person or business, address, and if applicable, DOB;
- (ii) the requesting officer's:
 - (a) full name, rank and employee number; and
 - (b) station/establishment and contact details; and
- (iii) the reasons for the request.

Officers who obtain a licensee's enforcement history as a result of an urgent request over the telephone are to forward written confirmation of the request to the Data Officer, Compliance Planning, Office of Fair Trading on official Service letterhead as soon as practicable.

Officers in charge of stations and establishments may request additional infringement notice books direct from the Data Officer, Compliance Planning, Office of Fair Trading who will supply them at no cost to the Service.

13.13.11 Enforcement powers

Chapter 2, Part 1, ss. 19 to 25: 'Entry, inquiries and inspection' of the *Police Powers and Responsibilities Act* relates to powers of entry, inquiries and inspection generally and in relation to relevant laws.

The *Security Providers Act* and *Second-hand Dealers and Pawnbrokers Act* are relevant laws (see s. 21: 'Relevant laws' of the Police Powers and Responsibilities Regulation).

Powers of entry

There is no specific power of entry available to officers for entry into licensed premises to ensure compliance with the *Security Providers Act*. However, the following powers may be appropriate for officers when investigating offences against the *Security Providers Act*.

- (i) under s. 19: 'General power to enter to make inquiries, investigations or serve documents' of the *Police Powers and Responsibilities Act* officers may use general powers of entry to inquire into or investigate a matter; and
- (ii) under s. 176: 'Entry and search-monitoring compliance' of the *Liquor Act* investigators may enter any place at any reasonable time of the day or night and exercise the powers set out in s. 178: 'General power of investigators in relation to places' for the purpose of finding out whether the *Liquor Act* is being complied with. (Note – all police officers are approved to exercise powers of investigators under the *Liquor Act*; see Delegation No. D 27.3 of the Handbook of Delegations and Authorities).

Under s. 22: 'Power to enter etc. for relevant laws' of the *Police Powers and Responsibilities Act*, officers may, at any reasonable time, enter and stay on a place used for a purpose under a licence under the *Second-hand Dealers and Pawnbrokers Act* for ensuring compliance with that Act.

Powers to demand name and address

Sections 40: 'Person may be required to state name and address' and 41: 'Prescribed circumstances of requiring name and address' of the *Police Powers and Responsibilities Act* apply to offences against the *Security Providers Act* and *Second-hand Dealers and Pawnbrokers Act*.

In addition to the above, pursuant to sections 40 and 41(g) of the *Police Powers and Responsibilities Act*, officers may require a person to state the person's correct name and address and if appropriate, evidence of correctness thereof, if the officer reasonably believes obtaining the person's name and address is necessary for the administration or enforcement of the *Second-hand Dealers and Pawnbrokers Act*.

POLICY

To assist with the administration of infringement notices, officers should wherever possible, when requiring evidence of the correctness of the name and address given, ensure that the name and address of the alleged offender is confirmed by some means of photographic identification before issuing an infringement notice. Appropriate notes about identification should be made on the rear of the prosecution copy of the relevant infringement notice.

13.13.12 Evidentiary notes on rear of infringement notice

PROCEDURE

Officers issuing an infringement notice should make appropriate notes on the rear of the white original (prosecutions) copy of the particular infringement notice in relation to the alleged offence, including

- (i) conversations with the alleged offender including:
 - (a) any admissions or confessions;
 - (b) any reasons for the alleged offence; and
 - (c) negation of any relevant defences/exculpations;
- (ii) description of the offender including any identification produced;
- (iii) position held by the offender at the relevant premises;
- (iv) corroborating officer's details;
- (v) details of any other witnesses; and
- (vi) any other relevant details.

See also ss. 13.4.3: 'Liquor and minors', 13.4.5: 'Security Providers' and 13.13: 'Second-hand Dealers and Pawnbrokers' of this Manual.

13.13.13 Property Crime Unit to be forwarded copy of notice

PROCEDURE

Officers issuing infringement notices to any licensees for offences against the *Second-hand Dealers and Pawnbrokers Act*, are to forward a copy of the infringement notice by way of email or facsimile to the Officer in Charge, Property Crime Unit for inclusion on Stolen Property Investigation and Recovery System.

13.13.14 Discontinuing arrest

Section 377: 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act* outlines when police have a duty to release an adult who has been arrested. This duty includes when it is more appropriate to serve an arrested person with an infringement notice, notice to appear or summons for the offence (see s. 377(2) of the *Police Powers and Responsibilities Act*).

POLICY

Where an officer has arrested an adult person for a Fair Trading offence, the officer is to consider discontinuing the arrest and issuing an infringement notice to the person for the offence in accordance with s. 377: 'Additional case when arrest of adult may be discontinued' of the *Police Powers and Responsibilities Act*.

Also see s. 16.6: 'Discontinuing arrest' of this Manual.

13.13.15 Identifying particulars

POLICY

There are no provisions for the taking of the identifying particulars of a person who has only been issued with an infringement notice for a Fair Trading offence.

Officers are to be mindful that authority only exists to take identifying particulars for offences against the *Second-hand Dealers and Pawnbrokers Act* and s. 9: 'Requirement to be licensed' of the *Security Providers Act* (third offence only) in accordance with ss. 467: 'Taking identifying particulars of person in custody' and 468: 'Taking identifying particulars—proceeding started by notice to appear or complaint and summons' of the *Police Powers and Responsibilities Act* (see s. 2.26.2: 'When to take identifying particulars' of this Manual).

However, where an officer arrests a person for a Fair Trading offence and discontinues the arrest and issues an infringement notice for the offence in accordance with s. 377(2)(b), the officer is to determine whether the identifying particulars should be destroyed within a reasonable time in the presence of a justice in accordance with s. 474: 'Destruction of identifying particulars' of the *Police Powers and Responsibilities Act*.

13.13.16 Court election

Where an alleged offender has elected to defend the matter in Court, the Office of Fair Trading will forward written advice and the white original (prosecutions) copy of the infringement notice by secure post to the officer in charge of the issuing officer's station or establishment.

POLICY

Officers in charge who receive advice from the Office of Fair Trading there will be a defended action are to refer the matter to the issuing officer to consider commencing a proceeding against the alleged offender by way of complaint and summons, notice to appear or arrest, where appropriate.

The police prosecutor responsible for prosecution of the matter is to advise the Manager, Compliance Planning, Office of Fair Trading of the outcome of such a defended action (see Service Manuals Contact Directory).

PROCEDURE

Officers who receive advice that a person has elected to have their infringement notice dealt with in a court should comply with ss. 3.4.2: 'The decision to institute proceedings' and 3.4.3: 'The discretion to prosecute' of this Manual.

See also s. 3.5: 'The institution of proceedings' of this Manual.

See also s. 8.7: 'Waiving and cancellation of infringement notices' of the Traffic Manual.

13.13.17 Children

POLICY

Officers are not to issue infringement notices for Fair Trading offences alleged to have been committed by a person under 17 years of age.

Officers are to consider alternative action for dealing with alleged child offenders for Fair Trading offences (see s. 5.2.2: 'Alternatives for dealing with child offenders of this Manual).

13.13.18 Infringement notices to be limited

POLICY

The issue of infringement notices to an offender is restricted to a maximum number of three infringement notices for Fair Trading offences at any one time. If more than three offences are detected for which an infringement notice can be issued, the officer may determine, depending on the circumstances, to either:

- (i) issue three infringement notices and provide a verbal caution for all the other offences; or
- (ii) commence proceedings for all the offences detected as appropriate.

13.13.19 Distribution of infringement notices

PROCEDURE

Distribution of infringement notices for offences against the *Security Providers Act* or *Second-hand Dealers and Pawnbrokers Act* is as follows:

- (i) white original (prosecutions) copy to be forwarded by the relevant officer in charge to the Data Officer, Compliance Planning, Office of Fair Trading within five days of issue, with an 'Infringements Issued Notice' form (see Attachment B of the OFT Guidelines);
- (ii) blue duplicate (office) copy to be retained in the book and filed at issuing station/establishment; and
- (iii) yellow triplicate (alleged offender's) copy to be given to the offender.

13.13.20 Withdrawal and cancellation of infringement notices

Withdrawal or cancellation of infringement notices in possession of or issued by members of the Service are actioned by the Office of Fair Trading after receiving an appropriate recommendation from the officer in charge of the relevant station or establishment.

Withdrawal of an infringement notice refers to the discontinuance of enforcement action in relation an infringement notice after the infringement notice has been issued to an alleged offender and the police or the offender has departed the scene.

Cancellation of an infringement notice refers to the revocation of an infringement notice because:

- (i) the infringement notice is reported as lost, stolen or damaged; or
- (ii) of errors detected on the infringement notice by the issuing officer, relevant officer in charge, Office of Fair Trading, or State Penalty Enforcement Registry (SPERS).

Suitability of infringement notice for withdrawal or cancellation

POLICY

Where an infringement notice contains one or more of the errors listed below, that infringement notice should be considered for withdrawal or cancellation as appropriate:

- (i) incorrect or false name or address or date of birth of the alleged offender;
- (ii) no time of offence (if relevant to the offence);
- (iii) no or incorrect date of offence (incorrect date of issue does not invalidate the infringement notice)
- (iv) no or incorrect location of offence;
- (v) no or incorrect penalty inserted;
- (vi) no or incorrect offence title or code inserted;
- (vii) no or incorrect offence title or code inserted;
- (viii) more than one offence inserted; or
- (ix) expiration of limitation of proceedings (i.e. more than 12 months after the date of the offence).

Where applicable, in making a determination as to whether or not an infringement notice should be withdrawn or cancelled consideration should be given as to whether a prosecution action instigated before a court would be likely to fail due to the apparent defect in the infringement notice subject of the determination.

Action by officers (errors on infringement notices)

POLICY

Officers who make an error on an infringement notice to be issued to a person, should neatly cross out and initial the error, ensuring enough space is remaining to insert the correct details. However, if the error is substantial or more than one error is made, the infringement notice should be cancelled and another notice issued.

Officers who make an error(s) on an infringement notice, which cannot be rectified as above, prior to issue to a person, are to:

- (i) retain the original and two copies of the infringement notice including the yellow triplicate (alleged offender) copy;
- (ii) issue another correctly completed infringement notice to the alleged offender if appropriate in the circumstances;
- (iii) report on the infringement notice containing the error(s) to their officer in charge, including whether another infringement notice was issued in lieu and the number of such infringement notice; and
- (iv) attach the original and two copies of the infringement notice containing the error to the report.

Officers who detect an error in an infringement notice which has been issued to an alleged offender who has departed from the scene are to:

- (i) report the circumstances to their officer in charge; and
- (ii) attach the original and remaining copies of the infringement notice containing the error to the report.

Action by officers in charge (errors on infringement notices)

The Office of Fair Trading will return any infringement notices with errors detected by the Office of Fair Trading or SPERS, to the relevant officer in charge for review and determination as to whether any further enforcement action is appropriate.

PROCEDURE

Officers in charge who detect a previously undetected error in an infringement notice or who receive infringement notices which contain errors detected by the Office of Fair Trading or SPERS are to, if considered appropriate, refer the infringement notice to the issuing officer:

- (i) for a report outlining the circumstances of the error; and
- (ii) consider the commencement of proceedings or the issue of another infringement notice.

Officers in charge who receive a report from an issuing officer regarding an infringement notice containing error(s) are to consider the contents of the report and if supported, forward the report together with their recommendation as to whether or not the infringement notice should be withdrawn/cancelled, to the Manager, Compliance Planning, Office of Fair Trading. The original and remaining copies of the infringement notice containing the error are to be attached to the report.

Where an infringement notice relates to an offence against the *Second-hand Dealers and Pawnbrokers Act*, officers in charge are to ensure that a copy of the report forwarded to the Office of Fair Trading is also provided to the Officer in Charge, Property Crime Investigation Unit for removal from Stolen Property Investigation and Recovery System.

13.13.21 Requests for withdrawal (waiving) or cancellation

POLICY

Letters from alleged offenders containing requests for withdrawal or cancellation of infringement notices issued by a police officer and sent directly to the Office of Fair Trading will be forwarded to the officer in charge of the issuing officer's station or establishment for review and determination.

Officers in charge receiving requests for withdrawal or cancellation of infringement notices are to:

if received directly from the alleged offender, forward a copy of the letter with a covering report to the Manager, Compliance Planning, Office of Fair Trading, as soon as possible;

- (i) review the grounds for the request/complaint;
- (ii) determine, with reference to the OFT Guidelines and s. 8.7.1: 'Suitability of infringement notices for withdrawal or cancellation' of the Traffic Manual, whether:
 - (a) the infringement notice should remain and be enforced; or
 - (b) the infringement notice should be withdrawn or cancelled; and
 - (c) another infringement notice should be issued/substituted; and
- (iii) forward written advice of their determination to the Manager, Compliance Planning, Office of Fair Trading within 30 days of receipt of the request.

13.14 Stealing and like offences

13.14.1 Director of Public Prosecutions (State) Guidelines

POLICY

Officers should refer to Guideline 13: 'Summary charges' of the Director of Public Prosecutions (State) Guidelines when investigating offences contrary to ss. 5, 6 and 7 of the *Regulatory Offences Act*.

13.14.2 Recovery of suspected stolen property from the Department of Education, Training and Employment

PROCEDURE

The Asset Management Branch of the Department of Education, Training and Employment maintains a register of equipment with a value of \$1000 or more. This is known as the Reportable Equipment Register. This register records details such as:

- (i) asset number – a number allocated by the responsible officer when the equipment is registered;
- (ii) asset description – description of the asset;
- (iii) serial number – the serial number of the asset; and
- (iv) location code – a departmental code which equates to the physical location of the asset within the department.

In some cases equipment valued at less than \$1000 may also be identified.

To facilitate the identification of property which may belong to the Department of Education, Training and Employment, officers should contact the Fixed Assets Unit, Department of Education, Training and Employment (see Service Manuals Contact Directory).

13.14.3 Principal offenders (receiving stolen property when the 'thief' is dealt with under Regulatory Offences Act)

POLICY

Persons, who receive property obtained by means of an act constituting an indictable offence may be charged with the offence of receiving under s. 433 of the Criminal Code notwithstanding that the 'thief' has been prosecuted under the provisions of the *Regulatory Offences Act* (e.g. unauthorised dealing with shop goods).

In such cases officers should ensure that evidence is available to be given to establish that the property was in fact obtained by means of an act constituting an indictable offence (stealing).

Officers should consider the evidence carefully to establish whether the receiver can be charged under the *Regulatory Offences Act* as a party to the offence, on the basis of counselling or procuring the commission of the offence.

13.15 Deleted

13.16 Animals

13.16.1 Cruelty to animals

POLICY

Officers are to consider the provisions of s. 242(1): 'Serious animal cruelty' of the Criminal Code when investigating incidents involving cruelty to animals. An offence against this section is a crime.

Throughout an animal cruelty investigation, consultations with appropriate external law enforcement organisations may be utilised to identify the lead agency and whether a prosecution is to be commenced by the Service, or otherwise.

13.16.2 Dog attacks and regulated dogs

POLICY

Responding to complaints of dog attacks is the responsibility of the relevant local government authority. Members should generally refer persons with complaints about dog attacks to the relevant local government authority.

However, the provisions of the Criminal Code may apply in some instances. For example, an offence of assault may be proved in cases where the owner or controller of a dog has intentionally caused the dog to attack another person.

Where a complaint of a dog attack may lead to the prosecution of a person for a criminal offence, officers are to liaise with the local government authority to ensure that any necessary evidence is obtained (e.g. photographs) before the dog is destroyed.

The management of regulated dogs is the responsibility of the relevant local government authority. Chapter 4: 'Regulated dogs' of the *Animal Management (Cats and Dogs) Act* outlines the responsibilities of the local government authorities and provides definitions of a:

- (i) declared dangerous dog;
- (ii) declared menacing dog; and
- (iii) restricted dog.

13.16.3 Providing relief to an animal at a place or vehicle

POLICY

Section 147(2): 'Powers to provide relief to animal' of the *Police Powers and Responsibilities Act* provides that an officer may enter and stay at a place, other than a vehicle, while it is reasonably necessary to provide the food or water or to disentangle an animal if:

- (i) the officer reasonably suspects:
 - (a) the animal at the place, is suffering from lack of food or water or is entangled;
 - (b) the person in charge of the animal is not, or is apparently not, present at the place; and
- (ii) the animal is not at a part of the place at which a person resides, or apparently resides.

Section 147(4) of the *Police Powers and Responsibilities Act* provides that an officer may enter a vehicle if the officer reasonably suspects there is a need to enter the vehicle to relieve an animal in pain in the vehicle or prevent an animal in the vehicle from suffering pain.

Although s. 614: 'Power to use force – exercise of certain powers' of the *Police Powers and Responsibilities Act* provides it is lawful for an officer, and anyone helping the officer, to use reasonably necessary force when exercising or attempting to exercise a power under that Act, officers are to first obtain the authorisation of the regional duty officer, patrol group inspector or district duty officer to use force if the envisaged use of the reasonably necessary force is likely to cause damage to the place or the vehicle.

ORDER

Where damage is caused by an officer, or an officer's assistant, in exercising a power under the *Police Powers and Responsibilities Act*, the officer who caused the damage, or the officer whose assistant caused the damage, is to also comply with s. 636: 'Police officer to give notice of damage' of the Act.

13.16.4 Destruction of animals

The Criminal Code

POLICY

Unlawful killing or maiming or wounding animals is an offence under the Criminal Code. However there may be circumstances where the necessity arises to kill, maim or wound an animal for the purpose of defending or protecting oneself, another, or property from injury.

In any of these cases, officers should be aware that a person is not criminally responsible for an injury caused to property (including an animal) by the use of such force as is reasonably necessary for the purpose of defending or protecting himself, herself, or any other person, or any property (including another animal), from injury which the person believes, on reasonable grounds, to be imminent (see s. 458: 'Unlawful acts' of the Criminal Code).

Police Powers and Responsibilities Act

POLICY

Section 148: 'Power to destroy animal' of the Act provides power to an officer to destroy an animal or cause an animal to be destroyed if:

- (i) the animal has been seized under s. 137(1), 146(2)(c) or (d) or 157(1)(h) or the animal's owner has given written consent to the destruction; and
- (ii) the police officer reasonably believes that the animal is in pain to the extent that it is cruel to keep it alive.

Information on the humane destruction of animals is contained on the Operational Skills and Tactics Program web page of the QPS Corporate Intranet.

Land Protection (Pest and Stock Route Management) Act

ORDER

The provisions of s. 95: 'Destruction of particular dogs' of the *Land Protection (Pest and Stock Route Management) Act* are not to be relied upon unless the officer concerned has been given written approval to be an authorised person under that Act by the Commissioner (see s. 13: 'Appointment of police officers as public officials for other Acts' of the Act).

13.16.5 Animal welfare directions

In cases where:

- (i) an animal has been seized under s. 146(2)(d): 'Power in relation to offences involving animals' of the *Police Powers and Responsibilities Act*; or
- (ii) an officer reasonably suspects:
 - (a) a person has committed, is committing or is about to commit, an 'animal welfare offence' (see Schedule 6: 'Dictionary' of the *Police Powers and Responsibilities Act*); or
 - (b) an animal:
 - is not being cared for properly;
 - is experiencing undue pain;
 - requires veterinary treatment; or
 - should not be used for work,

and the officer considers it to be necessary and reasonable in the interests of the animal's welfare, the officer may give a written direction (an 'animal welfare direction') requiring stated action about the animal or its environment to a 'person in charge' of the animal. Additionally, if the animal has been seized under ss. 137(1): 'Removal of animals from roads and other places', 146(2)(c) or (d) or 157(1)(h): 'Powers under search warrant' of the *Police Powers and Responsibilities Act*, an animal welfare direction may also be given to a person:

- (i) who, immediately before the seizure, was a person in charge of the animal; or
- (ii) whom the police officer reasonably suspects was, immediately before the seizure, a person in charge of the animal.

Subsections (2)(a) to (c) of s. 143: 'Power to give animal welfare direction' of the *Police Powers and Responsibilities Act* define who is a person in charge of an animal.

Subsection (4) of s. 143: 'Power to give animal welfare direction' of the *Police Powers and Responsibilities Act* provides that without limiting subsection (1), the direction may require any of the following action to be taken:

- (i) care for, or treat, the animal in stated way;
- (ii) provide the animal with stated accommodation, food, rest, water or other living conditions;
- (iii) consult a veterinary surgeon about the animal's condition before a stated time;
- (iv) move the animal from the place where it is situated when the direction is given to another stated place for a purpose mentioned in paragraph (i), (ii) or (iii); and
- (v) not to move the animal from the place where it is situated when the direction is given.

PROCEDURE

When giving an animal welfare direction, officers are to complete a Form FDU 1428: 'Animal Welfare Direction', a Form FDU 1431: 'Schedule to an animal welfare direction' and Form FDU 1430 'Information notice – animal welfare direction' (available in QPS Forms Select). A copy of these documents is to be given to the person(s) in charge of the animal.

The information notice is to explain the decision, the reasons for the decision, that the person to whom the notice is given may apply to the chief executive for a review of the decision within fourteen (14) days after the person receives the notice, and how to apply for a review.

An animal welfare direction may be given orally only in cases where:

- (i) the officer considers it to be in the interests of the animal's welfare to give the direction immediately;
- (ii) for any reason it is not practicable to immediately give the direction in the approved form; and
- (iii) the officer warns the person it is an offence not to comply with the direction unless the person has a reasonable excuse.

ORDER

If the animal welfare direction is given orally, the police officer that gave the direction must confirm the direction by also giving a copy of the written animal welfare direction forms (i.e. FDU 1428, FDU 1430 and FDU 1431) as soon as practicable after giving it orally (available in QPS Forms Select).

POLICY

Prior to giving an animal welfare direction, the officer intending to give the direction is to ensure that QPRIME is checked to ascertain whether the person in charge of the animal is already subject to a current animal welfare direction for the same animal. Similar checks should also be made with the Biosecurity Compliance Coordinator of the Department of Agriculture, Fisheries and Forestry (see Service Manuals Contact Directory).

In cases where the person in charge is already subject to a current animal welfare direction, the officer intending to give the animal welfare direction is to check whether the previous direction is being complied with and only give another direction if the action(s) required by the previous animal welfare direction are insufficient to improve the animal's welfare.

PROCEDURE

When an animal welfare direction is given, the officer who gave the direction is to ensure that:

- (i) a flag is added to the QPRIME person record indicating that the person is subject to an animal welfare direction and that the original forms are filed at their station or establishment; and
- (ii) a copy of the forms is provided to the Biosecurity Compliance Coordinator, the Department of Agriculture, Fisheries and Forestry.

In cases where an animal welfare direction requires a person in charge of an animal to present the animal to a particular police station or establishment to show that the direction has been complied with, the officer who gave the animal welfare direction is to ensure that a copy of the animal welfare direction forms are forwarded to the officer in charge of the nominated police station. A QPRIME task should also be created and forwarded to the nominated police station.

Where an officer in charge of a station or establishment receives a copy of animal welfare direction forms and that direction requires the person in charge of an animal to present the animal to a police station or establishment to show compliance, the documents should be made accessible to those members who are likely to be required to inspect the animal.

In instances where a member inspects an animal as part of checking compliance with an animal welfare direction the member is to complete the QPRIME task and return it to the officer that issued the animal welfare direction with the details of the inspection and whether the direction was complied with.

(Note – an interagency protocol between the Service, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) Queensland Inc. and the Department of Agriculture, Fisheries and Forestry addresses what is required where the responsibility of checking an animal welfare direction given by a police officer is to be transferred to one of these other agencies).

13.16.6 Failure to comply with an animal welfare direction

POLICY

The responsibility of checking whether an animal welfare direction has been complied with rests with the officer who issued the animal welfare direction.

In cases where a suspected contravention of an animal welfare direction is detected, the officer who detected the contravention is to ensure an investigation for an offence against s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act* is commenced.

If the animal welfare direction has only been given orally, and the written animal welfare direction forms have not yet been given to the person, officers are to ensure that the provisions of s. 633: 'Safeguards for directions or requirements' of the *Police Powers and Responsibilities Act* are complied with before a prosecution is commenced.

Where a prosecution has been commenced for a failure to comply with an animal welfare direction, the investigating officer is to send a QPRIME task to the officer in charge of the police station to which the officer who issued the animal welfare direction was attached at the time the direction was issued. The officer is to request the original animal welfare direction forms to be forwarded to the investigating officer for inclusion in the occurrence and any subsequent full brief of evidence.

13.16.7 Review and appeal of an animal welfare direction

POLICY

A person who has been given an animal welfare direction may apply to have the decision to give an animal welfare direction reviewed. The person may apply for the review by lodging an application for review on an approved form with the Chief Executive of the Department of Agriculture, Fisheries and Forestry.

Where an officer has given an animal welfare direction and an application for review of the animal welfare direction has been made, the Chief Executive, Department of Agriculture, Fisheries and Forestry will notify the officer concerned of the pending review.

The review process does not override any requirements of the animal welfare direction. The relevant officer should continue to ensure that the person, to whom the direction was given, complies with its requirements.

On being notified of the application for review being received by the Chief Executive, Department of Agriculture, Fisheries and Forestry, the officer who gave the animal welfare direction is to prepare a report outlining the circumstances leading to the decision to give the animal welfare direction and submit it to the Chief Executive, Department of Agriculture, Fisheries and Forestry, through the officer in charge of their region or command.

Section 199: 'Who may appeal' of the *Animal Care and Protection Act* provides that if an interested person has applied for a review of an original decision, any interested person for the decision may appeal against the review decision to a Magistrates Court.

In cases where the Chief Executive has reviewed the decision of a police officer to issue an animal welfare direction and has exercised a power under s. 197: 'Review decision' of the *Animal Care and Protection Act* and the issuing officer is aggrieved by the decision of the Chief Executive, the officer may apply to the officer in charge of their region or command for approval to appeal the Chief Executive's decision. Officers are not to appeal the Chief's Executive's decision without appropriate approval.

13.16.8 Providing assistance to the Department of Agriculture, Fisheries and Forestry, and Royal Society for the Prevention of Cruelty to Animals Incorporated

POLICY

Authorised officers and inspectors of the Department of Agriculture, Fisheries and Forestry and the Royal Society for the Prevention of Cruelty to Animals Incorporated, may request police assistance for investigating an animal welfare offence.

Such requests for assistance will usually relate to instances where the Department of Agriculture, Fisheries and Forestry, and/or Royal Society for the Prevention of Cruelty to Animals Incorporated officers are likely to be exposed to an increased risk of physical harm should they attempt to exercise a power under the *Animal Care and Protection Act*.

Where the request for assistance relates to a location within an area controlled by a police communications centre, member should refer such requests to the duty officer of the relevant police communications centre.

In considering the request, the duty officer should have regard to the reasons provided by the Department of Agriculture, Fisheries and Forestry, and/or the Royal Society for the Prevention of Cruelty to Animals Incorporated in deciding whether it is necessary to provide a police response. In cases where the provision of a police response is necessary, consideration should also be given as to whether a negotiated response would be appropriate in the circumstances.

(Note – an interagency protocol between the Service, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) Queensland Inc. and the Department of Agriculture, Fisheries and Forestry, addresses how the Service will deal with such requests for assistance.)

13.16.9 Dealing with an animal welfare incident

POLICY

Members who are contacted by informants in relation to animal welfare incidents are to direct those informants to the Department of Agriculture, Fisheries and Forestry, or the Royal Society for the Prevention of Cruelty to Animals Incorporated (see the Service Manuals Contact Directory). However, in instances where:

- (i) the relevant incident is a 'critical incident' (i.e. an incident where the welfare of the animal is severely compromised, and there is an urgent need to alleviate pain and suffering); and
- (ii) the Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated is unable to respond within a reasonable time,

members should ensure that an appropriate officer investigates the matter and action is taken to alleviate the pain and suffering of the animal.

In the normal course of policing duties, officers may detect possible breaches of the *Animal Care and Protection Act*. The Service has a duty to uphold the law generally and while officers may commence investigations into these matters, consideration should first be given to the possibility of referring the matter to the Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated. This may be done without the need to make a Policelink entered occurrence.

Whether Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated is the most appropriate agency will depend on the location and the classification of the animal concerned. As a general rule, the Royal Society for the Prevention of Cruelty to Animals Incorporated is responsible for dealing with incidents involving companion animals and hobby farm animals and the Department of Agriculture, Fisheries and Forestry is responsible for dealing with incidents involving commercial livestock.

Department of Agriculture, Fisheries and Forestry and the Royal Society for the Prevention of Cruelty to Animals Incorporated may accept the responsibility of completing an investigation into a possible breach of the *Animal Care and Protection Act* provided:

- (i) the Service has not commenced significant inquiries into the matter; and
- (ii) the location of the incident allows the Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated to commence an investigation within an appropriate time.

PROCEDURE

Where an officer believes it is more appropriate to refer a possible breach of the *Animal Care and Protection Act* to either Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated, the officer is to make the request through their officer in charge.

If it is considered appropriate, the officer in charge may refer the matter to the Operations Coordinator, Department of Agriculture, Fisheries and Forestry. The Operations Coordinator, Department of Agriculture, Fisheries and Forestry, will determine whether Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated is the most appropriate agency to respond.

POLICY

Powers are available to officers to alleviate an animal's pain and suffering (e.g. ss. 143: 'Power to give animal welfare direction', 146: 'Power in relation to offences involving animals', 147: 'Powers to provide relief to animal' and 148: 'Power to destroy animal' of the *Police Powers and Responsibilities Act*).

Also, a number of specific provisions authorise officers to seize animals in certain circumstances (e.g. ss. 137(1): 'Removal of animals from roads and other places', 146(2)(c) and (d) and 157(1)(h): 'Powers under search warrant' of the *Police Powers and Responsibilities Act*). However, officers should consider the alternatives to seizing an animal where circumstances permit (e.g. arranging for a local government animal control unit to impound an abandoned animal).

Steps before seizing an animal under 146(2)(d) of the Police Powers and Responsibilities Act

Section 146 of the *Police Powers and Responsibilities Act* provides officers with powers to enter places, search for, and seize, animals in certain circumstances. If the provisions of s. 146 of the *Police Powers and Responsibilities Act* apply, an officer may seize the animal if:

- (i) the officer reasonably suspects the animal is:
 - (a) under an imminent risk of death or injury;
 - (b) requires veterinary treatment; or
 - (c) is experiencing undue pain and the interests of its welfare require its immediate seizure; or
- (ii) the person in charge of the animal has contravened, or is contravening, an animal welfare direction, under the *Police Powers and Responsibilities Act* or the *Animal Care and Protection Act*, or a court order about the animal.

POLICY

Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated may be able to assist officers in seizing an animal under s. 146(2)(d) of the *Police Powers and Responsibilities Act* in addition to transporting, caring for and forfeiting the animal to the State pursuant to s. 154: 'Power to forfeit' of the *Animal Care and Protection Act*. However, officers are to comply with the following procedure to secure such assistance.

PROCEDURE

Where circumstances permit, before seizing an animal pursuant to s. 146(2)(d) of the *Police Powers and Responsibilities Act* officers should:

- (i) contact an inspector from either Department of Agriculture, Fisheries and Forestry or the Royal Society for the Prevention of Cruelty to Animals Incorporated to discuss the nature of the animal's injuries and/or condition and options available. Where an inspector cannot be contacted, inquiries may be directed to the Operations Coordinator of either agency;
- (ii) if possible, take digital photographs of the animal to brief the inspector about the extent of animal's injuries (The inspector will wherever possible forward any photographs to the relevant agency's veterinarian for a professional opinion to support the advice); and
- (iii) forward any digital photographs taken of the animal to the inspector by e-mail (the photographs should be compressed/zipped and the e-mail should outline the circumstances that require the sending of the photographs).

In some cases, after seizing an animal under s. 146(2)(d) of the *Police Powers and Responsibilities Act*, officers may seek to have the animal forfeited to the State under the provisions of s. 154 of the *Animal Care and Protection Act* (see s. 4.16.3: 'Disposal of animals under the Animal Care and Protection Act' of this Manual).

(Note – an interagency protocol between the Service, the Royal Society for the Prevention of Cruelty to Animals (RSPCA) Queensland Inc. and the Department of Agriculture, Fisheries and Forestry, addresses how and when the Service will respond to an animal welfare incident that is usually dealt with by these other agencies.)

13.16.10 Carcasses of animals on roads

POLICY

Where members become aware that the carcass of an animal is on a road, and as necessary for ensuring the safe and effective flow of traffic, officers should contact or arrange contact with a local government authority to remove the carcass.

13.17 Trespass

13.17.1 When to take action for trespass

POLICY

Trespass on land is actionable as a civil wrong. However, trespass may, in some circumstances, also amount to a criminal offence.

The decision by police to take action for this type of criminal offence should therefore only be made when:

- (i) one or more of the following requirements is present:
 - (a) where specific legislation exists;
 - (b) the police officer has a reasonable suspicion the person trespassing is committing, or has committed or is intending to commit an offence;
 - (c) the person trespassing is committing a breach of the peace;
 - (d) an issue of safety arises; or
 - (e) the person in peaceful possession of the land/place is not able to readily remove the person; and
- (ii) the provisions of s. 3.4.3: 'The discretion to prosecute' of this Manual have been fulfilled.

When does a trespass on a person's property go beyond the realm of civil trespass

Section 11: 'Trespass' of the *Summary Offences Act* and s. 48A: 'Unlawful entry of dwelling houses' of the *Invasion of Privacy Act* are similar in respect to 'unlawful trespassing'. These provisions are not intended to prohibit persons entering upon another person's property for lawful purposes. For example, to knock at a person's door to seek a direction or look for some person.

Pursuant to this legislation an offence is committed if something more than 'trespass' in the civil sense is proved. For example the continual trespassing of children onto a neighbour's property to retrieve a football or other article would be

trespass in the civil sense, whereas a trespass by a person intending to commit an offence or a 'peeping tom' could well be trespassing in the criminal sense. Nevertheless, it is not the intention of this legislation to make every civil trespass a criminal offence.

PROCEDURE

Officers investigating complaints under these two Acts should consider the intention of the person against whom the complaint is made as well as their reasons for entering or being on the premises, prior to commencing a prosecution.

Officers should also note that an offence against s. 11 of the *Summary Offences Act* is a declared offence for the purposes of s. 634: 'Safeguards for declared offences under Summary Offences Act' of the *Police Powers and Responsibilities Act*.

See also s. 13.17.5: 'Trespass in shopping centres' of this chapter.

13.17.2 Requests to remove person(s) from a place, etc. for trespass or disorderly conduct

Officers, assisting persons in the peaceable possession of any land, structure, vessel or place to lawfully remove persons improperly there, are taken to be acting in the exercise of their duty despite the fact that such assistance could be provided by a person who is not an officer (see s. 792 of the *Police Powers and Responsibilities Act*).

PROCEDURE

Officers requested to assist to remove person(s) from any land, structure, vessel or place should refer to s. 277: 'Defence of premises against trespassers – removal of disorderly persons' of the Criminal Code. This section authorises a person in peaceable possession of any land, structure, vessel or place, or who is entitled to the control or management of any land, structure, vessel, or place, and for any person lawfully assisting him or her or acting by his or her authority, to use such force as is reasonably necessary in order to:

- (i) prevent any person from wrongfully entering upon such land, structure, vessel, or place; or
- (ii) to remove there from a person who:
 - (a) wrongfully remains therein; or
 - (b) conducts himself or herself in a disorderly manner therein;

provided that he or she does not do grievous bodily harm to such person.

Officers should first satisfy themselves that they can place reliance on the statement of the person in authority before assistance is given, e.g. assisting the person in control of a household to remove another person from that dwelling. Also, officers should record in their official police notebook the nature of the request of the person in authority for police assistance. The person in authority should then be requested to sign the officer's notebook.

When officers are called upon to assist and it is ascertained that the trespasser has committed, or is committing an offence, or is a party to a breach of the peace then appropriate action should be taken to prosecute the offender. See Chapter 3: 'Prosecution Process' of this Manual.

13.17.3 Trespass (Industrial disputes)

In accordance with the provisions of the *Industrial Relations Act*, *Fair Work Act* (Cwlth) and the *Work Health and Safety Act* various persons have been authorised and have the right to:

- (i) enter a workplace;
- (ii) make inspections of the workplace
- (iii) inspect any plant and equipment;
- (iv) meet with and have discussions with employees;
- (v) copy a document at the workplace;
- (vi) inspect, photograph or film any part of the place or anything at the workplace;
- (vii) require a person to state their name and address;
- (viii) take anything into or onto the workplace the persons, equipment and materials an inspector reasonably requires for exercising a power; and
- (ix) require a person at the workplace to give an inspector reasonable assistance to carry out any of the above duties.

Authorised persons, generally officials employed by a union or other industrial organisation, may enter and remain on relevant workplaces and have powers in relation to the investigation of industrial relations matters and health and safety matters. The authorised persons have been issued by the relevant authority, an authorisation containing identification particulars, name of the industrial organisation, the relevant Act and section under which the authorisation is issued and any relevant limitations of powers.

Any person wanting to enter a workplace for the purposes of investigating a suspected contravention of the nominated act, who is not an authorised person or authorised representative or in the possession of a relevant permit, should not enter the workplace unless the occupier has given consent.

Industrial Relations Act

Authorised persons under this Act are referred to as 'authorised industrial officers'. For further information regarding entry powers, powers, functions, obligations and limitations of authorised persons, refer to the *Industrial Relations Act*.

Fair Work Act (Commonwealth)

Authorised persons under this Act are referred to as 'permit holders'. For further information regarding the authorisation, entry powers, powers, functions, obligations and limitations of permit holders, refer to the *Fair Work Act (Cwlth)*.

Work Health and Safety Act

Authorised persons under this Act are referred to as 'authorised representatives'. For further information regarding entry powers, powers, functions, obligations and limitations of authorised representatives, refer to the *Work Health and Safety Act*.

Attending industrial disputes

PROCEDURE

Instances have occurred where police have been called to business premises, building sites or other workplaces for the purpose of removing various authorised persons from these areas at the request of employers, employer's representatives or occupiers. When this occurs, police are to take the following action:

- (i) determine from the employer, employers representative or occupier, why they believe the authorised person should be removed;
- (ii) determine under which Act the authorised person is claiming a right to enter the workplace, by requesting the production of the relevant authorisation document that is being used to gain entry;
- (iii) refer to the specific legislation in relation to the entry to the workplace by the authorised person;
- (iv) assess the circumstances to determine whether the authorised person should be removed; and
- (v) determine whether the behaviour of the authorised person, employer, occupier or other persons warrants the consideration of further action.

Police responding to requests to remove a person/s from business premises, are reminded in the majority of instances, only the occupier of the premises has lawful authority to request persons be removed. Officers should carefully consider any requests to remove persons from a place of work before taking action.

POLICY

Officers attending at industrial disputes should refrain from intervening except to prevent riots, breaches of the peace or breaches of the law (see ss. 50, 51 and 52 of the *Police Powers and Responsibilities Act*).

Other assistance and advice if required in relation to the relevant legislation or specific circumstances may be obtained. Sources include:

- (i) Regional Duty Officer or District Duty Officer;
- (ii) Police Communications Centre;
- (iii) Operational Legal Advice;
- (iv) Industrial Officers, Employee Relations, of the Queensland Police Service;
- (v) Health and Safety Advisors, Health and Safety Section, Safety and Wellbeing, of the Queensland Police Service; and
- (vi) the Australian Government Fair Work Building & Construction website.

Where the matter relates specifically to entry under the *Work Health and Safety Act* by authorised representatives, an officer from Workplace Health and Safety Queensland, regional offices (see Service Manuals Contact Directory) may be contacted. Officers are encouraged to contact Workplace Health and Safety Queensland where conflicts relating to entry in respect of workplace health and safety issues arise between authorised representatives and employers or occupiers.

Removal of persons from a workplace

POLICY

Officers are not to remove the various authorised persons from a place of work if they are there lawfully and have not committed a breach of the peace or any other offence. Officers may assist an occupier to remove persons from a workplace:

- (i) if those persons have no legal authority to be in those premises; or

(ii) if those persons are behaving in a disorderly manner therein, see s. 277: 'Defence of premises against trespassers – removal of disorderly persons' of the Criminal Code and s. 13.19.3: 'Requests to remove persons(s) from a place, etc. for trespass or disorderly conduct' of this chapter; or

(iii) where the provisions of s. 11: 'Trespass' and s. 121: 'Persons unlawfully gathering in or on a building or structure' of the *Summary Offences Act* apply, see also s. 13.17.1: 'When to take action for trespass', of this chapter.

13.17.4 Wheel clamping of motor vehicles

Wheel clamping is an offence

Section 135(1)(c) of the *Transport Operations (Road Use Management) Act* proscribes the detaining without the consent of the owner of a vehicle parked or standing on a road or elsewhere by:

- (i) attaching an immobilising device to the vehicle; or
- (ii) placing an immobilising device near the vehicle (e.g. by locking in an upright position, a moveable steel post, commonly called a 'parking sentinel', that is secured to the ground at the entrance of a parking space where the vehicle is parked or standing).

In s. 135 of the *Transport Operations (Road Use Management) Act*:

'**immobilising device**', for a vehicle, means:

- (i) wheel clamps; or
- (ii) another device that effectively detains the vehicle; and

'**owner**' of a vehicle includes a person in lawful possession of the vehicle.

This proscription does not apply to:

- (i) a police officer exercising the officer's powers or performing the officer's functions, or a person acting under a lawful direction of a police officer;
- (ii) the sheriff or another person authorised by law to execute a warrant of execution against the vehicle;
- (iii) an enforcement officer authorised by law to enforce an immobilisation warrant against the vehicle, see Division 7A: 'Enforcement by vehicle immobilisation' of the *State Penalties Enforcement Act*; and
- (iv) a person exercising a power over a vehicle that the person may have as the holder of a security interest in the vehicle.

Additionally this section abolishes the common law remedy of distress damage feasant in relation to trespass on land by a vehicle to the extent that it is inconsistent with s. 135(1)(c). However, except for a person who has detained a vehicle in contravention of s. 135(1)(c), this does not limit a right a person may have to remove, or cause to be removed, from land a vehicle parked or left standing on the land.

Distress Damage Feasant

In *Jamieson's Tow and Salvage Ltd v. Murray* [1984] 2 NZLR 144, Quilliam J. at 147 stated:

The remedy of distress damage feasant has been variously defined. A useful summary of it is found in *Salmond on the Law of Torts* (17th ed., 1977) p.614:

'It is lawful for any occupier of land to seize any chattels which are unlawfully upon his land and have done or are doing damage there, and to detain them until payment of compensation for the damage done. This right is known as that of distress damage feasant... the right extends to all chattels animate or inanimate... Distress damage feasant differs from other forms of distress in that it is a remedy which can be exercised out of hand, at any time of the day or night. The right of distress damage feasant is vested, in general, only in the occupier of land.'

As Salmond goes on to explain there are certain limits to the right of distress. For present purposes the main features are that the thing distrained must be unlawfully on the land, there must be actual damage done by the thing distrained, and the thing must be seized while still on the land. There is a further, and in this case most important, qualification which is not referred to in Salmond but for which authority is to be found in some early cases namely that if the thing, vehicle, is at the time of the distress in the possession and under the care of the owner of it and being used by him, then there may be no distraint. These limitations may be addressed as follows:

- (i) unlawful presence on the land:
 - (a) who is the owner of the land;
 - (b) who has exclusive possession of the land;
 - (c) are spaces allocated or rented or leased to tenants;
 - (d) is the motorist entitled to put the vehicle where it is/was located; and

- (e) are any signs located at the parking space;
- (ii) actual damage:
 - (a) there must be actual damage done by the thing distrained before the right of distress can be exercised;
 - (b) obstruction to flow of traffic;
 - (c) physical damage – pushing chain/fence to gain entry to park; and
 - (d) in *Jamieson's Tow and Salvage Ltd v. Murray* [1984] 2 NZLR 144 at 149, Quilliam J. stated:

'if the remedy of distress damage feasant is to be applied to modern conditions then it seems to me inevitable that the cost of removing an illegally parked vehicle would need to be regarded as actual damage. For myself I should be most hesitant to extend the remedy any further than is absolutely necessary but in this I think one is left with no sensible option.'
- (iii) the thing, vehicle, must still be on the land; and
- (iv) if the thing, vehicle, is at the time of the distress in the possession and under the care of the owner of it and being used by him, then there may be no distress. In *Jamieson's Tow and Salvage Ltd v. Murray*, Quilliam J. held that the remedy of distress damage feasant did not apply because of the presence of the owner of the car.

Rights of motorists and rights of land owners

Generally motorists may park or drive on private property only with the consent, express or implied, of the owner or occupant of the land. Parking or driving on private land without any such consent may constitute a civil trespass. As stated earlier s. 135 of the *Transport Operations (Road Use Management) Act*, although abolishing the common law remedy of distress damage feasant in relation to wheel clamping, does not limit a right a person may have to remove, or cause to be removed, from land a vehicle parked or left standing on the land. Therefore this remedy, and possibly other remedies, may be available to the land owner to remove a vehicle parked or left standing on the land.

Agreements

Pursuant to s. 104 of the *Transport Operations (Road Use Management) Act* a local government may, under a local law, define specified land (including structures on the land) controlled by it, as an off-street regulated parking area and regulate the use of that area.

Land controlled by a local government includes land over which the local government may exercise control for the purposes of Part 6: (ss. 101 to 111) 'Regulated Parking' of the *Transport Operations (Road Use Management) Act* under an arrangement with a person (occupier) who owns or has an interest in the land (e.g. a local government may, under an agreement with the owner of a shopping centre, specify a public parking area at the shopping centre as an off-street regulated parking area and regulate the use of the area).

Schedule 4 of the *Transport Operations (Road Use Management) Act* provides that a road includes areas declared under a regulation to be a road. The example is given that the car park of a specified shopping centre may be declared to be a road under a Regulation.

Seizures

Under s. 137 of the *Police Powers and Responsibilities Act*, a police officer may, in prescribed circumstances (see s. 138 of the *Police Powers and Responsibilities Act*), seize and move a vehicle or animal to a place for safe keeping or arrange for a vehicle or animal to be moved to a place for safe keeping.

Tow Truck Act and Tow Truck Regulation

POLICY

Whenever it becomes absolutely necessary to seize and move a vehicle officers are to ensure that the vehicle is moved to a place for safe keeping by a tow truck that is licensed under the *Tow Truck Act* and operated by a person holding a driver's certificate under that Act.

Officers are permitted under the provisions of s. 77 of the *Police Powers and Responsibilities Act* to sign a towing authority, with respect to vehicles seized under the *Police Powers and Responsibilities Act* or another Act, to allow the driver of a tow truck to tow the vehicle to:

- (i) the nearest holding yard available to the driver; or
- (ii) if directed by an officer, the nearest police establishment or other place directed by the officer.

In circumstances outlined in s. 137(2) of the *Police Powers and Responsibilities Act* an officer may move a vehicle or animal or arrange for a vehicle or animal to be moved to a place where it can be located by its driver.

The provisions ss. 4.6.6: 'Enquiries to be made by reporting officer', 4.15: 'Action in special cases (vehicles loads or other things)' of this Manual apply.

Dealing with complaints

PROCEDURE

When a complaint is received with respect to vehicles trespassing on privately owned land for which there is no agreement between the occupier and the local government, members should:

- (i) check the vehicle's registration number and other provided details to ensure that it has not been previously reported stolen;
- (ii) advise the complainant that it is a civil trespass and private legal advice should be sought by the complainant;
- (iii) advise the complainant in terms of s. 135: 'Unlawfully interfering with, or detaining, vehicles etc.' of the *Transport Operations (Road Use Management) Act*; and
- (iv) inform the complainant that in the eventuality that the vehicle is towed away from the land that the local police communications centre should be advised of the vehicle's identification particulars, the towing company involved and the place where it was towed to.

When a complaint is received with respect to a vehicle unlawfully parked on privately owned land for which there is an agreement in place between the occupier and the local government, members should establish from the complainant:

- (i) whether the motorist is entitled to park the vehicle where it is/was located;
- (ii) whether there are any traffic signs or markings located at the parking space/location;
- (iii) whether any of the conditions of s. 138(d) or (e) of the *Police Powers and Responsibilities Act* are applicable with respect to the vehicle causing danger, hindrance or being left in circumstances which are an offence against the:
 - (a) *Transport Operations (Road Use Management) Act*,
 - (b) *Brisbane Forest Park Act*,
 - (c) *Recreation Areas Management Act*, or
 - (d) *Nature Conservation Act*,
- (iv) if a Traffic Infringement Notice been issued by the local government in relation to the vehicle. If no notice has been issued the complainant should be advised to contact the local government; and
- (v) whether the owner of the vehicle is present or has been contacted. If the owner has been contacted and is attending or is present, the complainant should be advised that police will attend if the owner refuses to move the vehicle or otherwise comply with the prescribed conditions for parking in the particular area.

Officers should attend the scene of such a complaint in circumstances where:

- (i) a vehicle is unlawfully parked in a regulated parking area; and
- (ii) the vehicle is parked so as to be liable to seizure and removal under s. 138(d) or (e) of the *Police Powers and Responsibilities Act*.

13.17.5 Trespass in shopping centres

Shopping centres are private property for which an implied invitation to enter is extended to the general public. The management of a shopping centre may withdraw that invitation from any person. In some cases such a withdrawal of the invitation is made by the giving of a written notice to the person concerned, although the withdrawal can be made verbally.

ORDER

Officers are not to act on behalf of the management of a shopping centre to withdraw the invitation of a person to enter a shopping centre by giving written or verbal notice to a person that the person is not permitted to enter the shopping centre.

POLICY

Where a person enters a shopping centre after their invitation to enter has been withdrawn, officers should consider whether a prosecution for an offence under s. 11: 'Trespass' of the *Summary Offences Act* is warranted. In making this determination, officers should refer to s. 3.4: 'General prosecution policy' and s. 13.17.1: 'When to take action for trespass' of this Manual.

Where a prosecution for an offence of trespass cannot be supported, officers may advise the shopping centre management that they may wish to consider their options of redress through civil litigation for the tort of trespass.

If requested to do so, officers are to assist a person entitled to the management or control of a shopping centre to remove persons who are improperly there, in accordance with s. 13.17.2: 'Requests to remove person(s) from a place, etc. for trespass' of this chapter.

Officers should, in appropriate circumstances, also consider the provisions of s. 50: 'Dealing with breach of the peace' and s. 48: 'Direction may be given to person' of the *Police Powers and Responsibilities Act* when dealing with disorderly persons or trespassers in a shopping centre (see also s. 13.23: 'Move-on power' and 13.4: 'Peace and Good Behaviour Act' of this chapter).

13.18 Warrants

13.18.1 Definitions

For the purpose of s. 13.18: 'Warrants', the following terms have been defined as:

'Certified Faxed Copy of a warrant' is a copy of a paper warrant that has been certified by a person using a fax machine or computer to send or make available the copy of the paper warrant. The certification is to state that the person has seen the original warrant and that the copy is a copy of the original warrant. The certification also contains a statement specifying the time the copy was sent or made available.

'Computer warrant' is a warrant that is created in the form of computer stored information under procedures approved by a regulation.

'Copy of a paper warrant' is a written warrant that has been printed from a fax machine or computer.

'Interstate officer' means a police officer from another State or Territory.

'Organisational Unit Task List' is the primary facility available on QPRIME for officers performing supervisory duties in managing all tasks for which the Organisational Unit is responsible. The task list is used for the allocation and monitoring of progress of tasks, including warrants, to police officers.

'Paper warrant' is a hard copy or written original warrant that is issued by a justice or anyone else under any Act.

'Warrant report' is a report containing all information pertaining to warrants for individuals, companies etc. produced in QPRIME.

'Reporting officer' is an officer who executes or satisfies a warrant and a staff member who satisfies a warrant.

'Station' means a police station or police establishment.

'Written version of a computer warrant' is a warrant that is generated, under approved procedures. Once generated the written version is taken to be the original warrant issued at the time of the computer warrant's creation by the person who created the computer warrant. The written version may be cancelled by endorsement by anyone entitled to execute the warrant. The written version is also taken to be cancelled eight hours after it is made, if it has not been executed by that time.

13.18.2 Introduction

Part 4, Division 6A: 'Procedures for computer warrants' and Division 6B: Execution of written warrants using electronic copies or a computer document' of the *Justices Act* enable warrants prescribed under a regulation to be created, stored or otherwise managed on computers (see s. 66: 'Purpose and application of division' of the *Justices Act*).

Pursuant to this legislation, the creation of a computer (electronic) warrant by a person under the approved procedures has the same effect as the issue of the same type of warrant under the person's hand (see s. 67: 'Approved procedures for computer warrants' and s. 68: 'Creation of a computer warrant' of the *Justices Act*). A computer (electronic) warrant may be created even though the warrant is authorised under a provision of an Act authorising the issue of a warrant on application made by telephone or other form of distance communication. The types of warrant prescribed by regulation for the purpose of s. 66(4) of the *Justices Act* include:

- (i) a warrant issued under the *Bail Act*,
- (ii) a warrant issued under the *Justices Act*,
- (iii) a warrant of commitment issued under the *Penalties and Sentences Act*,
- (iv) an arrest warrant under the *Police Powers and Responsibilities Act*, and
- (v) a warrant under the *State Penalties Enforcement Act*.

Once a written version of a computer (electronic) warrant is generated it is taken to be the original warrant and, if not executed within eight hours of being made, will be taken to be cancelled. The making or cancellation of the written version does not affect the existence of the computer (electronic) warrant.

A computer (electronic) warrant may be executed by using a written version of the warrant or information about the warrant in another document made under the approved procedures. Where a person is arrested on execution of a computer (electronic) warrant using another document made under the approved procedures, a written version of the

warrant made before or after the execution must then be dealt with as if the written version of the warrant had been used.

In a proceeding before a court in which the execution of a computer (electronic) warrant is relevant, a document purporting to be a certified written version of the warrant is admissible as proof of the warrant it purports to be. Unless the court requires a written version of a computer (electronic) warrant to be produced, a document purporting to be a certified document made under the approved procedures is admissible as proof of the warrant it purports to contain information about.

A paper warrant may be executed by using a copy of the paper warrant or a document prescribed under a regulation containing information about outstanding warrants. A copy of a paper warrant must be certified by the person using the fax machine or computer to send or make available the copy and must be executed within eight hours of the time stated within the certification which indicates when the warrant was sent or made available.

In a proceeding before a court in which the execution of a paper warrant is relevant, a copy of a paper warrant:

- (i) certified by the person sending it that that person has seen the original warrant and the copy is a copy of the original warrant; and
- (ii) certified by the person receiving the copy;

is admissible as proof of the warrant it purports to be. A court may require the original warrant to be produced.

When a name is queried on QPRIME, a flag is displayed, advising if the person is 'wanted on warrant'. Information entered on QPRIME is immediately available state-wide.

13.18.3 Warrant procedures generally

POLICY

Computer warrants (electronic warrants)

Computer (electronic) warrants are received at the Police Information Centre or from the Department of Justice and Attorney-General in an electronic format. Once received and recorded on QPRIME, the computer (electronic) warrant is assigned to a QPRIME Organisational Unit Active Task List. These warrants may then be assigned by the officer in charge of the relevant organisational unit to reporting officers for execution or satisfaction.

When a person named in a computer (electronic) warrant has been arrested by an officer using a warrant report, the officer may obtain a written version of a computer (electronic) warrant by printing the warrant from QPRIME.

Paper warrants

Paper warrants are received at the Police Information Centre, Offender Management Centre from the Department of Justice and Attorney-General and other issuing authorities. Once received and recorded on QPRIME, the paper warrant is assigned to a QPRIME Organisational Unit Active Task List. These warrants may then be assigned by the officer in charge to reporting officers for execution or satisfaction. The paper warrant is retained at the Police Information Centre.

When a person named in a warrant has been arrested by an officer in accordance with a paper warrant, the reporting officer may obtain a certified copy of the warrant from the Police Information Centre, Information Technology Division. Paper warrants that are held by the Police Information Centre may be transmitted by fax machine to officers when a person named in a warrant has been arrested.

Exceptions

Not all paper warrants are sent to and received at the Police Information Centre from issuing authorities. Instead, these paper warrants are forwarded from issuing authorities to a station. The warrants that are received at a station are warrants of possession and warrants of execution for companies. Warrants of execution for companies and warrants of possession are detailed to reporting officers by the officer in charge.

Officers at a station may generate an arrest warrant on QPRIME (see s. 13.18.26: 'Arrest warrants' of this chapter). Once the warrant has been issued by a justice, the officer should modify the status of the warrant on QPRIME to show the warrant as outstanding. Officers should also create a 'wanted on warrant' flag on QPRIME in order to reflect the person's status. Should QPRIME not be available, an officer should obtain a warrant as outlined in s. 3.5.13: 'Proceedings by way of a warrant in the first instance or arrest warrant' to s. 3.5.15: 'Unexecuted warrants in the first instance and arrest warrants' of this Manual.

Bail Act warrants issued for the non-appearance of defendants are normally posted directly to the Police Information Centre for recording on QPRIME. On occasion, such warrants are held at the issuing Magistrates Court to permit defendants to attend court and explain their non-appearance. In these cases where defendants indicate that they wish to surrender themselves to the court, police should obtain possession of the paper warrant from the court and execute it where required. Under these circumstances, there is no necessity to have the warrant details entered onto QPRIME.

13.18.4 Executing and satisfying computer (electronic) and paper warrants

Generally, a warrant is executed when the person named in the warrant has been arrested or in the case of a warrant of execution, by seizing property. A warrant is satisfied when the person named in the warrant pays the outstanding amount of money that is due on the warrant.

Section 21: 'General power to enter to arrest or detain someone or enforce warrant' of the *Police Powers and Responsibilities Act* provides amongst other things the authority of police officers to enter, remain and search for a person wanted on a warrant.

Sections 614: 'Power to use force—exercise of certain powers' and 615: 'Power to use force against individuals' of the *Police Powers and Responsibilities Act* provide that an officer may use reasonably necessary force against a thing or a person, provided that such force is not likely to cause grievous bodily harm or death to a person, to exercise the powers given under any Act. These provisions apply to the execution of a warrant issued under any Queensland Act.

POLICY

Officers who locate a person whom they reasonably believe is the subject person of a warrant(s) should take all reasonable steps to ensure that the:

- (i) person is the person named in the warrant(s);
- (ii) warrant(s) has not been previously satisfied or executed; and
- (iii) warrant is not cancelled, expired or defective; before attempting to satisfy or execute the warrant(s).

Officers may execute a warrant on a person by using:

- (i) a printed version of a computer (electronic) warrant;
- (ii) a paper warrant or a Certified Faxed Copy of a paper warrant; or
- (iii) a printed version of the warrant report.

When a warrant is executed, officers should ensure that a copy of the paper warrant is obtained, appropriately dealt with including endorsements where required, and wherever practicable handed to the watchhouse manager prior to leaving the watchhouse.

Officers should not arrest a person named in a warrant, in circumstances where that person maintains that full payment of the warrant has been made, unless the officer is satisfied on reasonable grounds that the fine upon which the warrant is based remains unpaid. In circumstances where it is not possible to determine whether the warrant has been satisfied, the warrant should not be executed.

Unless officers are acting as a Clerk of the Court or in another capacity to perform duties that are normally undertaken by officers from the Department of Justice and Attorney-General, reporting officers are not to accept monies that are tendered by persons for part payment of a warrant.

An officer who has received a printed version of a computer (electronic) warrant or a copy of a paper warrant is to execute the warrant within eight hours of the copy or printed version being made. This is not applicable to Mental Health Act Warrants or Defence Force Warrants.

When a computer (electronic) or paper warrant is executed or satisfied reporting officers are to comply with the relevant warrant procedures outlined in the QPRIME User Guide.

Each warrant should be endorsed as to satisfaction or execution. When more than one warrant relates to a person, ensure that the rear of each warrant is endorsed in the order of the issue date. If two or more executed warrants have been issued on the same date endorse the rear of each warrant, according to the warrant number, to indicate to a court which warrant was the first warrant executed (for example, 1/3, 2/3 and 3/3).

Officers are to ensure that the warrant is legible and no malfunction occurred during printing. If a malfunction occurs during transmission or printing:

- (i) modify QPRIME to show the status of the warrant as 'not actioned';
- (ii) where the warrant status is 'executed' follow the process recommended in 'Update Executed Warrant to Not Finalised Status' in the QPRIME User Guide; and
- (iii) recommence the workflow process in QPRIME to obtain a legible certified copy of the warrant.

PROCEDURE

An officer who locates a person who is wanted by virtue of a warrant of commitment or an arrest and imprisonment warrant should, when the outstanding amount is not reasonably forthcoming, arrest the person by virtue of the warrant and transport the person to the nearest watchhouse or correctional centre which will accept the prisoner. Watchhouse managers may, in accordance with the provisions of s. 13.18.9: 'Responsibilities of watchhouse managers' of this chapter, receive pro rata payments.

Officers who intend to execute a warrant and the located person claims not to be the person named in the warrant, should:

- (i) commence inquiries to investigate the veracity of the claim; and
- (ii) notify their supervisor.

When a supervisor has been notified that an officer intends to execute a warrant and the located person claims not to be the person named in the warrant, the supervisor should:

- (i) make any further inquiries, or ensure further inquiries are made, as considered necessary to determine the veracity of the person's claim; and
- (ii) as a result of those inquiries, decide whether or not the person should be taken into custody as required by the warrant.

ORDER

Officers who execute a warrant are to, if reasonably practicable, endorse the back of the original warrant, or other document taken to be an original warrant such as the printed version of a computer (electronic) warrant or a Certified Faxed Copy with:

- (i) the date and time of execution;
- (ii) the name of the person on whom it was executed;
- (iii) if supplied, the name of the occupier of the place; and
- (iv) the name, rank, registered number (if any), station and signature of the executing officer. (see s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*).

In cases where the paper warrant or Certified Faxed Copy is not available, the warrant report is to be endorsed with the above particulars.

In cases where QPRIME is not available, officers are to follow the process outlined in 'QPRIME unavailable' of the QPRIME User Guide.

The endorsed copy of the original warrant, or other document taken to be an original warrant, is to accompany the prisoner to the watchhouse.

Officers executing warrants which involve the:

- (i) search or arrest of a person;
- (ii) search of a vehicle;
- (iii) search of a place other than a public place;
- (iv) seizure of property;
- (v) stopping or detention of any person or vehicle;
- (vi) requirement of a person to state the person's name and address;
- (vii) giving of any direction under the provisions of ss. 48: 'Direction may be given to person' or 177: 'Powers of direction etc. at crime scene' of the *Police Powers and Responsibilities Act*;
- (viii) entering of any place to make an inquiry or investigation; or
- (ix) exercising of a power of public official;

are to ensure that the provisions of s. 637: 'Supplying police officer's details' of the *Police Powers and Responsibilities Act* are complied with.

Warrant satisfied or executed in error

An officer who becomes aware, after satisfying or executing a warrant, that the:

- (i) warrant had been previously lawfully satisfied or executed;
- (ii) person whom the officer:
 - (a) seized goods or chattels from;
 - (b) received payment from; or
 - (c) arrested or otherwise took into custody; was not the person named in the warrant;
- (iii) warrant was expired at the time it was satisfied or executed;
- (iv) in the case of a written version of a computer (electronic) warrant – warrant was cancelled; or
- (v) warrant was otherwise defective at the time it was satisfied or executed;

should:

- (i) take immediate steps to rectify the action taken to enforce the order of the warrant by, as the case may be:

- (a) releasing, or arranging the release of, the person from custody; or
 - (b) returning, or arranging the return of, any goods or chattels seized or payment received; and
- (ii) in the case of cancelled warrants or warrants satisfied by or executed on the wrong person and whose status has been modified to 'executed' on QPRIME refer to the process recommended in 'Update Executed Warrant to Not Finalised Status' of the QPRIME User Guide;
- (iii) in the case of a warrant that is expired, invalid or incomplete officers are to:
- (a) send a task to the Manager, Police Information Centre;
 - containing sufficient identifying details of the warrant; and
 - outlining the nature of the defect or advice that the warrant is expired; and
 - (b) if it is an original written warrant in the officer's possession, return the warrant to the issuing court or justice with an attached letter outlining the reason(s) for the return; or
- (iv) in the case of a warrant that has previously been satisfied or executed officers are to:
- (a) send a task to the Manager, Police Information Centre;
 - containing sufficient identifying details of the warrant; and
 - including all relevant information regarding the previous satisfaction or execution of the warrant.

Where the status of the task is still 'outstanding', the task is still active. If this is the case, submit a task to Police Information Centre seeking that the execution status be reverted referring to the process recommended in 'Update an Executed Warrant to Not Finalised Status' of the QPRIME User Guide. Officers are to complete the remarks box on 'warrant not actioned' task.

13.18.5 Responsibilities of the Manager, Police Information Centre

POLICY

The Manager, Police Information Centre, is to ensure that:

- (i) paper warrants that are received from the Department of Justice and Attorney-General or other issuing authorities are entered onto QPRIME and are tasked to the appropriate station;
- (ii) personal details, address details, offence details, money or default period details and other details of paper warrants are recorded and flagged against the person details in QPRIME;
- (iii) when a request is made for a paper warrant to be transmitted by fax machine or networked printer nominated by a reporting officer or watchhouse, that the requested warrant is copied, certified in accordance with the *Justices Act* and is transmitted to the reporting officer or watchhouse as soon as practicable;
- (iv) when advised that errors or omissions are found on warrants about to be or already stored on QPRIME:
 - (a) the relevant QPRIME record is immediately modified to 'returned to issuing authority'; and
 - (b) a report concerning the identified error is created and attached to the paper warrant and returned to the issuing authority who sent the warrant;
- (v) when advised by a reporting officer (by way of QPRIME workflow) that an executed computer (electronic) or paper warrant status has been changed to 'not finalised' due to the transmitted warrant being illegible or a malfunction occurring during transmission or printing, the status of the warrant is modified to 'outstanding' and person details in QPRIME flagged as appropriate;
- (vi) when advised by a reporting officer (by way of e-mail to Warrant.Bureau) that a person has been arrested on a computer (electronic) or paper warrant and that QPRIME is unavailable:
 - (a) the status of the warrant on QPRIME is monitored; and
 - (b) when QPRIME becomes available, the status of the warrant is monitored until the warrant status is modified to executed by the officer;
- (vii) when advised by a reporting officer (by way of e-mail to Warrant.Bureau) that a computer (electronic) or paper warrant has been satisfied and that QPRIME is 'not available', the status of the warrant on QPRIME is modified to satisfied by the officer when QPRIME becomes available;
- (viii) when a request has been made by a reporting officer (by way of QPRIME) for a certified copy of a paper warrant to be transmitted to the reporting officer, the status of the paper warrant on QPRIME is monitored until the warrant status is modified to executed by the officer;
- (ix) if the warrant is located with a Court Brief (QP9) or brief of evidence, the relevant Court Brief (QP9) or brief of evidence is transmitted to the reporting officer or watchhouse manager making the request;

(x) once the warrant, with the endorsement and, if necessary, relevant Court Brief (QP9) or brief of evidence, has been transmitted to the reporting officer or watchhouse manager making the request, QPRIME is modified, reflecting that the Certified Faxed Copy/Certified Copy request has been actioned; and

(xi) when a paper warrant, that is stored at the Police Information Centre, has been executed or satisfied and a status change report is completed for each issuing authority, return the status change report and any executed or satisfied paper warrants to each issuing authority unless a court requires the original warrant to be produced as soon as practicable or at a later specified time, in which case arrangements should be made for the production of the original paper warrant.

Request for a warrant from a federal agent

POLICY

When the Manager, Police Information Centre, receives a request from a federal agent for a warrant, the Officer in Charge should:

- (i) if the warrant is to be satisfied, advise the federal agent to attend a station or other place where the person named in the warrant is located to arrange for the satisfaction and finalisation of the warrant; or
- (ii) if the warrant is to be executed, advise the federal agent to either:
 - (a) if the person is in custody, contact the officer in charge of the place where the person is in custody to obtain the written version of the computer (electronic) warrant or a copy of the paper warrant on the agent's behalf; or
 - (b) if the person is not in custody, contact the station where the person named in the warrant is located, to arrange for the execution of the warrant by an officer attached to the station.

Request for a warrant from an interstate officer for an extradition

POLICY

When the Manager, Police Information Centre receives a request from an interstate officer for a copy of a bench warrant or *Bail Act* warrant, that officer in charge is to advise the officer in charge of the station where the original arresting officer is attached to arrange for extradition.

When the Manager, Police Information Centre, receives a request from an interstate officer for a copy of a warrant of apprehension and conveyance of prisoner to prison, the Manager, Police Information Centre, is to advise the interstate officer to contact the Corrective Services Investigation Unit, which will have a copy of the warrant.

When the Manager, Police Information Centre receives advice from an officer in charge of a station or an officer that the extradition of a person named in a warrant is approved, the Manager, Police Information Centre is to ensure that a copy of the warrant is sent to the officer with carriage of the matter by fax or designated network printer.

13.18.6 Responsibilities of officers in charge of stations

POLICY

Officers in charge of a station should:

- (i) where appropriate develop and disseminate Station/Establishment Instructions for checking and assigning:
 - (a) computer (electronic) and paper warrant tasks from the station Organisational Active Task List;
 - (b) paper warrants that are received at the station from issuing authorities; and
 - (c) paper warrants that are created at the station;
- (ii) ensure that arrangements are in place to enable officers discharging the duties and responsibilities in the absence of that officer in charge to assign warrant tasks from QPRIME;
- (iii) assign warrant tasks from the station Organisational Active Task List and paper warrants to officers under their control;
- (iv) ensure that all warrants and tasks received are dealt with within:
 - (a) for arrest warrants – twenty eight days; or
 - (b) other warrants – sixty days or the time specified on the warrant;
- (v) when a reporting officer who has completed enquiries submits a warrant task to the station Supervisor Approve Unit Member List:
 - (a) check warrant tasks that have been submitted for completeness;
 - (b) where the warrant has been satisfied and payment has been received, forward the printout of the computer (electronic) warrant and the monies received in accordance with the Financial Management Practice Manual and district or local instructions;

- (c) where the warrant has been executed or satisfied the 'wanted on warrant' flag has been expired in the person's QPRIME record;
- (d) where appropriate reassign the warrant task to the responsible division where the named person resides or is believed to reside; or
- (e) where the person cannot be located or has left the state:
 - check that the QPRIME occurrence has been updated with the results of inquiries or the last known interstate address; and
 - finalise the task;
- (vi) upon receipt of a paper warrant that has been sent directly from an issuing authority to the station, other than a *Mental Health Act* warrant, warrant of possession, or warrants that are forwarded directly to the officer in charge of a watchhouse:
 - (a) notify the Manager, Police Information Centre of the paper warrant received; and
 - (b) forward the paper warrant to the Police Information Centre;
- (vii) when a *Mental Health Act* warrant or warrant of possession has been sent directly from an issuing authority and received at the station and the warrant is not executed or satisfied:
 - (a) where a reporting officer's inquiries reveal that the person named in the warrant is unable to be located or may be located in another police division, overseas, or interstate, forward the warrant and a brief report outlining the status of the warrant to the issuing authority; and
 - (b) in the case of *Mental Health Act* warrants see s. 13.18.28: 'Mental Health Act warrants' of this chapter;
- (viii) when a reporting officer executes or satisfies a paper warrant, that has been sent directly from an issuing authority and received at the station:
 - (a) if necessary, check the finalised warrant for completeness and forward the endorsed warrant to the issuing authority; and
 - (b) where payment for the warrant has been received and a receipt issued, forward the monies received in accordance with the Financial Management Practice Manual and district or local instructions to the issuing authority; and
- (ix) upon receipt of a request from an interstate officer for a copy of a warrant in the first instance, bench warrant or *Bail Act* warrant which is held at the Police Information Centre ensure that:
 - (a) the requirements of Chapter 10: 'Escorts and Extradition' of this Manual are complied with; and
 - (b) if extradition of the person named in the warrant is approved, advise the Manager, Police Information Centre that extradition has been approved and that a copy of the warrant is to be faxed to the investigating officer by the Manager, Police Information Centre.

13.18.7 Responsibilities of police officers

POLICY

Officers may execute or satisfy a computer (electronic) or paper warrant. Officers who perform duties at stations where they are required to execute or satisfy computer (electronic) or paper warrants should:

- (i) check their QPRIME active task list, at least once daily;
- (ii) print the warrant report from the warrant related task;
- (iii) check the warrant occurrence prior to making inquiries to ensure that the warrant is still outstanding;
- (iv) finalise and submit the warrant task to their officer in charge for approval when all enquiries relating to the warrant have been completed or when inquiries indicate that the person named in the warrant is a resident, or may be located, within another police division;
- (v) if a new address is available or the particulars on the existing address have changed, enter that address or particulars on QPRIME; and
- (vi) comply with the provisions of s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' and s. 13.18.26: 'Arrest warrants' of this chapter.

13.18.8 Responsibilities of staff members

POLICY

Staff members may only receive payment and issue receipts to satisfy computer (electronic) or paper warrants at the direction of the officer in charge of a station. Whenever a staff member receives payment to satisfy a warrant, that staff

member is to comply with the applicable provisions of s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

13.18.9 Responsibilities of watchhouse managers

POLICY

Watchhouse managers should refer to:

- (i) s. 16.5.2: 'Responsibilities of watchhouse manager relating to arrest without possession of a warrant' of this Manual;
- (ii) s. 13.18.18: 'Defence force warrants' of this chapter; and
- (iii) s. 16.19.4: 'Release of prisoners detained by warrants' of this Manual.

Watchhouse managers may receive pro rata payments that are made by persons on warrants which are recorded on QPRIME. A warrant must be executed prior to a pro rata payment being made. All payments that are made must be recorded on QPRIME.

To calculate pro rata payment, Watchhouse Managers should access 'Calculate Pro Rata Payment' of the QPRIME User Guide.

When a pro rata payment is to be made on warrants that are not entered on QPRIME, officers should refer to s. 16.19.5: 'Calculation of sentences' of this Manual.

When a pro rata payment is made and the amount outstanding is calculated, watchhouse managers should complete a Money Collected Report for Warrants on QPRIME utilising the 'Warrant Money Collected Report' of the QPRIME User Guide.

ORDER

Watchhouse managers are not to accept a person arrested on a warrant:

- (i) unless that person is accompanied by a copy of a paper warrant, a written version of a computer (electronic) warrant or a warrant report, endorsed as to its execution;
- (ii) if that warrant has expired; or
- (iii) if the copy of a paper warrant has not been certified.

13.18.10 Responsibilities of prosecutors

PROCEDURE

When a *Bail Act* warrant is issued by a Magistrates Court, the warrant is forwarded direct to the Police Information Centre by the police prosecutor or local officer in charge together with the Court Brief (QP9).

POLICY

The prosecutor or officer in charge who receives notification from the Magistrate that there is a *Bail Act* warrant in existence for a defendant is to forward the warrant together with the Court Brief (QP9) and relevant Court Brief (QP9) or brief of evidence to the Manager, Police Information Centre.

13.18.11 Lost paper warrants

POLICY

Where it becomes apparent that a paper warrant has been lost or misplaced and cannot be located, the officer in charge of the station where the warrant was last received or the Manager, Police Information Centre, if the warrant was last received at that centre, is to make comprehensive enquiries as to the circumstances surrounding the loss of the warrant.

Where the warrant is still not located, the officer in charge is to:

- (i) cause a report to be prepared advising of the loss of the warrant, and the circumstances surrounding its loss;
- (ii) in cases involving a station, forward that report to the district officer or commissioned officer in charge; and
- (iii) in cases involving the Police Information Centre, forward that report to the Officer in Charge, Information Technology Division.

Officers in charge who receive a report advising of the loss of a warrant are to immediately forward that report to the issuing authority and take any required action pursuant to Chapter 15: 'Risk Management' of this Manual and/or 'Complaint Management' of the Human Resources Policies.

13.18.12 Incorrect or incomplete details on warrants

ORDER

If a reporting officer finds that the money or default period or other details, of any warrant that is recorded on QPRIME is incorrect or incomplete, the reporting officer is:

(i) to immediately advise the Manager, Police Information Centre. The message is to advise of the incorrect or incomplete information and the correct information, if known; and

(ii) not to execute or satisfy the warrant until advice is received from the Manager, Police Information Centre that the correct information has been entered onto QPRIME.

13.18.13 Warrants issued under the Service and Execution of Process Act (Cwlth)

Warrants of apprehension or commitment may be issued under the *Service and Execution of Process Act* (Cwlth), regarding offences committed interstate and the offenders are located in Queensland. These warrants cannot be finalised in the same manner as computer (electronic) warrants pursuant to the *Justices Act*.

Warrants of apprehension

A warrant of apprehension is a warrant which has been issued by a court in one State for the arrest of a person in another State. Such a warrant is issued when a fine has been imposed on the person named in the warrant, and the person has failed to pay all or some of the fine. The *Service and Execution of Process Act* (Cwlth) empowers a court of summary jurisdiction in the State or Territory in which the person is located to order the imposition of the original penalty.

POLICY

Officers who become aware that a person located in Queensland is wanted by virtue of a warrant of commitment in another Australian jurisdiction should send a message to the Commissioner of Police for that jurisdiction. The message should request that with respect to the interstate warrant of commitment that a warrant of apprehension be sought for execution in Queensland. This message should be transmitted via the Police Communications Centre, Brisbane, and contain:

- (i) the subject person's full name, date of birth and current address;
- (ii) whether the subject person is an inmate of a correctional centre; and
- (iii) a request to forward the warrant of apprehension to the Manager, Police Information Centre.

When warrants of apprehension are received at the Police Information Centre, they are to:

- (i) recorded the warrant on QPRIME;
- (ii) ensure a flag is entered against the person wanted in QPRIME;
- (iii) forward a task on QPRIME to the station which has responsibility for the location of the address listed on the warrant; and
- (iv) forwarded the warrant to the relevant station.

Officers in charge of stations receiving tasks for warrants of apprehension on QPRIME are, where appropriate:

- (i) to ensure these warrants are assigned on QPRIME to an officer;
- (ii) give the original warrant to the officer when it is received from the Police Information Centre; and
- (iii) remit payments received for these warrants to the issuing authority.

If it is ascertained the person named in the warrant is in another police division the officer in charge is to modify QPRIME indicating that the warrant has been tasked to another station via the tasking list.

If it is ascertained the person named in the warrant is no longer in Queensland the officer in charge is to task the warrant to the Manager, Police Information Centre, with relevant details where it will be updated on QPRIME accordingly.

PROCEDURE

An officer who locates a person who is wanted in this State by virtue of a warrant of apprehension will have access to the original of the warrant and:

- (i) advise the person of the outstanding amount on the warrant, and if the amount is not paid, that the person is liable to arrest;
- (ii) afford the person a reasonable opportunity to pay the outstanding amount considering all of the circumstances of the case. Care should be taken, when affording the person named in the warrant a reasonable opportunity to pay the outstanding amount, that satisfaction or execution of the warrant is not avoided;
- (iii) where the person named in the warrant tenders the outstanding amount, accept the money and issue an official receipt for the amount to that person;
- (iv) where the outstanding amount is not reasonably forthcoming, arrest the person by virtue of the warrant and transport the person to a watchhouse; and
- (v) follow the relevant procedures, with regard to updating the status of the warrant on QPRIME, outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

POLICY

Officers who arrest a person by virtue of a warrant of apprehension are to charge that person in the normal manner and are to:

- (i) complete a bench charge sheet. The wording of the charge will be the wording taken from the warrant;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the original of the warrant as being executed; and
- (iv) attach the warrant to the bench charge sheet for production in court.

PROCEDURE

When completing a Court Brief (QP9) in relation to a warrant of apprehension, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person; and
- (iii) any other relevant information.

ORDER

Officers are not to grant bail to a person arrested by virtue of a warrant of apprehension, as only a court may grant bail in such cases.

Warrants of commitment

A warrant of commitment under the *Service and Execution of Process Act (Cwlth)* is issued by a Queensland court after a person has been arrested pursuant to a warrant of apprehension and the outstanding amount remains unpaid after the expiration of further time to pay allowed by the Queensland Court. This warrant cannot be finalised as a computer (electronic) warrant.

POLICY

When warrants of commitment issued under the *Service and Execution of Process Act (Cwlth)* are received at the Police Information Centre, the Officer in Charge of the Police Information Centre is to ensure these warrants are:

- (i) recorded and entered as a flag against the person wanted in QPRIME; and
- (ii) assigned a warrant task on QPRIME and forward to the station which has responsibility for the location of the address listed on the warrant.

Officers in charge of stations receiving warrants of commitment issued under the *Service and Execution of Process Act (Cwlth)* on QPRIME are to:

- (i) ensure the warrant tasks are assigned on QPRIME to an officer; and
- (ii) remit payments received for these warrants to the issuing authority.

If it is ascertained the person named in the warrant is in another police division the officer in charge is to update the warrant occurrence in QPRIME and reassign the warrant task to the respective division.

If it is ascertained the person named in the warrant is no longer in Queensland the officer in charge is to reassign the warrant task to Police Information Centre who will make enquiries to the issuing authority and modify QPRIME accordingly.

PROCEDURE

An officer who locates a person who is wanted in this State by virtue of a warrant of commitment issued under the *Service and Execution of Process Act (Cwlth)* should have access to the original copy of the warrant, and:

- (i) advise the person of the outstanding amount on the warrant and if the amount is not paid, that the person is liable to arrest;
- (ii) afford the person a reasonable opportunity to pay the outstanding amount considering all of the circumstances of the case. Care should be taken when affording the person named in the warrant a reasonable opportunity to pay the outstanding amount, that satisfaction or execution of the warrant is not avoided;
- (iii) where the person named in the warrant tenders the outstanding amount, accept the money and issue an official receipt for the amount to that person;
- (iv) where the outstanding amount is not reasonably forthcoming, arrest the person by virtue of the warrant and transport the person to a watchhouse; and
- (v) follow the relevant procedures, with regard to updating the status of the warrant on QPRIME, outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

For warrants of commitment issued under the *Penalties and Sentences Act* see s. 13.18.17: 'Warrants of commitment issued under the *Penalties and Sentences Act*' of this chapter.

13.18.14 Warrants of apprehension and conveyance of prisoner to a corrective services facility

Warrants of apprehension and conveyance of a prisoner to prison are issued pursuant to the *Corrective Services Act* as a result of the suspension or cancellation of a conditional release order (s. 104: 'Warrant for prisoner's arrest' of the *Corrective Services Act*) or a parole order (s. 206: 'Warrant for prisoner's arrest' of the *Corrective Services Act*). All warrants of apprehension and conveyance of a prisoner to prison authorise a police officer to arrest the person named therein and convey the person to the specified prison or to any other prison which is more accessible or convenient. Warrants of apprehension and conveyance of prisoners to prison are forwarded to the Police Information Centre and are entered onto QPRIME where, in addition a flag is to be entered against the person wanted.

PROCEDURE

An officer who locates a person who is wanted by virtue of a warrant of apprehension and conveyance of prisoner to prison should apprehend the person by virtue of the warrant and:

- (i) take the person to:
 - (a) the prison specified in the warrant;
 - (b) any other prison which is more accessible or convenient; or
 - (c) if no prison is accessible or convenient, the nearest watchhouse;
- (ii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*, and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

When an officer executes a Return to Prison (RTP) warrant outside of business hours, which has not been entered onto QPRIME by the Police Information Centre, watchhouse staff are to enter a comment on the custody screen of QPRIME stating that the 'Return to Prison warrant dated [date] was executed on [execution date].'

13.18.15 Bail Act warrants

Bail Act warrants may be issued by a Magistrates Court for a range of offences or circumstances under the *Bail Act*. Generally these authorise the arrest of a person due to a breach of a condition of bail, or some other condition relating to the bail changes. The majority of *Bail Act* warrants forwarded to the Service relate to a person who has been granted bail and who has failed to appear before a specified court in accordance with that bail. *Bail Act* warrants are forwarded to the Police Information Centre and are entered onto QPRIME where, in addition, a flag is entered against the person wanted.

PROCEDURE

An officer who locates a person wanted by virtue of a *Bail Act* warrant should:

- (i) arrest the person by virtue of the warrant and take the person to a watchhouse;
- (ii) endorse the warrant or the written version of the computer (electronic) warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*, and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

POLICY

An officer who arrests a person by virtue of a *Bail Act* warrant is to charge that person in the normal manner and is to:

- (i) complete a bench charge sheet:
 - (a) for an offence of breaching a condition of bail, if the warrant was issued because of a breach of bail conditions; or
 - (b) indicating that the person was arrested by virtue of a *Bail Act* warrant, including the date and place at which the *Bail Act* warrant was issued, in other cases;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*, and
- (iv) attach the warrant to the bench charge sheet and Court Brief (QP9) for the prosecutor to tender to the court.

If the offender's first court appearance, after being arrested by virtue of the *Bail Act* warrant, is in the court that issued the *Bail Act* warrant, a bench charge sheet is not required to be prepared for the original substantive offence(s).

If the offender's first court appearance, after being arrested by virtue of the *Bail Act* warrant, is in a court other than that which issued the *Bail Act* warrant, the reporting officer is to ensure that a copy of the bench charge sheet for any original substantive offence is obtained for delivery to the court prior to the defendant's appearance. A copy of the original bench charge sheet for a substantive offence should be marked 'COPY'.

Copies should be available with the warrant and Court Brief (QP9) from the Police Information Centre. Where no copy of a bench charge sheet for an original substantive offence is available, the arresting officer who executed the warrant is to ensure a new bench charge sheet is prepared. If the charge for the original substantive offence was created in QPRIME, the bench charge sheet can be printed from the QPRIME charge sequencing report.

In cases where station copies are used or a new bench charge sheet is prepared, officers are to ensure as far as practicable that the wording of the charge on the copy conforms to the wording on the warrant.

PROCEDURE

When completing a Court Brief (QP9) in relation to a *Bail Act* warrant, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person;
- (iii) the circumstances surrounding the issue of the warrant, including details of the non-appearance by the defendant which led to the issue of the warrant; and
- (iv) any other relevant information.

13.18.16 Bench warrants

All bench warrants authorise a police officer to arrest the person named therein and place the person before a court. Bench warrants are forwarded to the Police Information Centre and are entered onto QPRIME, where in addition, a flag is entered against the person wanted.

PROCEDURE

An officer who locates a person who is wanted by virtue of a bench warrant should:

- (i) arrest the person by virtue of the warrant and take the person to a watchhouse;
- (ii) endorse the copy of the paper warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*; and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter dealing with paper warrants.

POLICY

An officer who arrests a person by virtue of a bench warrant is to charge that person in the normal manner and is to:

- (i) complete a bench charge sheet indicating that the person has been arrested by virtue of a bench warrant, including the date and place at which the bench warrant was issued;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*; and
- (iv) attach the warrant to the Court Brief (QP9) for the prosecutor to tender to the court.

PROCEDURE

When completing a Court Brief (QP9) in relation to a bench warrant, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person;
- (iii) the circumstances surrounding the issue of the warrant, including details of the non-appearance by the defendant which led to the issue of the warrant; and
- (iv) any other relevant information.

13.18.17 Warrants of commitment issued under the Penalties and Sentences Act

A warrant of commitment is a warrant issued as the result of the non-payment of a penalty imposed by a court. The warrant authorises a police officer to demand full payment of the outstanding amount and to arrest the person if that amount is not forthcoming. A person who is arrested by virtue of a warrant of commitment does not appear before a court and is committed directly to a watchhouse or correctional centre to serve the default period of imprisonment. Paper and computer (electronic) warrants of commitment are forwarded by the Department of Justice and Attorney-General to

the Police Information Centre and are recorded on QPRIME, where in addition, a flag is entered against the person wanted.

A person arrested by virtue of a warrant of commitment may not be released from custody unless:

- (i) the warrant was executed in error (see s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter);
- (ii) the person has remained in custody for the period of time specified in the warrant; or
- (iii) the person has paid the outstanding portion of the fine stated in the warrant (see ss. 13.18.9: 'Responsibilities of watchhouse managers' of this chapter and 16.19.4: 'Release of prisoners detained by warrants' of this Manual).

PROCEDURE

An officer who locates a person who is wanted by virtue of a warrant of commitment issued under the *Penalties and Sentences Act* should:

- (i) advise the person of the outstanding amount on the warrant, and that if the amount is not paid, the person is liable to arrest;
- (ii) afford the person a reasonable opportunity to pay the outstanding amount. A reasonable opportunity may mean considering all of the circumstances of the case. Care should be taken, when affording the person named in the warrant a reasonable opportunity to pay the outstanding amount, that satisfaction or execution of the warrant is not avoided;
- (iii) if the person named in the warrant tenders the outstanding amount, accept the money and issue an official receipt for the amount to that person;
- (iv) after the receipt is issued, follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter; and
- (v) when the outstanding amount is not reasonably forthcoming, arrest the person by virtue of the warrant and transport the person to the nearest watchhouse or correctional centre which will accept the prisoner.

In the case of a person who has been taken to a watchhouse or correctional centre after arrest on a warrant of commitment, there is no necessity to complete bench charge sheets or a Court Brief (QP9). On arrival at the watchhouse or correctional centre, the reporting officer should:

- (i) if deemed appropriate (see s. 10.4.15: 'Transfer of and taking charge of persons in custody' of this Manual), complete a QPS Prisoner Property Sheet and, where the prisoner is lodged at a:
 - (a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or
 - (b) correctional centre – obtain a receipt for the prisoner and prisoner's property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed QPS Prisoner Property Sheet is to be retained at the arresting officer's station or establishment;
- (ii) endorse the written version of the computer (electronic) warrant or the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*, and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

POLICY

For warrants of commitment issued under the *Service and Execution of Process Act (Cwlth)* see s. 13.18.13: 'Warrants issued under the Service and Execution of Process Act (Cwlth)' of this chapter. For execution of warrants in the first instance on patients of mental hospitals see s. 6.6.15: 'Execution of warrants on patients detained under the provisions of the Mental Health Act' of this Manual.

13.18.18 Defence Force warrants

Warrants for the arrest of members of the Australian Defence Force (ADF), are normally issued after that member has been absent without leave from their place of duty for a period of seven days. The warrants are issued by authority of the *Defence Force Discipline Act (Cwlth)* and are issued internally by the branch of the Service from which the person is absent. The *Defence Force Discipline Act (Cwlth)* by virtue of s. 918: 'Power to order to make arrest', also empowers officers to arrest such absconders.

After the issue of a warrant from within a branch of the ADF for a service person wanted for absconding:

- (i) in the case of Army warrants, the paper warrant is held at the issuing location and a copy is forwarded to the Police Information Centre. The person's name is entered and a flag is entered against the person details in QPRIME;

(ii) in the case of Navy warrants, the paper warrant is forwarded to Royal Australian Navy Headquarters, Sydney, and a copy is forwarded to the Police Information Centre. The person's name is entered and a flag is entered against the person details in QPRIME; and

(iii) in the case of Air Force warrants, the paper warrant is held at the issuing base, and copies are distributed to RAAF police establishments only.

The paper warrants are available from those issuing authorities.

It is desirable that the arrest of ADF absconders be effected by a military authority, but in many cases this will not be possible. Members of military police branches do not have authority to take action at private residences.

PROCEDURE

Where officers become aware that a person is wanted on a warrant issued by either the Army, Royal Australian Navy or Royal Australian Air Force, and circumstances dictate that officers should effect the arrest of a person, officers should:

- (i) confirm the existence of the warrant by obtaining either the wording of the warrant or the warrant itself;
- (ii) execute the warrant and take the person to a watchhouse. In executing the warrant officers should be mindful of the limitations of execution between 2100 hours and 0600 hours as prescribed in s. 91(3) of the *Defence Force Discipline Act* (Cwlth);
- (iii) provide the watchhouse manager with the wording of the warrant, or the warrant itself as the case may be, as well as full details of the person as far as known;
- (iv) advise the nearest relevant military police establishment, or in the case of Navy warrants, the duty officer at the nearest Naval base; and
- (v) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

It is not necessary to complete either a bench charge sheet or Court Brief (QP9).

Officers in charge of a watchhouse to which a member of the ADF is brought by virtue of a military warrant should:

- (i) accept the prisoner in accordance with the instructions contained in Chapter 16: 'Custody' of this Manual;
- (ii) process and hold the prisoner in the normal manner, with the exception that photographs and fingerprints are not to be taken;
- (iii) on arrival of the relevant military personnel, have them digitally sign the Release of Custody Report (Full) in QPRIME to the effect that custody of the prisoner has passed to the military authority; and
- (iv) release the prisoner to the custody of the member of the ADF, or into the custody of a police officer who has been detailed to escort the prisoner to another location.

POLICY

On occasions, representatives of the military authority will be unable to send a representative to the particular watchhouse to take custody of the prisoner. In this instance the military authority may request that the Service transport the prisoner to a specific military establishment.

Where a member of the ADF has been arrested by virtue of a military warrant issued by the service person's organisation and a request has been received from the relevant military authority to transport the prisoner to a location other than the nearest watchhouse, officers are to refer that request by the most expedient means available, to their district officer or commissioned officer in charge.

Where a defence force absconder is a member of a defence force other than the ADF, officers should refer to s. 11.15.4: 'Unlawful non-citizens' of this Manual.

District officers or commissioned officers in charge who have been notified of a request to transport a prisoner in accordance with the preceding order are to:

- (i) communicate directly with the ADF officer making the request; and
- (ii) advise the ADF officer that any transport undertaken by the Service will only be made at the expense of the relevant branch of the ADF.

Where an ADF officer accepts this condition, district officers or commissioned officers in charge are to make arrangements to transport the prisoner to the destination nominated. District officers or commissioned officers in charge are to provide a written direction to officers undertaking the escort, which is to include any travel arrangements made.

After an escort has been provided, district officers or commissioned officers in charge are to cause an itemised account of the costs of the escort to be prepared which is to be forwarded to the ADF authority concerned, in accordance with the Financial Management Practice Manual.

Officers who are detailed to escort a prisoner held by virtue of a military warrant are to:

- (i) attend at the watchhouse at which the prisoner is held and prepare a QPS Person Report (Custody);

- (ii) ensure the prisoners property is collected and signed out of QPRIME;
- (iii) take custody by signing the release tab of the Custody Report (Full) in QPRIME;
- (iv) ensure the prisoner is recorded as being in transit to the military establishment;
- (v) print duplicate copies of the QPS Person Report (Custody) and retain until arrival at the military establishment;
- (vi) transport the prisoner in accordance with the written direction of the district officer or commissioned officer in charge;
- (vii) on arrival at a military establishment, escorting officers are to relinquish custody of the prisoner to the relevant duty officer by having the relevant duty officer sign the original of the QPS Person Report (Custody);
- (viii) provide the duty officer with the duplicate copy of the QPS Person Report (Custody) and ensure the signed original is returned to the watchhouse to be included with the relevant entry; and
- (ix) ensure the Custody Report (Full) is finalised when returning to the watchhouse so that the 'Release time' field can be completed using the time that the prisoner was handed over to the military establishment.

13.18.19 Warrants of commitment issued forthwith

A warrant of commitment issued forthwith is a warrant issued by a court in relation to a defendant who has been convicted and ordered to pay a fine, but for which no time to pay has been allowed. The person is required to meet the fine immediately or is liable to be taken to a place of detention.

PROCEDURE

When a warrant of commitment issued forthwith is handed to the officer in charge of the watchhouse, the warrant will be accompanied by a schedule compiled by the Department of Justice and Attorney-General.

The officer to whom a warrant of commitment issued forthwith is handed should:

- (i) give the person the opportunity to pay the fine forthwith to the clerk of the court;
- (ii) if the person is unable to pay the fine, take into custody the person to whom the warrant refers;
- (iii) transport the prisoner to the nearest watchhouse or correctional centre which will accept the prisoner;
- (iv) if deemed appropriate (see s. 10.4.15: 'Transfer of and taking charge of persons in custody' of this Manual), complete a QPS Prisoner Property Sheet and, where the prisoner is lodged at a:
 - (a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or
 - (b) correctional centre – obtain a receipt for the prisoner and prisoner's property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original QPS Prisoner Property Sheet is to be retained at the arresting officer's station or establishment;
- (v) endorse the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*;
- (vi) deliver the warrant to the watchhouse manager or senior correctional officer; and
- (vii) complete the schedule and return it immediately to the issuing authority.

13.18.20 Warrants of commitment where punishment is by imprisonment

A warrant of commitment where punishment is by imprisonment is issued by a court, under the *Justices Act* rather than the *Penalties and Sentences Act*, on the conviction of a person in circumstances when the penalty is a period of imprisonment and the defendant has no option to pay a fine in lieu.

POLICY

When a warrant of commitment where punishment is by imprisonment is handed to the officer in charge of the watchhouse, the warrant will be accompanied by a schedule compiled by the Department of Justice and Attorney-General. The schedule should be completed by the reporting officer executing the warrant and returned to the issuing authority.

An officer to whom a warrant of commitment issued forthwith is handed is to take into custody the person to whom the warrant refers and:

- (i) transport the prisoner to the nearest watchhouse or correctional centre which will accept the prisoner;
- (ii) if deemed appropriate (see s. 10.4.15: 'Transfer of and taking charge of persons in custody' of this Manual), complete QPS Prisoner Property Sheet and, where the prisoner is lodged at a:
 - (a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or

(b) correctional centre – obtain a receipt for the prisoner and prisoner’s property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original QPS Prisoner Property Sheet is to be retained at the arresting officer’s station or establishment;

(iii) endorse the paper warrant as being executed in accordance with s. 638: ‘Record of execution of warrant or order’ of the *Police Powers and Responsibilities Act*;

(iv) deliver the warrant to the watchhouse manager or senior correctional officer; and

(v) complete the schedule and return it immediately to the issuing authority.

13.18.21 Warrants of commitment for trial or sentence

A warrant of commitment for trial or sentence is issued by a superior court for the purpose of bringing a person before that court for the purpose of facing trial or for sentencing.

POLICY

When a warrant of commitment for trial or sentence is handed to the officer in charge of the watchhouse, the warrant will be accompanied by a schedule compiled by the Department of Justice and Attorney-General. The schedule should be completed by the officer executing the warrant and returned to the issuing authority.

An officer to whom a warrant of commitment for trial or sentence is handed is to take into custody the person to whom the warrant refers and:

(i) transport the prisoner to the nearest watchhouse or correctional centre which will accept the prisoner;

(ii) if deemed appropriate (see s. 10.4.15: ‘Transfer of and taking charge of persons in custody’ of this Manual), complete a QPS Prisoner Property Sheet and, where the prisoner is lodged at a:

(a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or

(b) correctional centre – obtain a receipt for the prisoner and prisoner’s property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original QPS Prisoner Property Sheet is to be retained at the arresting officer’s station or establishment;

(iii) endorse the paper warrant as being executed in accordance with s. 638: ‘Record of execution of warrant or order’ of the *Police Powers and Responsibilities Act*;

(iv) deliver the warrant to the watchhouse manager or senior correctional officer; and

(v) complete the schedule and return it immediately to the issuing authority.

13.18.22 Warrants and orders for imprisonment

A warrant or an order for imprisonment is similar to a warrant of commitment where punishment is by imprisonment, except that this type of warrant or order is issued under the *Penalties and Sentences Act*. A warrant or an order for imprisonment is issued by a court on the conviction of a person in circumstances when the penalty is a period of imprisonment and the defendant has no option to pay a fine in lieu.

POLICY

When a warrant or an order for imprisonment is handed to the officer in charge of the watchhouse, the warrant or order will be accompanied by a schedule compiled by the Department of Justice and Attorney-General. The schedule should be completed by the officer executing the warrant or order and returned to the issuing authority.

An officer to whom a warrant or an order for imprisonment is handed is to take into custody the person to whom the warrant or order refers and:

(i) transport the prisoner to the nearest watchhouse or correctional centre which will accept the prisoner;

(ii) if deemed appropriate (see s. 10.4.15: ‘Transfer of and taking charge of persons in custody’ of this Manual), complete a QPS Prisoner Property Sheet and, where the prisoner is lodged at a:

(a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or

(b) correctional centre – obtain a receipt for the prisoner and prisoner’s property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original Queensland Police Service Prisoner Property Sheet is to be retained at the arresting officer’s station or establishment;

(iii) endorse the paper warrant or order as being executed in accordance with s. 638: ‘Record of execution of warrant or order’ of the *Police Powers and Responsibilities Act*;

(iv) deliver the warrant or order to the watchhouse manager or senior correctional officer; and

(v) complete the schedule and return it immediately to the issuing authority.

13.18.23 Remand warrants

A remand warrant is a warrant issued by a court enabling a prisoner to be taken from a Magistrates Court and held on remand in a correctional centre.

POLICY

When a remand warrant is handed to the officer in charge of the watchhouse, the warrant will be accompanied by a schedule compiled by the Department of Justice and Attorney-General. The schedule should be completed by the officer executing the warrant and returned to the issuing authority.

An officer to whom a remand warrant is handed is to take into custody the person to whom the warrant purportedly refers and:

- (i) transport the prisoner to the nearest watchhouse or correctional centre which will accept the prisoner;
- (ii) if deemed appropriate (see s. 10.4.15: 'Transfer of and taking charge of persons in custody' of this Manual), complete a Queensland Police Service Prisoner Property Sheet and, where the prisoner is lodged at a:
 - (a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or
 - (b) correctional centre – obtain a receipt for the prisoner and prisoner's property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original QPS Prisoner Property Sheet is to be retained at the arresting officer's station or establishment;
- (iii) deliver the warrant to the watchhouse manager or senior correctional officer; and
- (iv) complete the schedule and return it immediately to the issuing authority.

13.18.24 Warrants of execution

Warrants of execution are issuable by justices for the enforcement of decisions requiring payment of a penalty or compensation or sum of money or costs. Generally when specific legislation empowers the issue of this type of warrant, the provisions of that legislation should be followed.

When the Act by virtue of which a decision adjudging or requiring the payment of a penalty, compensation, etc. does not expressly provide that the amount of such penalty, compensation, etc. is to be levied by distress and sale of the goods and chattels of the person liable to make such payment, or by execution, then the provisions of Part 6, Division 9: 'Enforcement of Decisions' of the *Justices Act* apply. These provisions enable adjudicating justices to issue a warrant of execution.

Warrants of execution (for individuals) are forwarded to the Police Information Centre by the issuing authority where a flag is entered against the person details in QPRIME.

Warrants of execution (for companies) are forwarded to the Manager, Police Information Centre and entered onto QPRIME. Officers receiving warrants of execution (for companies) who are advised the company is under administration should make inquiries with the Australian Securities and Investments Commission regarding Notice of Appointment of Administrator under s. 450A: 'Appointment of administrator' of the *Corporations Act* (Cwlth) to confirm this is so. If the company has been placed under administration, the administrator must lodge a notice of this fact with the Australian Securities and Investments Commission. The provisions of s. 440F: 'Suspension of enforcement process' of the *Corporations Act* (Cwlth) prevent proceeding with the enforcement processes (which includes a warrant of execution) except with leave of the court or on terms imposed by the court. A court referred to in this instance is a Federal, Supreme or Family Court.

Police officers are not 'court officers' within the meaning of s. 440G: 'Duties of court officer in relation to property of company' of the *Corporations Act* (Cwlth).

Procedure (warrants of execution)

ORDER

Strict compliance with s. 172: 'Procedure on execution' of the *Justices Act* is required when a warrant of execution is executed.

All property seized must be the sole property of the person/company named in the warrant and be unencumbered. Officers may only execute a warrant of execution specifically directed to police officers.

POLICY

Section 172(a) of the *Justices Act* requires that the seizure of goods and chattels under a warrant of execution be by or under the direction of a police officer.

A list of all property seized should be recorded on a QPB32A: 'Field Property Receipt' or by an entry made in the officer's official police notebook (or other record). The person from whom the property was seized should be provided with a copy of that list and should then be invited to adopt the copy of the list retained by the executing police officer by signing that list. Officers should refer to s. 4.6.1: 'Initial responsibilities of reporting officer when taking possession of property' of this Manual.

Where it is confirmed that a company is under administration and a notice has been lodged with the Australian Securities and Investments Commission, officers should not execute or assist in the execution of warrants on that company. The issuing authority is to be advised that the company is under administration and where appropriate return the warrant to the issuing authority. Where the issuing authority issues further written directions to execute the warrant, the warrant is to be executed.

Storage of property

Once seized the property becomes the responsibility of the bailee, i.e. police officer. Where the property is stored by police the storage must comply with the provisions of Chapter 4: 'Property' of this Manual.

Responsibilities re public auction

The officer executing the warrant should refer to ss. 4.19: 'Public auction', 4.20: 'Sale by tender' and 4.21: 'Handling summary' of this Manual.

Inquiries concerning disposal of property, including costs of transport and storage, should be made prior to the execution of the warrant by the officer intending to execute the warrant. Officers should assess whether the sale of the property to be seized will recover less than the cost of transport, storage, auctioneers' fees and any other expenses. If it appears unlikely that sufficient monies will be recovered to cover the costs, officers should complete the appropriate certification on the rear of the warrant and return it to the issuing authority unexecuted.

Where the warrant results from a judgement debt, the officer intending to execute the warrant should not do so until the plaintiff has paid six hundred dollars into the police station's Collections Account to cover the costs of the process.

Other procedures

POLICY

Officers who execute or satisfy a warrant of execution for individuals are to:

- (i) if the warrant is executed, endorse the warrant as having been executed and complete and forward a report to the issuing authority;
- (ii) if the warrant is satisfied, issue a receipt and forward the warrant and the monies received to the issuing authority in accordance with the Financial Management Practice Manual and Regional, District or Station/Establishment Instructions and s. 4.6.1: 'Initial responsibilities of reporting officer when taking possession of property' of this Manual; and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter; or
- (iv) if the warrant is not executed or satisfied and inquiries indicate that the person named in the warrant is unable to be located or may be located in another police division, overseas, or interstate, assign the warrant to their officer in charge.

Officers who are required to deal with a warrant of execution issued pursuant to the provisions of the *Justices Act* are to comply with the provisions of s. 172: 'Procedure on Execution', of that Act.

Officers who execute or satisfy a warrant of execution for companies are to:

- (i) if the warrant is executed, endorse the warrant as having been executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act* and complete and forward a report to the issuing authority;
- (ii) if the warrant is satisfied, issue a receipt and forward the warrant and the monies received to the issuing authority in accordance with the Financial Management Practice Manual and Regional, District or Station/Establishment Instructions; or
- (iii) if the warrant is not executed or satisfied and inquiries indicate that the company is unable to be located or may be located in another police division, overseas, or interstate, forward a report and the warrant to the issuing authority.

13.18.25 Warrants of possession

POLICY

A warrant of possession is a warrant issued under s. 350: 'Issue of warrant of possession' of the *Residential Tenancies and Rooming Accommodation Act* which allows the lessor of rented premises to regain possession of those premises. These warrants are issued by a tribunal after an application has been made, other than by a tenant, for a termination order. Warrants of possession are paper warrants forwarded directly from the issuing authority to the local police station. These warrants are not recorded on QPRIME by the Police Information Centre (see paragraph 'Exceptions' in s. 13.18.3: 'Warrant procedures generally' of this chapter). The officer in charge of the receiving station is to ensure these warrants are recorded on QPRIME as 'Warrants of Possession [1695]'.

Warrants of possession specify a range of days on which the warrant may be executed, usually expressed in terms of a certain number of days from the date of issue. Execution may not be effected beyond the last day for execution.

Officers should carefully read any warrant of possession detailed to them for attention and take note of this and other conditions of execution.

The eviction of a person from their place of residence, even though they may be occupying the residence unlawfully, is always an emotive event and one which has the potential for attracting adverse criticism of the Service. For this reason, every effort must be made to persuade the tenants to vacate the premises voluntarily. Where this cooperation is not forthcoming it is important that the execution of the warrant takes place on the day and at the approximate time arranged. Where circumstances are such that it is not possible to execute the warrant on the arranged date, the tenants and the lessor or the lessor's agent should be informed of any change.

PROCEDURE

Officers required to execute a warrant of possession should, after carefully reading the warrant:

- (i) contact the registrar who issued the warrant and establish that an 'Order of Tribunal' notice has been given to the tenant or tenants as provided for by s. 351(2): 'Warrant of possession' of the *Residential Tenancies and Rooming Accommodation Act*;
- (ii) attend at the premises named in the warrant with a QP 0777: 'Notice to Tenants/Occupants' (available on QPS Forms Select);
- (iii) where the tenants are present officers should:
 - (a) advise them that a warrant of possession has been issued and attempt to gain their cooperation in voluntarily vacating the premises;
 - (b) complete in duplicate the 'Notice to Tenants/Occupants' including the time and date agreed to in cooperation with the tenants or if agreement cannot be reached, allowing reasonable time for the tenants to vacate that premises; and
 - (c) provide the tenants with a completed QP 0777: 'Notice to Tenants/Occupants' (available on QPS Forms Select);
- (iv) where the tenants cannot be contacted at the premises officers should complete the QP 0777: 'Notice to Tenants/Occupants' and place it at the premises in a conspicuous location. Officers should allow a reasonable time for the tenants to vacate the premises;
- (v) endorse the QP 0777: 'Notice to Tenants/Occupants' as to service and, where the notice was left at the premises, identify the place where it was left; and
- (vi) contact the person in whose favour the termination order was made (lessor or the lessor's agent) and advise that the warrant has been received, that it is to be executed at the time and date indicated to the tenants and that they need to attend at that time.

At the time and date indicated on the QP 0777: 'Notice to Tenants/Occupants' officers who are to execute the warrant of possession should:

- (i) ensure that a QP 0777: 'Notice to Tenants/Occupants' has been provided to the tenants or left at the premises;
- (ii) ascertain that the lessor or the lessor's agent is able to attend (where the lessor or the lessor's agent is unable to attend, the warrant should not be executed and where appropriate, further suitable arrangements should be made);
- (iii) ascertain that the lessor or the lessor's agent has made arrangements for the storage of all property at a location other than within the premises subject of the warrant (officers should not be involved in providing storage facilities for any removed property), provide the lessor with the free call telephone number for the Residential Tenancies Authority (see Service Manuals Contact Directory) and advise the lessor that advice may be obtained about the lessor's obligations under the *Residential Tenancies and Rooming Accommodation Act* from that organisation;
- (iv) record the following endorsement in their official police notebook:

'I [name of lessor or the lessor's agent] acknowledge that after the warrant of possession is executed, I will be obligated in respect to the storage and disposal of property found on the premises pursuant to the Residential Tenancies and Rooming Accommodation Act 2008';
- (v) request the lessor or the lessor's agent to sign the endorsement. Where the lessor or the lessor's agent is not prepared to sign the endorsement, the warrant of possession should not be executed but returned to the issuing authority together with a report, containing the reasons for the non-execution of the warrant, and a copy of the QP 0777: 'Notice to Tenants/Occupants';
- (vi) attend at the premises and execute the warrant. Where the tenants are present:
 - (a) explain to the tenants that unless they remove themselves and their property forthwith, reasonable force will be used to execute the warrant; and

(b) where the tenants begin to remove their property from the premises, allow them reasonable time to do so, and remain at the scene until the premises have been vacated; and

(vii) execute the warrant where the tenants:

- (a) are absent;
- (b) fail to take immediate action to remove themselves and their property from the premises;
- (c) remove themselves from the premises but refuse to remove their property; or
- (d) after commencing to remove themselves or their property from the premises discontinue doing so.

When executing the warrant of possession officers should:

- (i) enter the premises using reasonable help and force;
- (ii) remove the tenants from the premises (if required) using reasonable help and force;
- (iii) exercise any powers as provided for in the warrant;
- (iv) give possession of the premises to the lessor or the lessor's agent;
- (v) allow the lessor or the lessor's agent to remove all property belonging to the tenants from the premises;
- (vi) remain at the premises until all property has been removed by the lessor or the lessor's agent
- (vii) endorse the warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*, furnish a report as to the circumstances surrounding the execution of the warrant and forward the endorsed warrant, the copy of the QP 0777: 'Notice to Tenants/Occupants' and the report through the officer in charge to the issuing authority; and
- (viii) execute the warrant on QPRIME in accordance with the QPRIME User Guide. The QP 0777: 'Notice to Tenants/Occupants' can be added as an attachment to the relevant QPRIME Occurrence.

Whenever a warrant of possession is received at a station and detailed to an officer to execute, by virtue of the warrant, police should attend even in circumstances where the tenants have previously vacated the premises. Officers should then give possession of the premises to the lessor or the lessor's agent and endorse the warrant accordingly.

13.18.26 Arrest warrants

An arrest warrant is a warrant issued by a justice for the arrest of a person for an offence (see Chapter 14, Part 1, ss. 369 to 373: 'Arrest under warrant' of the *Police Powers and Responsibilities Act*). The warrant does not become active at this time, and is activated by the reporting officer after it has been signed by a justice of the peace.

If necessary, the warrant form or complaint may be printed out as many times as necessary prior to activation. This enables the reporting officer to make any changes prior to seeking authorisation by a justice of the peace.

PROCEDURE

An officer who intends to record and generate an arrest warrant should follow the procedure outlined in 'Record and Generate Arrest Warrant' of the QPRIME User Guide.

If an arrest warrant, is not executed within forty-eight hours of its issue, the officer obtaining the warrant should forward the original warrant to the Police Information Centre by following the procedure outlined in 'Forward Warrant to Offender Management' of the QPRIME User Guide.

Activating the warrant

POLICY

When the warrant has been signed by the justice the reporting officer should follow the procedure outlined in 'Update arrest warrant authorisation details' of the QPRIME User Guide.

ORDER

An officer is not to activate nor attempt to activate an arrest warrant unless that warrant has been signed by a justice.

Warrant form not activated

POLICY

Circumstances will arise when there is later no need to activate that warrant. This will include circumstances in which a justice refuses to sign the warrant, or when the person named in a warrant is located and arrested prior to activation.

When the need to activate an arrest warrant no longer exists the reporting officer is to:

- (i) follow the procedure outlined in 'Forward Warrant to Offender Management' of the QPRIME User Guide with a notation of the reason for non-activation of the warrant; and
- (ii) send a task to Offender Management, advising that the warrant is to be cancelled, providing reasons for cancellation.

PROCEDURE

Where a warrant entry has not been activated after a one month period commencing from the warrant entry date, the Manager, Offender Management may cancel the inactivated warrant entry on QPRIME. However, prior to cancellation, the Manager, Offender Management is to advise the reporting officer and the reporting officer's officer in charge that such action will be taken unless the warrant is activated within a forty-eight hour period.

Where a warrant entry has been cancelled by the Manager, Offender Management and the officer requires the warrant entry to exist, the officer is to recommence the warrant entry procedure in QPRIME.

Activated warrant

ORDER

If an arrest warrant is not executed within forty-eight hours of its activation, the warrant and Court Brief (QP9) are to be forwarded by the reporting officer to the Offender Management Centre by following the procedure outlined in 'Forward Warrant to Offender Management' of the QPRIME User Guide.

Where a request for the cancellation of or refusal to issue or re-issue an Australian Passport is sought for a person subject of the arrest warrant with the Department of Foreign Affairs and Trade, a copy of the requesting form is to also be attached to the warrant. See also s. 7.2.7: 'Australian Passports (requests for information, cancellation and refusals)', of the Management Support Manual.

POLICY

A brief of evidence should be completed and forwarded to the Manager, Offender Management, within one month of the date of activation, unless the warrant is sooner executed.

Officers who arrest a person by virtue of an arrest warrant are to charge that person in the normal manner and:

- (i) complete a bench charge sheet. The wording of the charge will be the wording taken from the warrant;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the paper warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act* as being executed or if the copy of the paper warrant has been forwarded to the Police Information Centre;
- (iv) attach the warrant to the bench charge sheet for production in court; and
- (v) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

PROCEDURE

When completing a Court Brief (QP9) in relation to an arrest warrant, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person; and
- (iii) any other relevant information.

13.18.27 Warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence

A warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence is issued pursuant to the *Penalties and Sentences Act* as a result of a person contravening a parole order. All warrants in the first instance to apprehend a person charged with an indictable offence or a simple offence authorise a police officer to arrest the person named therein and place the person before a court. Warrants in the first instance to apprehend a person charged with an indictable offence or a simple offence are forwarded to the Police Information Centre by Queensland Corrective Services and are entered on QPRIME. In addition a flag is entered against the person details in QPRIME.

POLICY

Officers who arrest a person by virtue of a warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence are to charge that person in the normal manner and:

- (i) complete a bench charge sheet. The wording of the charge will be the wording taken from the warrant;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*;
- (iv) attach the warrant to the bench charge sheet for production in court; and
- (v) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) warrants' of this chapter.

PROCEDURE

When completing a Court Brief (QP9) in relation to a warrant in the first instance to apprehend a person charged with an indictable offence or a simple offence, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person; and
- (iii) any other relevant information.

For execution of warrants in the first instance on patients of mental hospitals see s. 6.6.15: 'Execution of warrants on patients detained under the Mental Health Act' of this Manual.

13.18.28 Mental Health Act Warrants

Warrants under the *Mental Health Act* may be issued pursuant to ss. 250: 'Effect of decision to continue proceedings', 474: 'Punishment of contempt' or 513: 'Issue of warrant'.

A warrant may be issued under s. 250 of the *Mental Health Act* if a person does not appear before the court when proceedings against the person have been continued after a reference to the Attorney-General. A warrant under s. 250 of the *Mental Health Act* gives an officer the power to arrest a person and bring them before the court to be dealt with according to law.

A warrant may be issued under s. 474 of the *Mental Health Act* if a person is in contempt of the Mental Health Review Tribunal. A warrant under s. 474 of the *Mental Health Act* requires an officer to arrest a person and bring them before the court to be dealt with according to law.

A warrant issued under s. 513 of the *Mental Health Act* may be necessary to give effect to ss. 25: 'Taking person to authorised mental health service', 117: 'Noncompliance with treatment order under community category of involuntary treatment order', 119: 'Change of category of order by authorised doctor' and 508: 'Taking patient to authorised mental health service' of the *Mental Health Act*.

A warrant issued under the provisions of s. 513 of the *Mental Health Act* gives an officer the power to:

- (i) detain the patient;
- (ii) take the patient to an authorised mental health service;
- (iii) exercise the officer's powers under s. 21: 'General power to enter to arrest or detain someone or enforce warrant' of the *Police Powers and Responsibilities Act* to:
 - (a) enter and stay for a reasonable time on a place to detain the patient; and
 - (b) search the place to find the patient.

Officers may only exercise their powers under s. 21 of the *Police Powers and Responsibilities Act* when acting under a warrant issued under s. 513 of the *Mental Health Act* at the place nominated in the warrant as the place 'Where the patient is likely to be found'.

A warrant issued under the provisions of s. 513 of the *Mental Health Act* will specify the hours of the day during which entry may be made and will nominate the day, within seven days after the warrant's issue, on which the warrant ends.

The 'Authority to return patient to authorised mental health service' is not strictly a warrant but a notice that authority exists in respect of a particular patient. However, for the purposes of this section, the form 'Authority to return patient to authorised mental health service' is treated as a warrant.

PROCEDURE

A Mental Health Act warrant is forwarded to the Officer in Charge of the Police Information Centre, Officer in Charge of the station and Police Communications Centre of concern from the issuing authority. As soon as it is received at the Police Information Centre, it will be entered onto QPRIME with the 'Authority to Return', as well as the BOLO.

In circumstances where a Mental Health Act warrant is received after hours, the front counter of the Police Information Centre will enter a BOLO onto QPRIME, together with any relevant caution. The warrant team of the Police Information Centre will be responsible for entry of such information during core business hours.

When a 'Warrant for apprehension of patient' has been detailed to an officer by the officer in charge of a station, that officer is to:

- (i) contact a health practitioner to make arrangements to execute the warrant;
- (ii) assist the health practitioner by executing the warrant and using the officer's powers under the warrant;
- (iii) execute the warrant on QPRIME in accordance with the procedure outlined in 'Execute paper warrants' of the QPRIME User Guide; and
- (iv) endorse the warrant, complete a report and forward it direct to the issuing authority.

For further information see s. 6.6: 'Mentally ill persons' of this Manual.

Unexecuted Mental Health Act warrants

POLICY

When a *Mental Health Act* warrant that has been entered onto QPRIME is not executed because the time for executing it has expired, QPRIME expires the BOLO automatically and tasks warrant to the Police Information Centre.

When an unexecuted *Mental Health Act* warrant task is assigned to the station Organisational Unit Active Task List and the person named in the warrant may be located in another police division, the officer in charge should reassign the warrant task to the appropriate police division.

Where the time for executing the warrant has not expired and the person named in the warrant cannot be located the warrant shall remain in existence until the person is located.

13.18.29 Mesne warrants

Mesne warrants are issued by justices in cases where a defendant fails to answer a summons, under the *Justices Act*, for either a breach of duty, simple offence or indictable offence. Mesne warrants authorise a police officer to arrest the person named therein and place the person before a court. Mesne warrants are forwarded to the Police Information Centre where a flag is entered against the person details in QPRIME.

PROCEDURE

An officer who locates a person who is wanted by virtue of a Mesne warrant should:

- (i) arrest the person by virtue of the warrant and take the person to a watchhouse;
- (ii) endorse the copy of the paper warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*; and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter dealing with paper warrants.

POLICY

An officer who arrests a person by virtue of a Mesne warrant is to:

- (i) complete a bench charge sheet indicating that the person has been arrested by virtue of a Mesne warrant, including the date and place of issue of the Mesne warrant;
- (ii) complete a Court Brief (QP9);
- (iii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*; and
- (iv) attach the warrant to the Court Brief (QP9) for the prosecutor to tender to the court.

If the offender's first court appearance, after being arrested by virtue of the Mesne warrant, is in the court that issued the Mesne warrant, a bench charge sheet is not required to be prepared for the original substantive offence(s).

If the offender's first court appearance, after being arrested by virtue of the Mesne warrant, is in a court other than that which issued the Mesne warrant, the reporting officer is to ensure that a copy of the bench charge sheet for any original substantive offence is obtained for delivery to the court prior to the defendant's appearance. A copy of the original bench charge sheet for a substantive offence should be marked 'COPY'.

Copies should be available with the warrant and Court Brief (QP9) from the Police Information Centre, Offender Management Centre. Where no copy of a bench charge sheet for an original substantive offence is available, the arresting officer who executed the warrant is to ensure a new bench charge sheet is prepared. If the charge for the original substantive offence was created in QPRIME, the bench charge sheet can be printed from the QPRIME charge sequencing report.

In cases where station copies are used or a new bench charge sheet is prepared, officers are to ensure as far as practicable that the wording of the charge on the copy conforms to the wording on the warrant.

PROCEDURE

When completing a Court Brief (QP9) in relation to a Mesne warrant, the front of the Court Brief (QP9) should be completed in the normal manner. The narrative on the rear of the Court Brief (QP9) should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person;
- (iii) the circumstances surrounding the issue of the warrant, including details of the non-appearance by the defendant which led to the issue of the warrant; and
- (iv) any other relevant information.

13.18.30 Police Powers and Responsibilities Act fail to appear warrants

PROCEDURE

When a notice to appear has been served on a defendant to appear before a Magistrates Court and that person fails to appear, it is open to the court to issue a warrant under the provisions of s. 389: 'Court may order immediate arrest of person who fails to appear' of the *Police Powers and Responsibilities Act* (*Police Powers and Responsibilities Act* fail to appear warrant).

POLICY

An officer who locates a person who is wanted by virtue of a *Police Powers and Responsibilities Act* fail to appear warrant should:

- (i) arrest the person by virtue of the warrant and take the person to a watchhouse;
- (ii) endorse the copy of the paper warrant in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*;
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter dealing with paper warrants;
- (iv) complete a QP 0666: 'Notice of Execution of *Police Powers and Responsibilities Act* Fail to Appear Warrant' form (QP 0666) which is available on Forms Select; and
- (v) attach the QP 0666 to the endorsed warrant for the information of the prosecutor.

There is no requirement to complete a bench charge sheet or Court Brief (QP9) for the *Police Powers and Responsibilities Act* fail to appear warrant.

If the offender's first court appearance, after being arrested by virtue of the *Police Powers and Responsibilities Act* fail to appear warrant, is in the court that issued the *Police Powers and Responsibilities Act* fail to appear warrant, a bench charge sheet is not required to be prepared for the original substantive offence(s).

If the offender's first court appearance, after being arrested by virtue of the *Police Powers and Responsibilities Act* fail to appear warrant, is in a court other than that which issued the *Police Powers and Responsibilities Act* fail to appear warrant, the reporting officer is to ensure a copy of the bench charge sheet for any original substantive offence is obtained for delivery to the court prior to the defendant's appearance. A copy of the original bench charge sheet for a substantive offence should be marked 'COPY'.

Copies should be available with the warrant and Court Brief (QP9) from the Police Information Centre. Where no copy of a bench charge sheet for an original substantive offence is available, the arresting officer who executed the warrant is to ensure a new bench charge sheet is prepared. If the charge for the original substantive offence was created in QPRIME, the bench charge sheet can be printed from the QPRIME charge sequencing report.

In cases where station copies are used or a new bench charge sheet is prepared, officers are to ensure as far as practicable that the wording of the charge on the copy conforms to the wording on the warrant.

13.18.31 Arrest and imprisonment warrants

An arrest and imprisonment warrant is issued under the provisions of s. 119: 'Enforcement by imprisonment' of the *State Penalties Enforcement Act*. The warrant authorises a police officer to arrest and imprison the offender for the period stated in the warrant. The warrant stops having effect if the unpaid amount is paid before the offender is imprisoned. The period of imprisonment an offender must serve under the warrant is cumulative on any other period of imprisonment the offender must serve under any other warrant or an order of a court. An arrest and imprisonment warrant is issued as the result of:

- (i) a court imposed penalty; or
- (ii) non-compliance of a penalty imposed for the non-payment of an infringement notice.

A person who is arrested by virtue of an arrest and imprisonment warrant does not appear before a court and is transported directly to a watchhouse or correctional centre to serve the default period of imprisonment. Arrest and imprisonment warrants are only available as computer (electronic) warrants and are forwarded by the State Penalties Enforcement Registry (SPER) to the Police Information Centre where it is to be recorded and a flag is entered against the person details in QPRIME.

PROCEDURE

An officer who locates a person wanted by virtue of an arrest and imprisonment warrant should:

- (i) advise the person of the outstanding amount on the warrant, and that if the amount is not paid, the person is liable to arrest;
- (ii) afford the person a reasonable opportunity to pay the outstanding amount. A reasonable opportunity may mean considering all of the circumstances of the case. Care should be taken, when affording the person named in the warrant a reasonable opportunity to pay the outstanding amount, that satisfaction or execution of the warrant is not avoided;

- (iii) if the person named in the warrant tenders the outstanding amount, accept the money and issue an official receipt for the amount to that person;
- (iv) after the receipt is issued, follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter; and
- (v) when the outstanding amount is not reasonably forthcoming, arrest the person by virtue of the warrant and transport the person to the nearest watchhouse or correctional centre which will accept the prisoner.

In the case of a person taken to a watchhouse or correctional centre after arrest on an arrest and imprisonment warrant, there is no necessity to complete bench charge sheets or a Court Brief (QP9). On arrival at the watchhouse or correctional centre, the reporting officer should:

- (i) if deemed appropriate (see s. 10.4.15: 'Transfer of and taking charge of persons in custody' of this Manual), complete a QPS Prisoner Property Sheet and, where the prisoner is lodged at a:
 - (a) watchhouse – deliver the original and a copy of the form, if completed, to the watchhouse manager; or
 - (b) correctional centre – obtain a receipt for the prisoner and prisoner's property on the original of the form and deliver a copy of the form to the senior correctional officer. The signed original QPS Prisoner Property Sheet is to be retained at the arresting officer's station or establishment;
- (ii) endorse the written version of the computer (electronic) warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*; and
- (iii) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter.

POLICY

Officers who locate a person recorded as being wanted by virtue of an arrest and imprisonment warrant should take all reasonable steps to ensure that the warrant has not been previously satisfied or executed.

When a person named in the warrant maintains that payment of an arrest and imprisonment warrant has been made, that warrant should not be executed unless officers are satisfied that the fine upon which the warrant is based remains unpaid. In circumstances where it is not possible to determine whether the warrant has been satisfied, the warrant should not be executed.

For execution of warrants in the first instance on patients of mental hospitals see ss. 6.6.15: 'Execution of warrants on patients detained under the Mental Health Act' and 13.18.28: 'Mental Health Act warrants' of this Manual.

13.18.32 Dangerous Prisoners (Sexual Offenders) Act Warrants

Arrest warrants issued under s. 20: 'Summons or warrant for released prisoner suspected of contravening a supervision order' of the *Dangerous Prisoners (Sexual Offenders) Act*, authorise a police officer or corrective services officer to arrest the released prisoner named therein and bring the released prisoner before the Supreme Court (see ss. 2.12.6: 'Continuing detention and supervision orders' and 2.12.7: 'Electronic monitoring of Dangerous Prisoners (Sexual Offenders)' of this Manual). Arrest warrants issued under s. 20 of the *Dangerous Prisoners (Sexual Offenders) Act* may be forwarded to the Police Information Centre by the issuing authority or alternatively by Queensland Corrective Services.

POLICY

On receiving arrest warrants issued under the Act, the Manager, Police Information Centre, should comply with s. 13.18.5: 'Responsibilities of the Manager, Police Information Centre' of this chapter.

An officer who locates a released prisoner who is wanted by virtue of an arrest warrant under the Act should:

- (i) arrest the released prisoner by virtue of the warrant and take the person to a watchhouse;
- (ii) complete a bench charge sheet. The wording of the charge will be the wording taken from the warrant;
- (iii) endorse the copy of the paper warrant as being executed in accordance with s. 638: 'Record of execution of warrant or order' of the *Police Powers and Responsibilities Act*;
- (iv) attach the warrant to the bench charge sheet for production in court;
- (v) complete a Court Brief (QP9) and ensure that all documentation in accordance with s. 3.7.2: 'Documentation at first appearance' of this Manual is available for production in the Supreme Court;
- (vi) follow the procedures outlined in s. 13.18.4: 'Executing and satisfying computer (electronic) and paper warrants' of this chapter; and
- (vii) forward a copy of the Court Brief (QP9) and other documentation required to the relevant Office of the Director of Public Prosecutions (State).

PROCEDURE

When completing a Court Brief (QP9) in relation to an arrest warrant, the second page of the Court Brief (QP9) containing the narrative or facts in relation to the matter should outline:

- (i) the circumstances under which the defendant was located;
- (ii) information which proves the identity of the defendant, such as an admission by the person; and
- (iii) any other relevant information.

The remainder of the Court Brief (QP9) should be completed in the normal manner.

POLICY

An officer is not to arrest a person by virtue of an arrest warrant issued under s. 20 of the *Dangerous Prisoners (Sexual Offenders) Act* unless the officer has possession of the QPRIME warrant report, a certified faxed copy of the paper warrant or the actual paper warrant. The fact that a QPS computer system displays a record of a warrant is not sufficient to effect an arrest.

An officer acting as a watchhouse keeper is not to accept a person who has been arrested by virtue of an arrest warrant issued under s. 20 of the *Dangerous Prisoners (Sexual Offenders) Act* unless that person is accompanied by:

- (i) the QPRIME warrant report;
- (ii) a certified faxed copy of the paper warrant signed by appropriate person at the Police Information Centre; or
- (iii) the actual paper warrant.

13.18.33 Execution of warrant on corrective service prisoner

POLICY

A warrant does not generally provide police with an authority to remove a person from a correctional facility in order to execute the warrant. Warrants do not specify a time and place where the prisoner is to be produced and therefore do not fall within the definition of either an 'attendance authority' as defined in the *Corrective Services Act* or 'court order' as defined in the *Justices Act*.

Police are not to remove a person from a correctional facility to execute a warrant unless:

- (i) the information contained on a warrant specifies a time and place where the prisoner is to be produced; or
- (ii) there is an authority, signed by a court, authorising the removal of a person from a correctional facility.

Appearance via notice from a court

The attendance of a corrective facility prisoner in a court for the purpose of the execution of a warrant can be facilitated by a notice from a court to the Chief Executive (Corrective Services). The notice must contain details including the time, place and that the prisoner is required in the court for a particular matter e.g. for the execution of Mesne warrant (see s. 69: 'Transfer to court' of the *Corrective Services Act*).

Appearance via video-link

Alternatively, where facilities exist, warrants can be finalised for corrective facility prisoners via the use of video-link. Executing the warrant via video-link removes unnecessary transport of the prisoner and improves efficiency.

PROCEDURE

District officers are to ensure local standard operating procedures are developed, and that agreement is made between the relevant Magistrates Court, police prosecutions corps and corrective service facility, to best facilitate the execution of warrants on prisoners via video-link, for their area of responsibility.

13.18.34 Police provision of assistance to the Department of Justice and Attorney-General in the execution of civil enforcement warrants.

Chapters 19 and 20 of the Uniform Civil Procedure Rules (Chap. 19 Uniform Civil Procedure Rules) enable the courts (Supreme, District and Magistrates) to issue enforcement warrants directing an enforcement officer to:

- (i) Arrest and/or detain a person to have them brought before a court;
- (ii) Seize and sell any property of a person to satisfy the monetary order of the court; or
- (iii) Recover possession of a persons' house and land to satisfy a non-monetary order of the court.

Supreme and District courts enforcement officers are bailiffs', and officers of the court. Magistrate court enforcement officers are civilians employed by the Department of Justice and Attorney General (DJAG) and are not court officers.

The types of warrants the courts may issue under the Uniform Civil Procedure Rules are:

- (i) enforcement hearing warrant under rule 816;
- (ii) enforcement warrants for seizure and sale of property under r. 828;

- (iii) enforcement warrant for possession under r. 913;
- (iv) enforcement warrant for seizure and delivery of goods under r. 916;
- (v) enforcement warrant for seizure and detention of property under Part 6;
- (vi) warrant (for arrest pending hearing for contempt) under r. 929; and
- (vii) warrant for the defendant's arrest under r. 935.

POLICY

Under the provisions of r. 816 (3) (Uniform Civil Procedure Rules), an enforcement officer may request police assistance in the execution of the enforcement warrant, and the police officer is required to provide reasonable help unless impractical to do so. Additionally, under subsection (5) the enforcement officer may deliver the arrested person to the officer in charge of the watchhouse, who must receive and keep the arrested person until otherwise advised.

The same provisions apply to r. 929 (Uniform Civil Procedure Rules) regarding the request and provision of assistance by a police officer to the enforcement officer, in the execution of the warrant for the arrest of a person pending a hearing for contempt.

The enforcement officer may also request police assistance if at any time during the course of executing the warrant, the enforcement officer believes their safety may be at risk.

PROCEDURE

The Service and DJAG have held discussions supported by a Memorandum of Understanding (MOU), to formalise the process of police providing assistance to DJAG enforcement officers, and where possible, eliminate the need for un-planned assistance except in emergency situations.

To facilitate this process, upon the issue of an enforcement warrant by the courts, a central point of contact from DJAG (Team leader, Adjudications Team, Supreme and District Courts, Brisbane) will contact a central contact within the Service (State Duty Officer or Duty Officer, Brisbane Police Communication Centre (BPCC)) requesting a QPRIME check upon the person and address named in the warrant.

The Duty Officer, BPCC will advise DJAG to contact the relevant local officer in charge to make arrangements for police assistance where a relevant flag is identified against the following entities:

- (i) a person subject to the Enforcement Warrant;
- (ii) all persons linked to the address subject to the Enforcement Warrant;
- (iii) all persons linked to property subject to the Enforcement Warrant; or
- (iv) any known activities at an address subject to an Enforcement Warrant.

The Department of Justice and Attorney-General (DJAG) advise that the majority of warrants are executed by their enforcement officers on Saturdays to enable the person named in the warrant to be located at the address. The Department of Justice and Attorney-General will meet with the local officer in charge of the police division within which the person named in the warrant resides, at least 3 days prior to the execution of the warrant, for the purpose of arranging police attendance on the day and time negotiated for the warrants execution.

Police attendance is subject to operational priorities, and if police are unable to attend, or are called away for other urgent matters, DJAG will either continue with the execution of the warrant, or leave and return following further negotiations with the officer in charge.

If the relevant checks do not identify adverse QPRIME holdings, and DJAG execute the warrant without police assistance, they may require assistance in the following circumstances:

- (i) assaults or threats of violence upon the civil enforcement officer;
- (ii) finding illicit drugs at the premises during the course of executing the warrant; or
- (iii) finding unsecured firearms at the premises during the execution of the warrant.

The Department of Justice and Attorney-General has instructed their enforcement officers in such incidents, wherever possible, to remove the person from the address and secure the scene, pending police arrival to investigate the matter.

ORDER

Police shall provide reasonable assistance to enforcement officers upon request, unless impractical to do so.

13.19 Casinos, unlawful gaming and match-fixing

13.19.1 Casino Crime Units and the Office of Liquor and Gaming Regulation

Casino crime squads have been established at most Queensland casinos. The Service works in co-operation with the Office of Liquor and Gaming Regulation to police Queensland casinos. The Office of Liquor and Gaming Regulation maintains Inspectors at every Queensland casino to monitor compliance with gaming regulations.

Where an incident occurs at any casino, the Officer in Charge, of the relevant Casino Crime Unit is to be advised.

Unless an incident at a Casino is considered significant or requires the urgent attention of the relevant Casino Crime Unit, advising the relevant Casino Crime Unit via a QPRIME notification task is sufficient.

Covert operations at a casino are not subject to the policies, procedures and orders established in the following sections.

13.19.2 Casino access

POLICY

The relevant Casino Crime Unit should be the initial point of contact for all police requiring access to facilities, staff or information which may be available from any particular casino. Where no Casino Crime Unit is established, officers should refer to local instructions.

PROCEDURE

Officers who in the course of their duties require access to:

- (i) a casino;
- (ii) a member of casino staff on duty at a casino; or
- (iii) information held by a casino.

should, where practicable, direct their request to the officer in charge of the relevant Casino Crime Unit. Where no casino crime squad is established officers should refer to local instructions.

ORDER

Officers in charge of divisions in which a casino is located, and at which no Casino Crime Unit has been established, are to develop local instructions relating to access to the casino, its staff and information held by the casino. These local instructions are to be developed after consultation with an Inspector, Office of Liquor and Gaming Regulation.

13.19.3 Camera surveillance requests

Casino complexes are monitored by cameras operated by both the casino management and the Office of Liquor and Gaming Regulation. Officers have no absolute right to use this equipment but must rely on the cooperation of the camera system's owners.

PROCEDURE

Officers requiring the use of camera monitoring equipment installed within a casino should request access to such equipment through the officer in charge of the relevant casino crime squad where such a squad exists.

When no staff from the relevant Casino Crime Unit are on duty or where no Casino Crime Unit is established, officers should request assistance from the Senior Inspector of the Office of Liquor and Gaming Regulation at that casino to use camera monitoring equipment.

Camera monitoring equipment installed within a casino complex should be used by officers only under the supervision of members of the relevant Casino Crime Unit where such a squad exists, or Inspectors employed by the Office of Liquor and Gaming Regulation in that casino.

13.19.4 Exclusion of a specified person from a casino

Section 92 of the *Casino Control Act* provides authority for a casino operator to issue a written direction to prohibit a person from entering or remaining in a casino.

Section 94(1) of the *Casino Control Act* empowers the Commissioner of the Police Service to direct a casino operator to exclude a specified person from a casino. A casino operator to whom the Commissioner issues such a direction, which is not required to state any reason(s) for the exclusion, must comply with that direction. Section 96 of the *Casino Control Act* provides that a direction made under s. 94 remains in force until revoked by the Commissioner.

Circumstances under which it may be considered desirable to exclude a person from a casino, in accordance with s. 94(1) of the *Casino Control Act*, include:

- (i) suspicion that the person subject of the exclusion is involved in unlawful activities to finance a gambling habit at that casino;

(ii) suspicion that the person subject of the exclusion is laundering moneys at the casino which have been obtained through unlawful activities; or

(iii) requirements of covert operations.

POLICY

By Delegation No. D 20.1 of the Handbook of Delegations and Authorities, the Commissioner has delegated the powers, under ss. 94 and 96 of the *Casino Control Act*, to assistant commissioners, chief superintendents and superintendents.

PROCEDURE

Officers who consider that a person should be excluded from a casino should submit a report, through the normal chain of command, requesting that an appropriate officer within their region or command consider issuing a direction pursuant to s. 94(1) of the *Casino Control Act* with respect to that person. The report should contain:

(i) identification particulars of the person with respect of whom the exclusion is sought, including, where practicable, a photograph of that person;

(ii) the name of the casino from which the exclusion is sought;

(iii) the name of the casino operator to whom the direction is to be made;

(iv) the reason(s) for the exclusion of the specified person, including supporting documents;

(v) the period of time for which the exclusion is sought; and

(vi) any other relevant information.

An assistant commissioner or superintendent may issue a direction pursuant to s. 94(1), or revoke a direction pursuant to s. 96 of the *Casino Control Act* subject to the conditions contained in Delegation No. D 20.1 of the Handbook of Delegations and Authorities.

13.19.5 Office of Liquor and Gaming Regulation

The Office of Liquor and Gaming Regulation undertakes the regulation of liquor licensing, casinos, charitable gambling, machine gaming, interactive gambling, keno, lotteries and wagering.

The regulatory activities undertaken by the Office of Liquor and Gaming Regulation include licensing premises and persons, investigating complaints, conducting prosecutions and ensuring industry compliance with liquor and gambling legislation.

The Office of Liquor and Gaming Regulation also maintains a website on the internet, which contains useful guidelines and information concerning charitable and non-profit gambling and the conduct of competitions and raffles.

13.19.6 Unlawful gaming

The following sections of the Criminal Code contain provisions relating to unlawful gaming:

(i) s. 230A: 'Definitions for ch 23';

(ii) s. 232: 'Operating a place for unlawful games';

(iii) s. 233: 'Possession of thing used to play an unlawful game'; and

(iv) s. 234: 'Conducting or playing unlawful games'.

Other legislation relating to gaming is included in the:

(i) *Casino Control Act*;

(ii) *Charitable and Non-Profit Gaming Act*;

(iii) *Gaming Machine Act*;

(iv) *Interactive Gambling (Player Protection) Act*;

(v) *Keno Act*;

(vi) *Lotteries Act*; and

(vii) *Wagering Act*.

Investigation of unlawful games offences

Section 230A of the Criminal Code defines an unlawful game as a game of chance, or mixed chance and skill, that:

(i) is not authorised under an Act; and

(ii) is played by 1 or more persons (players) who gamble or bet on an outcome of the game for the purpose of winning money or another consideration; and

(iii) has at least 1 of the following characteristics:

- (a) the game is conducted or played in a public place;
- (b) the game is played in a place, or part of a place, the occupier of which allows, on payment of money or for other consideration, players to enter and use for playing the game;
- (c) a percentage of the amount gambled or bet is:
 - kept by 1 or more of the players, or another person; and
 - not included in the winnings of the players.

A key consideration of the definition is whether players have staked money or anything of value on the outcome of the game.

The two main types of gaming activities most likely to be encountered by officers include 'funny money' events and poker tournaments.

Funny money events

'Funny money' events are popular with community groups as a fund raising activity.

A common way that 'funny money' events are held is that persons pay an entrance fee and receive a specified amount of unredeemable token money which is used to play a variety of gambling games (e.g. roulette and blackjack etc.) that are usually associated with a Casino. At the end of the games, an auction of donated goods is held and bids may be made with whatever token money a player has left.

'Funny money' events conducted in this way are unlawful games because, inter alia, an entrance fee is paid and players risk a stake on the outcome of the game for the purpose of winning a consideration or benefit (i.e. token money for which players may purchase auction goods).

Poker tournaments

Generally, other than in a licensed casino, any form of poker played in a public place and in which gambling is involved is an unlawful game. However, the Office of Liquor and Gaming Regulation advise that free to enter, free to play poker tournaments are an exception. Free to enter, free to play poker tournaments in public places, where the venue pays the tournament operator a fee for each player who participates in the tournament are not considered unlawful games on the basis that the entrants do not pay an entrance fee and are not risking anything of value. Furthermore, a game of poker between friends at a private dwelling where the amount bet on each game is received by the player with the winning hand is not an unlawful game.

POLICY

Officers investigating complaints or reports of suspected unlawful gaming should seek advice from the Office of Liquor and Gaming Regulation to establish whether such activities are authorised under legislation administered by that office.

Where any doubt exists as to what constitutes an unlawful game, officers are to ensure appropriate advice is sought before taking any enforcement action. See s. 1.13: 'Operational Legal Advice' of this Manual.

Inquiries concerning charitable gambling events, poker tournaments and casino nights

On occasion, inquiries are received by the Service concerning the conduct of charitable gambling events, poker tournaments for cash or prizes, casino nights using non-legal tender or 'funny money' and the establishment of businesses for the hire of casino gaming equipment for these purposes.

POLICY

Members of the Service receiving such inquiries should advise the inquirer to contact the Office of Liquor and Gaming Regulation and/or a solicitor for legal advice.

When two-up is lawful

Within Queensland, casinos have had an exclusive right to conduct two-up games under the respective Casino Agreements. These are commercial agreements between the State and the relevant operators authorised by the *Casino Control Act* and the relevant Casino Agreement Acts.

Two-up is also lawful if conducted in accordance with s. 179: 'Lawful two-up' of the *Charitable and Non-Profit Gaming Act* which allows for not-for-profit conduct of two-up games at Returned and Services League (RSL) or Services Clubs, and by persons authorised by an RSL sub-branch (in a liquor licensed premises) on Anzac Day and other designated days as prescribed under a regulation. Two-up on these occasions must not be played by a minor.

Returned and Services League sub-branches may provide approval to other licensed premises to play Two-Up on Anzac Day by providing a 'Approval of Licensed Venue to play Two-Up on Anzac Day' form to the other venue on an annual basis.

POLICY

Officers investigating a complaint of unlawful two-up should consider whether:

(i) the game of two-up is lawful in the circumstances in accordance with s. 179: 'Lawful two-up' of the *Charitable and Non-Profit Gaming Act*, and

(ii) commencing a prosecution is in the public interest taking into account all the circumstances including where and when the two-up game is being conducted.

Where an investigation into unlawful two-up relates to licensed premises other than a Returned and Services League or Services Club, officers are to make inquiries with the Returned and Services League to determine whether the licensed premises had obtained appropriate approval.

13.19.7 Match-fixing

A number of offences within the Criminal Code address the risk of organised crime infiltrating sport including with relevance to betting on sport, by targeting elite and sub-elite athletes for participation in match-fixing.

These offence provisions are detailed within Chapter 43: 'Match-fixing' of the Criminal Code and relate to a 'sporting event' or the happening of a 'sporting contingency' (see. s. 443: 'Definitions for ch 43' of the Criminal Code).

Offences of the Criminal Code are:

(i) s. 443A: 'Engaging in match-fixing conduct';

(ii) s. 443B: 'Facilitating match-fixing conduct or match-fixing arrangement';

(iii) s. 443C: 'Offering or giving benefit, or causing or threatening detriment, to engage in match-fixing conduct or match-fixing arrangement';

(iv) s. 443D: 'Using or disclosing knowledge or match-fixing conduct or match-fixing arrangement for betting';

(v) s. 443E: 'Encouraging person not to disclose match-fixing conduct or match-fixing arrangement'; and

(vi) s. 443F: 'Using or disclosing inside knowledge for betting'.

POLICY

Where an officer is investigating a match-fixing offence whether a suspect successfully affected the outcome of the sporting event, or the happening of the sporting contingency, is not to impact a decision to commence a proceeding.

(See also s. 443G: 'Evidentiary provision' of the Criminal Code and s. 3.4.3: 'Factors to consider when deciding to prosecute' of this Manual)

13.20 Compensation awarded to police officers

13.20.1 Procedures for officers seeking criminal compensation

Section 34: 'Generally workers' compensation application finally dealt with before victim assistance application' of the *Victims of Crime Assistance Act*, outlines that a person subject to an act of violence may only apply for victim assistance if the person has made a worker's compensation application and it has finally been dealt with. This section also outlines those circumstances when the scheme manager may give a person approval to make an application for victim assistance without first making a workers' compensation application.

Section 35: 'Application for particular victim assistance can be made earlier' of the *Victims of Crime Assistance Act* also outlines when a person after making an application for workers' compensation under the *Workers' Compensation and Rehabilitation Act* and before the application is finally dealt with, may apply for victims assistance. The victim assistance able to be provided in this circumstance however is limited. The assistance provided is limited to:

(i) for a primary victim of an act of violence, expenses incurred:

(a) for the loss of or damage to clothing the victim was wearing when the act of violence happened (s. 39(f): 'Composition of assistance' of the *Victims of Crime Assistance Act*);

(b) or reasonably likely to be incurred if exceptional circumstances exist e.g. relocation expenses, (s. 39(g) of the *Victims of Crime Assistance Act*); and

(c) in applying for assistance under this Act up to \$500 for legal costs (s. 38(2) of the *Victims of Crime Assistance Act*);

(ii) for a witness secondary victim of a more serious act of violence, expenses incurred:

(a) or reasonably likely to be incurred if exceptional circumstances exist e.g. relocation expenses, (s. 45(1)(f): 'Composition of assistance – witness to more serious act of violence' of the *Victims of Crime Assistance Act*); and

(b) in applying for assistance under this Act up to \$500 for legal costs (s. 44(2): 'Amount of assistance' of the *Victims of Crime Assistance Act*); and

(iii) for a related victim of an act of violence, reasonable expenses incurred:

- (a) or reasonably likely to be incurred for counselling as a direct result of becoming aware of the primary victims death (s. 49(1)(a): 'Composition of assistance' of the *Victims of Crime Assistance Act*);
- (b) or reasonably likely to be incurred for medical expenses as a direct result of becoming aware of the primary victims death (s. 49(1)(b) of the *Victims of Crime Assistance Act*);
- (c) or reasonably likely to be incurred for incidental travel as a direct result of becoming aware of the primary victims death (s. 49(1)(c) of the *Victims of Crime Assistance Act*);
- (d) for report expenses for the application for assistance (s. 49(1)(d) of the *Victims of Crime Assistance Act*);
- (e) or reasonably likely to be incurred if exceptional circumstances exist e.g. relocation expenses, (s. 49(1)(g) of the *Victims of Crime Assistance Act*); and
- (f) in applying for assistance under this Act up to \$500 for legal costs (s. 48(3): 'Amount of assistance' of the *Victims of Crime Assistance Act*).

PROCEDURE

Officers seeking to make application for criminal compensation should:

- (i) where eligible, make application for workers' compensation under the *Workers' Compensation and Rehabilitation Act* in the first instance, see also 'Workers compensation' within Compensation for injuries of the Human Resources Policies;
- (ii) after making an application for workers' compensation and before the application is finally dealt with, make an application for limited victim assistance pursuant to s. 35 of the *Victims of Crime Assistance Act*; and
- (iii) after making an application for workers' compensation and after the application is finally dealt with, apply for victim assistance pursuant to Chapter 3, Part 9: 'Applying for victim assistance' of the *Victims of Crime Assistance Act*. See also s. 33: 'When worker's workers' compensation application is finally dealt with' of the *Victims of Crime Assistance Act*, for when a workers' compensation application has been decided.

Officers seeking criminal compensation should also see s. 5.6.25: 'Release of information under the Victims of Crime Assistance Act' of the Management Support Manual and ss. 2.12.1: 'Victims of Crime Assistance Act', 2.12.2: 'Victim Support Service (Office of the Director of Public Prosecutions (State))' and 2.12.3: 'Victims Assist Queensland' of this Manual for information on applications under the *Victims of Crime Assistance Act*.

13.20.2 Damages or penalties awarded to police officers

POLICY

Where a court awards a payment to members of this Service as compensation or restitution for an incident which occurred during the course of their duties, members may retain the payment. However, the receipt of such compensation or restitution is to be reported to the member's executive officer so that the compensation or restitution can be noted on the member's personal file (for record purposes only).

Where no restitution is ordered or compensation paid, the member may make application to the Service for an ex-gratia payment through the member's executive officer.

13.21 Judicial Review

The *Judicial Review Act* gives those persons aggrieved by a decision to which the Act applies an enforceable right to:

- (i) request the reasons for administrative decisions; and/or
- (ii) seek a Statutory Order of Review or an Order of Review in the Supreme Court regarding administrative decisions, to which the Act applies made by Government departments, local authorities, and most semi-government agencies and statutory authorities.

13.21.1 Statement of Reasons

A person who is aggrieved by a decision to which the Act applies is entitled to be provided with a 'statement of reasons' for that decision upon request except in the following circumstances:

- (i) in notifying a person in relation to a decision, the decision includes or is accompanied by a statement, giving the reason(s) for the decision; or
- (ii) the decision is one that is included in a class of decisions set out in Schedule 2 of the *Judicial Review Act* which include:
 - (a) decisions relating to the administration of criminal justice (as stated in s. 1 of Schedule 2); and

(b) Police Service decisions (as stated in s. 9 of Schedule 2).

13.21.2 Statutory Order of Review

An aggrieved person may apply to the court for a statutory order of review in relation to a decision to which the provisions of the *Judicial Review Act* apply.

An aggrieved person is entitled to make such an application despite the fact that the person:

- (i) has been provided with a 'statement of reasons' for that decision; or
- (ii) is not entitled to be provided with a 'statement of reasons' for that decision.

13.21.3 Time Limits

An application by an aggrieved person for a 'statement of reasons' must be in writing and made within twenty-eight days from when the decision was made. The *Judicial Review Act* requires that a decision maker is to provide reasons within twenty-eight days of receipt of an application for reasons for a decision.

The *Judicial Review Act* further provides that if a decision maker is of the opinion the requester is not entitled to be provided with a 'statement of reasons', the requester is to be notified of this opinion within twenty-eight days of receipt of the request.

Should a decision maker be of the opinion that a requester is not entitled to be provided with a 'statement of reasons' for the following reasons:

- (i) in the case where the requester had been given the decision, the terms of which were recorded in writing – the request was not made within twenty-eight days after the document was given; or
- (ii) in any other case – the request was not made within a reasonable time after the decision was given.

the decision maker may refuse to provide a 'statement of reasons'. Should the decision maker decide to refuse to provide a 'statement of reasons' in these circumstances, the decision maker must within fourteen days of receipt of the request, give written notice stating:

- (i) the statement will not be given to the requester; and
- (ii) the reasons why it will not be given.

POLICY

Decision makers are to fully document the relevant evidence and reasons for every decision that potentially is subject to review.

Any correspondence which asks about a decision or how a decision was made (or not made), should be treated as a request for a 'statement of reasons'. The applicant does not have to mention the *Judicial Review Act* or refer specifically to a 'statement of reasons'.

ORDER

A member of the Service who receives a written request for a 'statement of reasons' is to treat it as urgent. The request should be forwarded without delay to the decision maker who is to immediately notify that member's Officer in Charge.

Officers in Charge are to seek advice from their assistant commissioner/executive director as to whether the decision is one to which the *Judicial Review Act* applies and what action is to be taken.

Members of the Service served with documents relating to an 'Application for a Statutory Order for Review' or similar documents requiring appearance at the Supreme Court, should immediately refer those papers to their assistant commissioner/executive director.

The assistant commissioner/executive director who receives papers relating to an 'Application for a Statutory Order of Review' or requesting the appearance of a member of the Service at the Supreme Court, is to refer the matter to Legal Services, PSBA through the Deputy Commissioner (Strategy, Policy and Performance). This office will arrange the appropriate legal representation.

Copies (not originals) of any notices or statements received or given under judicial review are to be forwarded to the Director, Legal Services, PSBA. Advice on matters of judicial review must be obtained from Legal Services, PSBA through the Deputy Commissioner, (Strategy Policy and Performance).

13.22 Explosives

13.22.1 Issuing, suspension or cancellation of authorities

The *Explosives Act*, through the issuing of authorities, regulates the sale, possession, handling and use of explosives. An authority means a licence, permit or another authority issued under the *Explosives Act*.

The issuing of an authority pursuant to the *Explosives Act* is the responsibility of the Chief Inspector of Explosives, Explosives Inspectorate, Safety and Health Division, Mines and Energy Division, Department of Employment, Economic Development and Innovation (see Service Manuals Contact Directory).

Section 23: 'Grounds for suspension or cancellation' of the *Explosives Act* provides grounds for the suspension or cancellation of an authority.

POLICY

All inquiries regarding authorities should be directed to the Chief Inspector of Explosives.

Where an officer becomes aware that the holder of an authority is no longer an appropriate person to be authorised in relation to explosives, that officer should furnish a report through the officer in charge of their region or command to the Chief Inspector of Explosives (see s. 15: 'Inquiries about person's appropriateness' of the *Explosives Act*).

Notification of a prescribed event under the Explosives Act

ORDER

A member of the Service who holds an authority to access, use and/or possess explosives under the *Explosives Act* must, as soon as practicable after becoming aware that a prescribed event has happened, give the Chief Inspector of Explosives notice (see s. 40(2): 'Notification requirements for all authority holders' of the Explosives Regulation).

POLICY

A prescribed event, as defined in s. 40(1) of the Explosives Regulation, is any event where a member of the Service:

- (i) becomes aware of a change in circumstances that prevents the member complying with the Explosives Regulation or a condition of the authority;
- (ii) is convicted of an offence:
 - (a) relating to misuse of drugs;
 - (b) involving violence or threatened violence;
 - (c) involving the use, carriage, discharge or possession of a firearm; or
 - (d) relating to the use and handling of explosives; or
- (iii) is named as a respondent in a domestic violence order.

13.22.2 Incidents involving explosives

Schedule 2: 'Dictionary' of the *Explosives Act* defines terms for the purpose of the *Explosives Act*.

The Chief Inspector of Explosives has the power to investigate explosives incidents pursuant to s. 58: 'Investigation by chief inspector or authority holder' of the *Explosives Act*. Explosives Inspectors also have various powers under the *Explosives Act* to investigate explosives incidents and offences.

POLICY

Officers attending an incident involving explosives are to ensure:

- (i) the Explosives Inspectorate is advised as soon as practicable. When contact is made discussions should ensue as to what part the Explosives Inspectorate will take in any subsequent investigation relating to the explosives. Should the Explosives Inspectorate undertake the investigation relating to the explosives, officers are to refrain from particularly dealing with the explosives incident, unless the incident involves other matters such as deaths or injuries to persons, damage to property, or police-related issues;
- (ii) in cases where the Explosives Inspectorate is not undertaking the investigation, the explosives incident is investigated in accordance with the provisions of Chapter 2: 'Investigative Process' of this Manual; and
- (iii) at the conclusion of the investigation, a report is furnished through the officer in charge of the region or command, who will forward it to the Chief Inspector of Explosives. The report is to contain the circumstances surrounding the accident, including:
 - (a) the person(s) involved;
 - (b) damage or injuries caused;
 - (c) type and quantity of explosive involved;
 - (d) type of detonator or initiating device;
 - (e) length, etc. of fuse; and
 - (f) source and approximate date of supply of the explosive.

13.22.3 Entry to explosives factories and magazines

Section 39: 'Offences relating to entry of factories' of the *Explosives Act* creates an offence of entering an explosives factory while in physical possession of a firearm. Similarly, s. 47: 'Offences relating to entry of magazines' of the *Explosives Act* creates an offence relating to entering a magazine while in physical possession of a firearm. The provisions of each section exempt police officers when entering explosives factories or magazines for performing official duties.

13.22.4 Assistance to explosives inspectors

Assistance to Explosives Inspectors should be provided in accordance with s. 13.3.2: 'Helping public officials exercise powers under various Acts' of this chapter.

13.22.5 Proceeding for an offence

POLICY

Officers may commence a proceeding for an offence against the *Explosives Act* under s. 118: 'Proceeding for offence' of the *Explosives Act* or s. 799: 'Provisions restricting starting of proceeding' of the *Police Powers and Responsibilities Act*.

PROCEDURE

Officers who seek to commence proceedings in accordance with s. 118 of the *Explosives Act*, are to complete a 'Request for Authority to Prosecute' form, available from the Mining and Safety Division, Department of Natural Resources and Mines. Officers are to email or fax the completed request to details listed on the form. A representative of the Explosive Inspectorate will contact the investigating officer once the request has been processed.

Investigating officers are to ensure a copy of the emailed or facsimile 'Request for Authority to Prosecute' form, associated facsimile transmission reports and any subsequent replies are attached to the prosecutions copy of the Court Brief (QP9).

ORDER

Proceedings may be commenced under s. 799 of the *Police Powers and Responsibilities Act* however, as soon as reasonably practicable after starting the proceeding, the officer must inform the Chief Inspector of Explosives at the Explosives Inspectorate Office in their area, of the starting of the proceeding (see Service Manuals Contact Directory).

13.22.6 Handling explosives

POLICY

Officers in the performance of their duty are exempt from Part 4: 'Handling explosives', divisions 2, 7 and 8 of the *Explosives Act* relating to the possession, transportation and use of explosives (see s. 8: 'Exempt government entities' of the Explosives Regulation). However, before handling explosives, officers are to seek advice and, if required, practical assistance from:

- (i) the Service's Explosive Ordnance Response Team (see s. 2.19.5: 'Explosives Ordnance Response Team' of this Manual); or
- (ii) the Chief Inspector of Explosives, Explosives Inspectorate, Safety and Health Division, Department of Natural Resources and Mines (see Service Manuals Contact Directory).

For military ordnance, requests for assistance from the Senior Ammunition Technical Officer (SATO) of the Australian Army are to be made through the local police communications centre in accordance with local instructions.

Members are also to be mindful of the storage issues associated with explosives. Members are not exempt from the provisions of the *Explosives Act* concerning the storage of explosives (see Division 6: 'Storing explosives' of the Act). Consequently, when an explosive has been seized or otherwise comes into the possession of a member in the course of performing the member's functions, they are to:

- (i) contact the Chief Inspector of Explosives, Explosives Inspectorate for advice concerning the appropriate storage of the explosives; and
- (ii) comply with the provisions of s. 4.14.2: 'Dangerous/noxious things' of this Manual.

Where the explosive is small arms ammunition, it is exempt from s. 44: 'Authority needed to store explosives' of the *Explosives Act* by virtue of s. 82: 'Explosives and government entities exempt from s. 44 of Act' and Schedule 4: 'Explosives exempt from section 44 of Act' of the Explosives Regulation. Small arms ammunition may be temporarily stored at a property point in accordance with Part 8, Division 2: 'Requirements for storing sch 4 explosives' of the Explosives Regulation. The member receiving the ammunition at the property point is to:

- (i) consider contacting the Chief Inspector of Explosives, Explosives Inspectorate for advice concerning the appropriate storage of the ammunition; and
- (ii) comply with s. 4.14.1: 'Weapons, weapon related things and ammunition' of this Manual.

Disposal of commercial explosives

Members of the public, who have lawful possession of commercial explosives, have on occasion attempted to dispose of them by surrendering the explosives to members of the Service, instead of disposing the explosives in accordance with the conditions of the relevant authority to possess explosives issued under the *Explosives Act*.

The disposal of commercial explosives is not a function of the Service and as such may not fall within the ambit of 'carrying out official functions' nor could it be described as being in the performance of an officer's duty. Consequently, if explosives come into an officer's possession in such circumstances, any subsequent possession, transportation and use of explosives by the officer would not be covered by the exemption provided by s. 8: 'Exempt government entities' of the Explosives Regulation and may render the officer liable to prosecution for offences under the *Explosives Act*.

POLICY

Officers are not to take possession of commercial explosives from persons in lawful possession of such explosives for the purpose of disposal. Officers are to refer such persons to the Explosives Inspectorate, Department of Natural Resources and Mines for advice as to how the explosives should be disposed.

13.23 Move-on power

13.23.1 Directions to move on

The term '**move on direction**' means a direction given under the provisions of s. 48: 'Direction may be given to person' of the *Police Powers and Responsibilities Act*. A move on direction is any direction which is reasonable in the circumstances but which does not interfere with a person's right of peaceful assembly, unless such interference is reasonably necessary in the interests of:

- (i) public safety;
- (ii) public order; or
- (iii) the protection of the rights and freedoms of other persons (see s. 48 of the *Police Powers and Responsibilities Act*).

The terms of a move on direction may include, but are not limited to, requiring a person to:

- (i) leave the regulated place and not return or be within the regulated place within a stated reasonable time, of not more than twenty-four hours;
- (ii) leave a stated part of the regulated place and not return or be within the stated part of the regulated place within a stated reasonable time, of not more than twenty-four hours; and
- (iii) move from a particular location at or near the regulated place for a stated reasonable distance, in a stated direction and not return or be within the stated distance from the place within a stated reasonable time, of not more than twenty-four hours.

13.23.2 When do move on powers apply

Officers who reasonably suspect that a person's behaviour or presence at or near a regulated place is or has been:

- (i) causing anxiety to a person entering, at or leaving the place, reasonably arising in all the circumstances;
- (ii) interfering with trade or business at the place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place. However, this applies to premises used for trade or business only if the occupier of the premises complains about the person's behaviour; or
- (iii) disrupting the peaceable and orderly conduct of any event, entertainment or gathering at the place;

may give that person a move on direction (see s. 46: 'When power applies to behaviour'; s. 47: 'When power applies to a person's presence' and s. 48 of the *Police Powers and Responsibilities Act*). However, if the regulated place is a public place, a move on direction can be given to the person, only if the person's behaviour or presence has or had the effect mentioned, in the part of the public place at or near where the person then is (see ss. 46(2) and 47(2) of the *Police Powers and Responsibilities Act*).

A move on direction may also be given where an officer reasonably suspects, because of the person's behaviour, a person is soliciting for prostitution in a public place. For this purpose a public place does not include any area in a licensed brothel that cannot be viewed from outside the brothel (see s. 46(5) and Schedule 6: 'Dictionary' of the *Police Powers and Responsibilities Act*).

Officers may also give a person a move on direction if they reasonably suspect that a person's behaviour at or near a regulated place is or has been disorderly, indecent, offensive or threatening to someone entering, at or leaving the place (see s. 46 of the *Police Powers and Responsibilities Act*). However, if the regulated place is a public place, a move on

direction can only be given if the person's behaviour has or had the effect mentioned, in the part of the public place at or near where the person is.

13.23.3 Giving a move on direction

POLICY

Because the right of a person to move about peacefully in public places is carefully guarded by the community generally, a decision to use a power under the *Police Powers and Responsibilities Act* interfering with a person's right to free movement, should be able to withstand public scrutiny.

Officers should ascertain the following before deciding to give a move on direction to a person:

- (i) whether informal means of directing a person to move on would be a more appropriate method in de-escalating the situation. For example, asking the person to leave the area.
- (ii) any reason the person offers for being in or near the place;
- (iii) the nature of any complaint made about the person;
- (iv) the nature of any anxiety the person is allegedly causing to someone else and whether the anxiety has any factual basis; and
- (v) the effect of the person's presence or behaviour on anyone else in or near the place.

An officer who gives a person or group of persons a move on direction is to, as soon as reasonably practicable:

- (i) request the name and address of any person to whom a direction is given. It should be noted however that the giving of a move on direction is not in itself a prescribed circumstance for which a police officer may require a person to state their name and address (see s. 40: 'Person may be required to state name and address' and s. 41: 'Prescribed circumstances for requiring name and address' of the *Police Powers and Responsibilities Act*);
- (ii) state the officer's name, rank and station or establishment to any person who is to be given a move on direction (see s. 637: 'Supplying police officer's details' of the *Police Powers and Responsibilities Act*);
- (iii) if not wearing uniform, to inform the person to be given a move on direction that the officer is a police officer and produce for that person's inspection the officer's identity card (see s. 637 of the *Police Powers and Responsibilities Act*); and
- (iv) tell the person or group of persons the reasons for giving the direction (see s. 48(4) of the *Police Powers and Responsibilities Act*).

PROCEDURE

Officers should give a direction substantially in the following form:

I am [name, rank] of [name of police station/establishment].

I direct you [indicate person or group or name of person if known] to immediately [leave/move (distance) from place/location] and you are not to [return/be within (distance) of place/location] for a period of [not longer than 24 hours].

If you fail to comply with this direction without a reasonable excuse, you will be committing an offence for which you may be arrested.

The reason I am giving this direction is [state reason as outlined in s. 46(1) or 47(1) of the Act].

Officers who give a person or group of persons a move on direction should record in their official police notebook details of the:

- (i) time and date the direction was given;
- (ii) location of the person or group when the direction was given;
- (iii) name and address, if known, of the person or persons given the direction or a description of the person given the direction, including age, sex and ethnic background;
- (iv) terms of the direction given; and
- (v) ensure an occurrence is entered on QPRIME as soon as reasonably practicable.

ORDER

Officers are not to give a move on direction to a person or group of persons whose behaviour or presence is interfering with trade or business at a place by unnecessarily obstructing, hindering or impeding someone entering, at or leaving the place unless the occupier of the place complains about the presence or behaviour of the person or group (see ss. 46 and 47 of the *Police Powers and Responsibilities Act*).

Officers who give a person or group of persons a move on direction are to ensure that an occurrence is entered on QPRIME as soon as is reasonably practicable.

Officers are not to give a move on direction to any person involved in an authorised public assembly (see s. 45: 'Part does not apply to authorised public assemblies' of the *Police Powers and Responsibilities Act*).

13.23.4 Failure to comply with move on directions

ORDER

Before taking any enforcement action for failing to comply with an oral direction, an officer is to, if practicable, warn a person who fails to comply with a move on direction that it is an offence to fail to comply with the direction unless the person has a reasonable excuse and that the person may be arrested for the offence. The officer must give the person a further reasonable opportunity to comply with the direction (see s. 633: 'Safeguards for oral directions or requirements' of the *Police Powers and Responsibilities Act*).

PROCEDURE

Prior to taking any enforcement action against a person who is reasonably suspected of having contravened a move on direction, officers should:

- (i) ascertain that the person is a person to whom a move on direction was given;
- (ii) determine whether the actions of the person do contravene the terms of the move on direction;
- (iii) establish whether the person has a reasonable excuse for failing to comply with the move on direction;
- (iv) warn the person that it is an offence to fail to comply with a move on direction and that the person may be arrested for the offence; and
- (v) give the person a reasonable opportunity to comply with the direction.

13.23.5 Inspection of the Register of directions given

POLICY

The Policelink entered occurrence generated in relation to a move on direction is to be considered as an entry in the register of directions given.

ORDER

Officers who are requested by a person to whom the relevant information relates to provide information from the register of directions given are to supply a print out of the relevant occurrence entry in QPRIME as soon as reasonably practicable to the person (see s. 681: 'Persons to be given copy of information in register' of the *Police Powers and Responsibilities Act*).

PROCEDURE

Officers who are requested to supply information in respect of an entry in the register of directions given which does not identify any persons to whom a direction was given by name are to satisfy themselves that the person making the request is a person to whom the information relates. Information should not be given to a person unless an officer believes that the person requesting the information is entitled to be given such information in accordance with the provisions of s. 681 of the *Police Powers and Responsibilities Act*.

Officers who provide information from the register of directions given or who refuse to provide information from the register should ensure that an appropriate entry is made on the relevant station or establishment job recording system.

13.24 Directions in state buildings

Chapter 19, Part 1, ss. 549 to 555: 'Directions in state buildings' of the *Police Powers and Responsibilities Act* provides police officers with powers relating to entrants to state buildings (as defined in s. 4 of the *State Buildings Protective Security Act*). These include:

- (i) a requirement of an entrant to state the entrant's reason for being in, or about to enter, the building;
- (ii) asking an entrant to:
 - (a) walk through a walk-through detect and/or pass the entrants belongings through an X-ray machine; and/or
 - (b) allow the officer to pass a hand held scanner in close proximity to the entrant or the entrant's belongings; and/or
 - (c) allow the officer to inspect the entrant's belongings; and/or
 - (d) remove one or more outer garments worn by the entrant as specified by the officer and allow the officer to inspect the garments; and/or
 - (e) remove all articles from the entrant's clothing and allow the officer to inspect them; and/or

- (f) open an article for inspection and allow the officer to inspect it; and/or
 - (g) open a vehicle or a part of it for inspection and allow the officer to inspect it; and/or
 - (h) remove an article from the vehicle as specified by the officer and allow the officer to inspect it;
- (iii) directing an entrant to leave a state building immediately, and take the entrant's belongings out of the building, if the entrant fails to:
- (a) state the person's reasons for being in or about to enter the building; or
 - (b) allow an officer to exercise a power under ss. 550 or 551 of the *Police Powers and Responsibilities Act*.
- (iv) seizing a prescribed thing (i.e. an explosive substance, a firearm, a noxious or offensive substance, or an offensive weapon) found in the possession of a person in a state building, unless the person is lawfully in possession of it in the course of the person's trade, business or calling; or
- (v) unless the person is arrested for a contravention of s. 791 (contravene direction of police officer), removing from or preventing entry of the entrant to a state building, if the entrant fails to comply with a request made or direction given under ss. 549 to 553 of the *Police Powers and Responsibilities Act* or fails to satisfy a police officer that the entrant has a good and lawful reason to be in a particular state building.

ORDER

Officers considering it reasonably necessary to make a request as outlined in paragraphs (ii)(c) to (h) above, are to tell the entrant the reasons for making the request.

A garment worn by an entrant is only to be touched by a police officer of the same sex as the entrant.

POLICY

Officers intending to exercise any power under Chapter 19, Part 1, ss. 549 to 555: 'Directions in state buildings' of the *Police Powers and Responsibilities Act* should, where practicable, advise a commissioned officer prior to exercising the power.

Where practicable, officers should advise any State Government Protective Security officers at the relevant state building of their intention to use any of the powers under Chapter 19, Part 1, ss. 549 to 555: 'Directions in state buildings' of the *Police Powers and Responsibilities Act*.

13.25 Environmental (State Parks and Wildlife) offences

Issues concerning State parks and wildlife fall within the responsibility of the Department of National Parks, Recreation, Sport and Racing, the Department of Environment and Heritage Protection or the Department of Agriculture, Fisheries and Forestry.

See also s. 13.7: 'Land environment' of this chapter.

13.25.1 Appointment of conservation officers, inspectors and authorised officers

In accordance with s. 127: 'Appointment of conservation officers' of the *Nature Conservation Act*, the Minister responsible for the appropriate department may appoint police officers as conservation officers.

In accordance with s. 143: 'Appointment and qualifications' of the *Recreation Areas Management Act*, the chief executive may appoint suitably qualified police officers as authorised officers under the Act.

In accordance with s. 52: 'Appointment and qualifications' of the *Marine Parks Act*, the chief executive may appoint police officers as authorised officers under the Act.

Despite the authorising laws, s. 13: 'Appointment of police officers as public officials for other Acts' of the *Police Powers and Responsibilities Act*, police officers are only to be appointed as public officials under the authorising law with the Commissioner's written approval to the proposed appointment.

13.25.2 Investigation and prosecution of offences relating to State parks and wildlife issues

Investigation of offences relating to State parks and wildlife issues are generally conducted by authorised officers attached to the relevant department.

POLICY

Authorised police officers may undertake investigations relating to parks and wildlife issues utilising powers under the *Police Powers and Responsibilities Act*.

Pursuant to s. 164: 'Indictable and summary offences' of the *Nature Conservation Act*, offences against that Act may be either indictable or summary.

Proceedings under the:

- (i) *Nature Conservation Act*,
- (ii) *Marine Parks Act*, and
- (iii) *Marine Parks Regulation*,

should be commenced in accordance with s. 42: 'Commencement of proceedings' of the *Justices Act*.

Under s. 200: 'Summary proceedings for offences' of the *Recreation Areas Management Act* authorised officers, or any other authorised person, may commence a prosecution. Therefore police officers who are authorised officers under the *Recreation Areas Management Act* may commence a prosecution under this Act.

However, in appropriate circumstances police officers, who are not authorised officers under the *Recreation Areas Management Act*, may commence a prosecution without prior authorisation. In any such case the police officer commencing the prosecution is to inform the chief executive of the relevant department, of the starting of the proceedings as soon as reasonably practicable after starting the proceedings (see s. 799: 'Provisions restricting starting of proceedings' of the *Police Powers and Responsibilities Act*). Notification can be made by contacting a representative of the relevant department.

A time limitation for starting a summary proceeding applies under:

- (i) s. 167: 'Limitation on time for starting summary proceedings' of the *Nature Conservation Act*;
- (ii) s. 133: 'Limitation on time for starting summary proceedings' of the *Marine Parks Act*; and
- (iii) s. 200(2): 'Summary proceedings for offences' of the *Recreation Areas Management Act*.

Wildlife seizures

Members are generally not expected to physically handle wildlife. The handling and care of wildlife is the responsibility of the Queensland Parks and Wildlife Service and where possible members should contact the nearest Queensland Parks and Wildlife Service office for assistance.

POLICY

When officers take possession of wildlife, the wildlife should be delivered to the nearest Queensland Parks and Wildlife Service officer at the first available opportunity. The responsibility for the delivery of that wildlife rests with the officer taking possession of such wildlife.

When wildlife has to be retained until delivery to a wildlife officer of the Queensland Parks and Wildlife Service, the officer seizing the wildlife is responsible for its safe custody and welfare.

Wildlife should not be released into the wild without first consulting with a Queensland Parks and Wildlife Service officer.

PROCEDURE

When officers deliver wildlife to the Queensland Parks and Wildlife Service, they should advise the Queensland Parks and Wildlife Service officer of any retention requirements.

See also Chapter 4: 'Property' of this Manual.

Dealing with prohibited animals

The keeping of most exotic animals as pets is prohibited in Queensland under the *Land Protection (Pest and Stock Route Management) Act*. Registered zoos and circuses can keep certain exotic species for exhibition purposes, but only under a permit and with strict conditions. A person is also required to hold a permit to keep most Australian native animals. For information regarding permits or assistance with the identification and appropriate management of exotic animals, contact the local Biosecurity Officer or local government pest management officer who is authorised under the *Land Protection (Pest and Stock Route Management) Act*.

For inquiries regarding native animals, contact the Department of Environment and Heritage (see Service Manuals Contact Directory).

13.25.3 Reporting wildlife offences

POLICY

Members receiving information regarding wildlife offences are to provide the information to the Queensland Parks and Wildlife Service.

Generally, information regarding offences relating to cruelty to or the killing of wildlife, or the illegal collection of native plants should be investigated by members of the Queensland Parks and Wildlife Service and not members of the Service, unless exceptional circumstances exist.

Queensland Parks and Wildlife Service to be advised

POLICY

Officers who receive information relating to cruelty to or the killing of wildlife, or the illegal collection of native plants, are to pass this information to their nearest office of the Queensland Parks and Wildlife Service. Members are to advise

members of the public that they may also report illegal activities relating to wildlife to the Queensland Parks and Wildlife Service.

Attacks by wildlife

POLICY

Any complaint in relation to attacks by protected wildlife should be directed to Queensland Parks and Wildlife Service officers.

PROCEDURE

Members should:

- (i) record particulars to identify the complainant and the nature of the complaint; and
- (ii) refer such a complaint to a Queensland Parks and Wildlife Service officer at the first available opportunity.

After hours contact numbers are available from the Duty Officer, Police Communications Centre, Brisbane.

13.25.4 Authority to issue infringement notices

Issuing infringement notices is restricted to offences outlined in Schedule 2: 'Environmental legislation' of the State Penalties Enforcement Regulation.

Issuing infringement notices is restricted to officers who have been appropriately authorised. In the case of the:

(i) *Marine Parks Act* and;

- (a) Marine Parks (Great Sandy) Zoning Plan;
- (b) Marine Parks (Moreton Bay) Zoning Plan; and
- (c) Marine Parks Regulation,

officers may be appointed, under s. 52: 'Appointment and qualifications' of the *Marine Parks Act*;

(ii) *Nature Conservation Act* and;

- (a) Nature Conservation (Administration) Regulation;
- (b) Nature Conservation (Koala) Conservation Plan;
- (c) Nature Conservation (Macropod) Conservation Plan;
- (d) Nature Conservation (Protected Areas Management) Regulation;
- (e) Nature Conservation (Protected Plants) Conservation Plan; and
- (f) Nature Conservation (Wildlife Management) Regulation,

officers must be specifically named in the relevant appointment, see s. 127: 'Appointment of conservation officers' of the *Nature Conservation Act*; and

(iii) *Recreation Areas Management Act* and Recreational Areas Management Regulation, officers must be specifically appointed by the chief executive in accordance with s. 143; 'Appointment and qualifications' of the *Recreation Areas Management Act*.

(See also Delegations No. D 24.5 and D 24.6 of the Handbook of Delegations and Authorities).

Part 3, ss. 13-32: 'Infringement Notices' of the *Police Powers and Responsibilities Act*, outlines requirements relating to issuing infringement notices under the above legislation.

13.25.5 Issuing of infringement notices

ORDER

Only appropriately authorised officers may issue infringement notices listed in Schedule 2: 'Environmental legislation' of the State Penalties Enforcement Regulation.

Infringement notice management

In relation to infringement notices issued pursuant to Schedule 2: 'Environmental legislation' of the State Penalties Enforcement Regulation, the Department of Environment and Heritage Protection is the data collection agency and payment receipt authority for infringement notices up to the point when the notices are forwarded to the State Penalties Enforcement Registry (SPER).

The Registrar, SPER, is responsible for instigating processes, including enforcement orders and arrest and imprisonment warrants, for non-payment of fines and associated costs, and will control any fine-option order and/or payment arrangements made available to offenders.

PROCEDURE

The Department of Environment and Heritage Protection supplies infringement notice books to stations and establishments. Requests for infringement notice books are to be made direct to Enforcement Services, Department of Environment and Heritage Protection (see Service Manuals Contact Directory).

Inquiries with regard to the issue of infringement notices should be directed to Enforcement Services, Department of Environment and Heritage Protection in the first instance.

When an infringement notice should not be issued

POLICY

No more than three infringement notices are to be issued to an offender at any one time. If more than three offences are detected for which an infringement notice can be issued, or a number of offences are detected and not all may be dealt with by infringement notices, officers should commence proceedings for all offences detected by way of notice to appear or, if appropriate, by arrest.

Infringement notices are not to be issued where:

- (i) alternative action, as outlined above, is necessary to prevent the continuation or repetition of an offence or the commission of another offence;
- (ii) another lawful authority (e.g. the Department of Environment and Heritage Protection) has issued an infringement notice for the same offence at the same location within the preceding twenty-four hours; or
- (iii) more than three offences arising out of the same set of circumstances have been detected.

If unusual circumstances exist officers should furnish a comprehensive report through their officer in charge to the representative for the relevant department, for all offences detected.

Confirmation of identification

POLICY

When issuing an infringement notice, officers should ensure that the name and address of the alleged offender are confirmed by some means of identification before commencing the process. Appropriate notes of conversation and identification should be made on the rear of the original (prosecutions) copy of the relevant infringement notice. Also see heading 'Evidentiary notes required for particular offences' of this subsection.

Officers making inquiries pursuant to the *Police Powers and Responsibilities Act* may utilise powers contained in Chapter 2, Part 4, Division 1: 'Powers relating to name and address', ss. 40-41 of that Act.

Infringement notices not to be issued to children

ORDER

An infringement notice is not to be issued where the alleged offence has been committed by a child.

POLICY

If the offence is of a comparatively minor nature an authorised officer should exercise discretion and may issue a caution to the person concerned. The provisions of s. 5.3: 'Cautioning of children' of this Manual apply where a child is to be cautioned in lieu of issuing an infringement notice.

If the offence is more serious, consideration should be given to commencing proceedings by issuing a notice to appear to the child.

Distribution of infringement notices

PROCEDURE

Distribution of infringement notices is as follows:

- (i) white original (prosecution) copy to be filed at the issuing officer's station/establishment;
- (ii) pink duplicate (PIN team) copy to be forwarded by the relevant officer in charge to the Enforcement Services, Department of Environment and Heritage Protection (see Service Manuals Contact Directory), within two days of issue;
- (iii) green triplicate (office) copy to be retained in the infringement notice book; and
- (iv) buff quadruplicate copy to be given to offender.

ORDER

The pink duplicate copy of the infringement notice is to be delivered to Enforcement Services, Department of Environment and Heritage Protection within two days of issue of the notice.

PROCEDURE

The pink copy of the infringement notice may be scanned and emailed to the Enforcement Services, Department of Environment and Heritage Protection to comply with the two day delivery timeline, with the pink duplicate hard copy sent by post shortly thereafter.

Cancelling infringement notices

POLICY

Officers who wish to cancel an infringement notice are to:

- (i) write the word 'CANCELLED' clearly on the original and each copy of the infringement notice;
- (ii) briefly describe the reason for the cancellation on the rear of the original (prosecutions) copy of the infringement notice; and
- (iii) forward the original, pink and buff copies of the infringement notice to their officer in charge, accompanied by a detailed report outlining the reason(s) for the cancellation.

Officers in charge are to ensure that cancelled infringement notices are forwarded Enforcement Services, Department of Environment and Heritage Protection, accompanied by a copy of the cancelling officer's report.

Withdrawal of infringement notices

Infringement notices may only be withdrawn by the administering authority.

POLICY

Officers seeking withdrawal of an infringement notice issued by them are to submit a detailed report to their officer in charge setting out the circumstances surrounding the request for withdrawal of the infringement notice.

Officers in charge, upon satisfying themselves of the reasons for the request for withdrawal of an infringement notice, are to forward the requesting officer's report to Enforcement Services, Department of Environment and Heritage Protection.

Complaints concerning the issue of infringement notices

POLICY

When an alleged offender lodges a complaint at a police station or establishment about the circumstances surrounding the issue of an infringement notice, the complaint should be assessed by the officer in charge of that station or establishment.

If the substance of the complaint is that the offender denies committing the offence, requests leniency in view of the circumstances or alleges any defect in the completion of the infringement notice, the officer in charge receiving the complaint should forward the complaint to the representative for the relevant department.

A complaint which alleges a possible breach of discipline, misconduct or corrupt conduct is to be dealt with in accordance with the discipline process as shown in 'Complaint Management' of the Human Resources Policies.

PROCEDURE

Members who receive a complaint from a member of the public concerning the issue of an infringement notice by telephone or orally should:

- (i) if the complaint relates only to the clarification of a particular, such as penalty, etc. attempt to satisfy the inquiry; or
- (ii) where the matter does not reveal any allegation of a breach of discipline or misconduct, advise the person making the complaint to write to the representative for the relevant department.

Officers issuing infringement notices who receive a complaint from a member of the public concerning the issue of that infringement notice, should advise the person that:

- (i) the person has the right to contest the matter in a magistrates court in accordance with the information outlined on the rear of the infringement notice;
- (ii) if the person does not wish to contest the matter, details for payment of the infringement notice are recorded on the rear of the notice; and
- (iii) any other inquiry in relation to the infringement notice is to be directed to the representative for the relevant department.

When a letter of complaint concerning the issue of an infringement notice is received at a police station or establishment, the officer in charge should:

- (i) forward a letter of acknowledgement to the alleged offender, advising that the matter has been referred to the Department of Environment and Heritage Protection;

(ii) as soon as practicable, request the Department of Environment and Heritage Protection to suspend processing of the infringement notice; and

(iii) forward the alleged offender's letter of complaint, or a copy of the letter if allegations of a possible breach of discipline, misconduct or corrupt conduct are contained in the letter, to the representative for the relevant department.

Defended actions

Commencement of proceedings and subsequent prosecutions for defended actions as a result of an issue of an infringement notice are performed by prosecution officers attached to Enforcement Services, Department of Environment and Heritage Protection.

POLICY

Officers who receive an official request from a Department of Environment and Heritage Protection Prosecution Officer for information relating to a defended action are to ensure that available requested information is forwarded as soon as practicable. Any information which is forwarded is to be in compliance with s. 5.6: 'Release of information' of the Management Support Manual.

Evidentiary notes required for particular offences

PROCEDURE

Officers issuing infringement notices should make notes in relation to the alleged offences, including relevant conversations and other relevant details. These notes may be made on the rear of the original copy of the infringement notice. Also see heading 'Confirmation of identification' of this subsection.

13.25.6 Aboriginal Cultural Heritage Act

The responsibility for dealing with matters under the *Aboriginal Cultural Heritage Act* rests with the Department of Aboriginal and Torres Strait Islander and Multicultural Affairs.

POLICY

Officers may, from time to time, receive reports of possible indigenous burial remains being located or of disputes over burial sites. Should this occur, the officer receiving the information should:

- (i) advise the complainant/enquirer that the Service does not have the responsibility for administering the *Aboriginal Cultural Heritage Act*,
- (ii) assist the complainant/enquirer in contacting the Cultural Heritage Unit of Department of Aboriginal and Torres Strait Islander and Multicultural Affairs (see Service Manuals Contact Directory); and
- (iii) comply with the provisions of s. 8.5.15: 'Location of possible indigenous burial remains' of this Manual.

13.25.7 Dams

Dams used for the purpose of water storage are present throughout Queensland and may at times be subject to policing matters such as search and rescue and missing person investigations. The Department of Energy and Water Supply is the authority responsible for the identification and overall management of dams in Queensland, and as part of this responsibility provide resources such as mapping to other government authorities.

Officers requiring information relating to a specific dam or in relation to dams generally, should contact the Department of Energy and Water Supply (see Service Manuals Contact Directory). Officers wishing to obtain a map or maps of all dams within a particular police district should make application to Geographic Information Services (GIS), by accessing the Geographic Information Services website on the QPS Corporate Intranet (Bulletin Board). Geographic Information Services can provide maps in both printed and digital form.

13.26 Racial, religious, sexuality and gender identity vilification (Anti-Discrimination Act)

The *Anti-Discrimination Act* seeks to promote equality of opportunity by protection from unfair discrimination in certain areas of activity, including work, education and accommodation. Chapter 4, Part 4, s. 124A: 'Vilification on grounds of race, religion, sexuality or gender identity unlawful' and Chapter 5A, s. 131A: 'Offence of serious racial, religious, sexuality or gender identity vilification' of the *Anti-Discrimination Act* outline circumstances whereby public acts may amount to unlawful acts of racial, religious, sexuality or gender identity vilification.

The Anti-Discrimination Commission Queensland is the administering body of the *Anti-Discrimination Act*. The Anti-Discrimination Commission Queensland has offices located in Brisbane, Rockhampton, Townsville and Cairns.

The Cultural Support Unit, Community Contact Command, provides advice and support to members of the Service in relation to cultural issues and monitors racial incidents including offences against the *Anti-Discrimination Act*. Also see s. 6.4: 'Cross-cultural issues' of this Manual.

The State Coordinator, Lesbian, Gay, Bisexual, Transgender and Intersex Program (LGBTI), Programs and Services Unit, Community Safety and Crime Prevention Branch, provides advice and support to members of the community in regard to LGBTI policing issues. See s. 1.7.10: 'Lesbian, Gay, Bisexual, Transgender and Intersex Liaison Program' of this Manual.

Breaches of the Act

The *Anti-Discrimination Act* provides for civil remedies, which are dealt with by the Anti-Discrimination Commission Queensland, and also for criminal offences in s. 131A: 'Offence of serious racial, religious, sexuality or gender identity vilification' of the *Anti-Discrimination Act*.

Incidents involving racial, religious, sexuality or gender identity vilification may come to the attention of police officers in the performance of their duties. The procedures to adopt in these circumstances will depend on the nature and extent of the apparent or alleged actions of the offender(s).

Commencement of proceedings

Contraventions of s. 124A of the *Anti-Discrimination Act* are investigated by the Anti-Discrimination Commission and may subsequently be heard and determined by the Queensland Civil and Administrative Tribunal (QCAT). The tribunal may make one or more orders under s. 209 of the *Anti-Discrimination Act*, including ordering the respondent to pay the complainant an amount of compensation for loss or damage caused by the contravention.

In respect of offences against s. 131A of the *Anti-Discrimination Act*, section 131A(2) provides that a Crown law officer's (Attorney-General or Director of Public Prosecutions) written consent must be obtained before a proceeding is started by complaint under the *Justices Act* in relation to an offence under s. 131A(1).

POLICY

Where a member of the Service receives a complaint or report of circumstances that may constitute a breach of s. 124A of the *Anti-Discrimination Act* and are not sufficient to constitute an offence of 'serious racial, religious, sexuality or gender identity vilification' (s. 131A), the member should:

- (i) advise the complainant of the relevant provisions of s. 124A of the *Anti-Discrimination Act* and that they may seek redress through the Anti-Discrimination Commission Queensland, and where appropriate:
 - (a) supply the 'Discrimination and Sexual Harassment Complaint Form' (see Appendix 13.4 of this chapter) and assist the complainant in the completion and forwarding of the form to the ADCQ Commissioner by way of mail; or
 - (b) provide contact details of the Anti-Discrimination Commission Queensland.

Where the circumstances of a complaint or report may constitute an offence against s. 131A of the *Anti-Discrimination Act*, in addition to the requirements of this policy, the member is to deal with the complaint in the same manner as any other offence including applying the provisions of s. 1.11: 'QPRIME – Policelink entered occurrences' of this Manual. Additionally, where the incident is reported to a staff member, that member is to notify a police officer.

Where circumstances, which may constitute an offence against s. 131A of the *Anti-Discrimination Act*, come to the notice of an officer, the officer is to:

- (i) advise the complainant:
 - (a) of the relevant provisions of s. 131A of the *Anti-Discrimination Act*;
 - (b) that all complaints of an offence against s. 131A of the *Anti-Discrimination Act* are investigated by the QPS; and
 - (c) that the Anti-Discrimination Commission Queensland wish to be advised of the matter;
- (ii) seek the complainant's consent to release the complainant's personal details to the Anti-Discrimination Commission Queensland;
- (iii) provide contact details of the Anti-Discrimination Commission Queensland to the complainant where appropriate;
- (iv) ensure that the general report section in the QPRIME occurrence includes advice as to whether or not the complainant has consented to their personal details being released to Anti-Discrimination Commission Queensland;
- (v) notify:
 - (a) District Crime Prevention Coordinator; and
 - (b) the Officer in Charge, Cultural Support Unit (Email: Cultural Support Unit); or
 - (c) the State Coordinator, LGBTI, as applicable,

of the details of the complaint and the crime report number; and

(vi) ensure that an incident of racial or religious vilification is reported as a 'Racial Incident' within QPRIME.

The Officer in Charge, Cultural Support Unit, Community Contact Command or the State Coordinator, LGBTI, as applicable, is to provide brief written advice (initial advice) of the details of the complaint to the Anti-Discrimination Commission Queensland. Attention should be given to ensure the advice does not contain the complainant's personal details where the complainant has not consented to the release of their personal details to Anti-Discrimination Commission Queensland. The advice should be provided as soon as practicable and should be in a format substantially the same as that shown in Appendix 13.5: 'Suggested format for advice regarding a complaint of an offence against s. 131A of the Anti-Discrimination Act 1991' of this chapter.

The district crime prevention coordinator is to liaise with the investigating officer as necessary, and consider any emerging issues including whether the matter will have a significant impact, adverse or otherwise, on a particular community or group that may be involved in the matter. Where an issue is identified, the district crime prevention coordinator should liaise with the cross-cultural liaison officer (CCLO), regional/district LGBTI liaison coordinator, Cultural Support Unit or representatives of the Anti-Discrimination Commission Queensland as appropriate, and ensure all necessary action is taken in an effort to resolve any such issues.

Prosecution of offences

PROCEDURE

Officers who investigate an offence against s. 131A of the *Anti-Discrimination Act* and decide that prosecution of the offence should be undertaken are to compile a brief of evidence and complete a report seeking consent of a Crown law officer to commence proceedings. The brief together with the report should be forwarded to the relevant Office of the Director of Public Prosecutions (State) through the normal chain of command.

Once written consent of a Crown law officer is obtained, a proceeding against a person for committing an offence against s. 131A of the *Anti-Discrimination Act* may be commenced by way of complaint and summons or notice to appear.

Advice to Anti-Discrimination Commission

POLICY

Where an investigation into a complaint or report of a suspected offence under s. 131A establishes insufficient evidence to substantiate or prosecute that offence, but sufficient evidence to establish a contravention under s. 124A, the investigating officer is to:

- (i) advise the complainant of the outcome of the investigation, and that the matter may be referred to the Anti-Discrimination Commission Queensland;
- (ii) if the complainant wishes to seek redress through the Anti-Discrimination Commission Queensland, supply the complainant with a copy of Appendix 13.4: 'Discrimination and Sexual Harassment Complaint Form'; and
- (iii) assist the complainant to complete the form and where practicable, forward same to the Anti-Discrimination Commission Queensland Commissioner by way of mail or personal delivery. (The form only need contain reasonably sufficient details to indicate an alleged contravention of the *Anti-Discrimination Act* (see s. 136 of the *Anti-Discrimination Act*). The details should include the crime report number and the investigating officer's details in the relevant section).

In all cases at the conclusion of an investigation into an alleged offence against s. 131A: 'Offence of serious racial, religious, sexuality or gender identity vilification' of the *Anti-Discrimination Act*, investigating officers are to notify the Officer in Charge, Cultural Support Unit, or State Coordinator, LGBTI of the outcome of any investigation or prosecution action undertaken in respect of that offence as soon as possible after the conclusion of the investigation. This notification should allow sufficient time for the Officer in Charge, Cultural Support Unit or State Coordinator, LGBTI to advise the Anti-Discrimination Commission Queensland of such details before the first court appearance of any defendant.

Upon being notified as above, the Officer in Charge, Cultural Support Unit or State Coordinator, LGBTI once satisfied as to the contents of the matter is to forward brief written advice (final advice) to the Commissioner, Anti-Discrimination Commission Queensland as soon as practicable. In cases where proceedings have been commenced, the advice is to be provided before the defendant's first court appearance. The advice should be substantially in the same format as shown in Appendix 13.5: 'Suggested format for advice regarding a complaint of an offence against s. 131A of the Anti-Discrimination Act 1991'.

Referral from Anti-Discrimination Commission Queensland

POLICY

Complaints in respect of offences against s. 131A: 'Offence of serious racial, religious, sexuality or gender identity vilification' of the *Anti-Discrimination Act* received at the Anti-Discrimination Commission Queensland will be referred to the Cultural Support Unit, Community Contact Command or State Coordinator, LGBTI. The Cultural Support Unit, or State Coordinator, LGBTI is to refer such complaints to and liaise with the regional crime coordinator in the region where the alleged offence occurred.

Enquiries

POLICY

Any enquiries regarding racial or religious vilification matters or the contents of this section can be directed to the Cultural Support Unit, Community Contact Command Police Headquarters.

Enquiries regarding sexuality or gender identity vilification matters should be directed to the regional/district LGBTI liaison officers in the first instance.

Contact may also be made with the Anti-Discrimination Commission Queensland to obtain information about what may constitute racial, religious, sexuality or gender identity vilification.

Requests for further information received from the Anti-Discrimination Commission Queensland are to be dealt with in accordance with s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual.

13.27 Personal Injuries Proceedings Act

The *Personal Injuries Proceedings Act* was introduced to regulate claims for and awards of damages based on liability for personal injuries. The *Personal Injuries Proceedings Act* contains a number of offence provisions however, police officers cannot instigate proceedings for these offences without the authority of the Attorney-General, Department of Justice and Attorney-General (State).

Members may have cause to deal with complaints of offences against the following sections of the *Personal Injuries Proceedings Act*.

13.27.1 Section 10(1): 'Person to whom notice of a claim is given must give preliminary response to claimant' of the Act

Before starting a civil proceeding for a personal injury claim, a claimant must give a written notice to the person against whom the proceeding is proposed to be started pursuant to s. 9: 'Notice of a claim' of the *Personal Injuries Proceedings Act*.

Section 10(1): 'Person to whom notice of a claim is given must give preliminary response to claimant' of the *Personal Injuries Proceedings Act* provides that where a notice of claim is given, the person must then respond to the claimant in writing within one month of receiving Part 1 of the notice of claim. The responses that the person may give are outlined in s. 10(1)(a) to (c). Failure to respond to the notice of claim is an offence.

POLICY

Where a person reports an offence against s. 10(1): 'Person to whom notice of a claim is given must give preliminary response to claimant' of the Act, members should refer to the provisions of s. 13.27.3: 'Dealing with offences against the Personal Injuries Proceedings Act' of this chapter.

13.27.2 Section 67: 'Prohibition of touting at scene of incident or at any time' of the Act

Section 67: 'Prohibition on touting at scene of incident or at any time' of the *Personal Injuries Proceedings Act* provides that it is unlawful for a 'prohibited person' to solicit or induce a 'potential claimant' involved in an incident to make a personal injuries claim in certain circumstances. The section also provides that it is unlawful for a 'prohibited person' to give a 'potential claimant' involved in an incident, or someone on the potential claimant's behalf, the name, address or telephone number of:

- (i) a particular law practice; or
- (ii) an employee or agent of a law practice.

Exemptions from the provisions of s. 67: 'Prohibition on touting at scene of incident or at any time' of the *Personal Injuries Proceedings Act* are provided in s. 67A: 'Exemption from s. 67(3) and (4)' of the *Personal Injuries Proceedings Act*.

For the purpose of s. 67: 'Prohibition on touting at scene of incident or at any time' of the Act the following definitions apply.

'Prohibited person' means a person who, for the purpose of the person's employment, is attending or attended the scene of an incident at or from which a person allegedly suffered personal injury or at a hospital after an incident at or from which a person allegedly suffered personal injury.

Example – a tow truck operator, police officer, ambulance officer, emergency services officer, doctor or hospital worker.

'Potential claimant' means:

- (i) a person who suffers, or may suffer, personal injury arising out of an incident; or

- (ii) another person who has or may have a claim in relation to a person mentioned in paragraph (i).

ORDER

Members of the Service must not solicit or induce a potential claimant to make a personal injuries claim.

Members of the Service must not give a 'potential claimant' involved in an incident, or someone on the potential claimant's behalf, the name, address or telephone number of a particular law practice or an employee or agent of a law practice.

POLICY

Where a person reports an offence against s. 67: 'Prohibition on touting at scene of incident or at any time' of the Act, members should refer to the provisions of s. 13.27.3: 'Dealing with offences against the Personal Injuries Proceedings Act' of this chapter.

13.27.3 Dealing with offences against the Personal Injuries Proceedings Act

PROCEDURE

Members who receive a complaint or detect an offence against the *Personal Injuries Proceedings Act* should, in addition to complying with the provisions of s. 1.11: 'QPRIME – Policelink entered occurrences' of this Manual, ensure an investigation is conducted into the incident with a view to establishing whether evidence exists to support a prosecution.

If the investigation reveals evidence supporting a prosecution, the investigating officer should:

- (i) prepare a Court Brief (QP9) and full brief of evidence in relation to the offence;
- (ii) submit the Court Brief (QP9) and full brief of evidence to an appointed brief checker for approval; and
- (iii) upon receipt of the brief checker's approval, submit a report, together with the Court Brief (QP9) and full brief of evidence to the officer in charge of the officer's region or command for referral to the Official Solicitor, Department of Justice and Attorney-General for prosecution.

Upon receipt of a Court Brief (QP9) together with a full brief of evidence relating to an intended prosecution for the offence against the *Personal Injuries Proceedings Act*, officers in charge of regions or commands should consider all the available evidence relating to the alleged offence. Where appropriate the matter should be referred to the Official Solicitor, Department of Justice and Attorney-General with a request to commence a prosecution.

However, in circumstances where a member of the Service may have committed the offence, the provisions of 'Complaint Management' of the Human Resources Policies are to be complied with.

13.28 Education (General Provisions) Act

The *Education (General Provisions) Act* contains the laws relating to education and other related purposes, which, from a policing perspective, include:

- (i) offences of wilful disturbance and trespass at State educational institutions;
- (ii) directions and orders about conduct or movement at, or entry to, premises of State instructional institutions and non-State schools and related offences; and
- (iii) provisions relating to compulsory schooling and participation in education and training and penalties for their non-compliance.

Definitions

For the purpose of this section the following definitions apply:

Chief Executive

means the Director-General, Department of Education and Training.

Compulsory participation phase

means the period which starts when a young person stops being of compulsory school age (i.e. turns 16 or completes year 10) and ends when the person:

- (i) gains a senior certificate, certificate III or certificate IV; or
- (ii) has participated in eligible options for 2 years after the person stopped being of compulsory school age; or
- (iii) turns 17 years.

(see s. 231: 'Compulsory participation phase' of the *Education (General Provisions) Act*).

Compulsory school age

means a child of at least 6 years of age and less than 16 years. However, a child is no longer of compulsory school age if the child has completed year 10 (see s. 9: 'Meaning of compulsory school age' of the *Education (General Provisions) Act*).

Eligible options

are defined in s. 232: 'Eligible options and providers' of the *Education (General Provisions) Act*.

Exempt person

(i) for a State instructional institution means a student of the institution, or an employee of the department engaged to perform work at the institution's premises (see s. 335: 'Definitions for pt 6' of the *Education (General Provisions) Act*); or

(ii) for a non-State school means a student of the school or an employee of the school's governing body engaged to perform work at the school's premises (see s. 343: 'Definitions for pt 7' of the *Education (General Provisions) Act*).

State school

means an educational institution established under s. 13: 'Power to establish State schools' of the *Education (General Provisions) Act* (see Schedule 4: 'Dictionary' of the *Education (General Provisions) Act*).

State instructional institution

means an educational institution established under s. 13: 'Power to establish State schools' or s. 14: 'Power to establish institutions that provide educational instruction to persons enrolled at State schools' of the *Education (General Provisions) Act* (see Schedule 4: 'Dictionary' of the *Education (General Provisions) Act*).

State educational institution

means an educational institution established under s. 13: 'Power to establish State schools'; s. 14: 'Power to establish institutions that provide educational instruction to persons enrolled at State schools'; or s. 15: 'Power to establish other educational institutions' of the *Education (General Provisions) Act* (see Schedule 4: 'Dictionary' of the *Education (General Provisions) Act*).

13.28.1 Directions and offences under the Education (General Provisions) Act

Wilful disturbance and trespass at State educational institutions

Section 333: 'Wilful disturbance' of the *Education (General Provisions) Act*, provides that a person must not:

- (i) wilfully disturb the good order or management of a State educational institution; or
- (ii) insult a staff member of a State educational institution in the presence or hearing of a student of the institution, who is, at the time in question:
 - (a) in or about the institution; or
 - (b) assembled with others for educational purposes at or in any place.

However, this section does not apply to a person who was, at the time of question, a student of the State educational institution (see s. 333(3) of the *Education (General Provisions) Act*).

Section 334: 'Trespass' of the *Education (General Provisions) Act* provides that a person must not be on the premises of a State educational institution unless the person has lawful authority or a reasonable excuse for being on the premises.

Directions and orders about conduct or movement at, or entry to, premises of State instructional institutions

Chapter 12, Part 5, ss. 335-342, of the *Education (General Provisions) Act* provides for directions and orders about conduct or movement at, or entry to, premises of State instructional institutions and related offences.

The *Education (General Provisions) Act* allows for State instructional institution's principals to give a person, other than an exempt person:

- (i) a written direction, about that person's conduct or movement at the institution's premises, for up to 30 days after the day on which the direction is given, if the principal is reasonably satisfied it is necessary for a reason outlined in s. 337: 'Direction about conduct or movement' of the *Education (General Provisions) Act*,
- (ii) an oral direction, requiring that person to immediately leave and not re-enter the institution's premises for 24 hours after the time of the direction if the principal reasonably suspects the person has done or is about to do one of a number of acts outlined in s. 339: 'Direction to leave and not re-enter' of the *Education (General Provisions) Act*, and

(iii) a written direction requiring that person not to enter the premises of a State instructional institution, for up to 60 days after the day on which the direction is given, if the principal is reasonably satisfied one of the acts under s. 340: 'Prohibition from entering premises' of the *Education (General Provisions) Act* is likely.

If a State instructional institution's principal proposes to give a direction under s. 337 or s. 339 to a person at the institution's premises, the principal may require the person to state the person's name and residential address and give evidence of the correctness thereof. An offence is committed if a person fails to comply with a requirement to state name and address or provide evidence of the correctness thereof, unless the person has a reasonable excuse. See s. 336: 'Person may be required to state name and address' of the *Education (General Provisions) Act*.

The *Education (General Provisions) Act* allows for the Chief Executive to:

(i) also exercise the power under s. 340 if the Chief Executive or principal reasonably believe it is appropriate (see s. 340A: 'Chief executive may prohibit person from entering premises' of the *Education (General Provisions) Act*); and

(ii) give a person, other than an exempt person, a written direction prohibiting the person from entering the premises of a State instructional institution for more than 60 days, but not more than 1 year (see s. 341: 'Prohibition from entering premises' of the *Education (General Provisions) Act*).

A person who does not comply with a direction given under ss. 337, 339, 340 or 341 of the *Education (General Provisions) Act*, unless the person has a reasonable excuse commits an offence (see ss. 337(5), 339(4), 340(6) and 357: 'Noncompliance with court order' of the *Education (General Provisions) Act*).

The above directions cannot be given to an exempt person which includes a student of the institution or an employee of the department engaged to perform work at the institution's premises (see 'exempt person' in s. 335: 'Definitions for pt 5' of the *Education (General Provisions) Act*).

Directions and orders about conduct or movement at, or entry to, premises of non-State schools

Chapter 12, Part 6, ss. 343-351, of the *Education (General Provisions) Act* provides for directions and orders about conduct or movement at, or entry to, premises of non-State schools and related offences.

The *Education (General Provisions) Act* allows for non-State school's principals to give a person, other than an exempt person:

(i) a written direction, about that person's conduct or movement at the institution's premises, for up to 30 days after the day on which the direction is given, if the principal is reasonably satisfied it is necessary for the reasons outlined in s. 346: 'Direction about conduct or movement' of the *Education (General Provisions) Act*;

(ii) an oral direction, requiring that person to immediately leave and not re-enter the school's premises for 24 hours after the time of the direction, if the principal reasonably suspects the person has done or is about to do one of a number of acts outlined in s. 348: 'Direction to leave and not re-enter' of the *Education (General Provisions) Act*; and

(iii) a written direction requiring that person not to enter the schools premises, for up to 60 days after the day on which the direction is given, if the principal is reasonably satisfied that, unless the direction is given, one of the acts under s. 349: 'Prohibition from entering premises' of the *Education (General Provisions) Act* is likely.

If a non-State school's principal proposes to give a direction under s. 346 or s. 348 to a person at the institution's premises, the principal may require the person to state the person's name and residential address and give evidence of the correctness thereof. An offence is committed if a person fails to comply with a requirement to state name and address or provide evidence of the correctness thereof, unless the person has a reasonable excuse. See s. 344: 'Person may be required to state name and address' of the *Education (General Provisions) Act*.

The *Education (General Provisions) Act* allows for the non-State school's governing body, or its nominee to:

(i) also exercise the power under s. 349 if the principal or governing body reasonably believe it is appropriate (see s. 349A: 'Non-State school's governing body or nominee may prohibit person from entering premises' of the *Education (General Provisions) Act*); and

(ii) give a person a written direction prohibiting a person from entering the school's premises for more than 60 days, but not more than 1 year (see s. 350: 'Prohibition from entering premises' of the *Education (General Provisions) Act*).

A person who does not comply with a direction given under ss. 346, 348, 349 or 350 of the *Education (General Provisions) Act*, unless the person has a reasonable excuse commits an offence (see ss. 346(5), 348(5), 349(5) and 350(6) of the *Education (General Provisions) Act*).

The above directions cannot be given to a student of the institution, or an employee of the school's governing body engaged to perform work at the school's premises (see 'exempt person' in s. 343: 'Definitions for pt 6' of the *Education (General Provisions) Act*).

Prohibition from entering premises of all State instructional institutions and non-State schools for up to 1 year

Under Chapter 12, Part 8, ss. 352 and 353 of the *Education (General Provisions) Act*, the Chief Executive may apply to a court for an order prohibiting a person, from entering the premises of:

- (i) all State instructional institutions (see s. 353 of the *Education (General Provisions) Act*); or
- (ii) all State instructional institutions and non-State schools (see s. 352 of the *Education (General Provisions) Act*),

for up to one year. The court may make such an order if satisfied on the balance of probabilities that the person poses an unacceptable risk to the safety or wellbeing of members of school communities of the institutions in general.

A person who does not comply with an order given by the court under s. 352 or s. 353 of the *Education (General Provisions) Act* commits an offence (see s. 357: 'Noncompliance with court order' of the *Education (General Provisions) Act*). However, an application for an order under s. 352 or s. 353 of the *Education (General Provisions) Act* may not be made in relation to a student of State instructional institution or non-State school (see s. 352(2) and s. 353(2) of the *Education (General Provisions) Act*).

13.28.2 Powers under the Police Powers and Responsibilities Act

The *Police Powers and Responsibilities Act* contains provisions relating to:

- (i) move on powers associated with the presence or behaviour of persons at or near a prescribed place, namely a primary, secondary or special school. See Chapter 2, Part 5: 'Directions to move-on' (ss. 46 to 48) of the *Police Powers and Responsibilities Act* and s. 13.23: 'Move-on power' of this Chapter; and
- (ii) dealing with breaches of the peace and prevention of offences. See Chapter 2, Part 6: 'Breaches of the peace, riots and prevention of offences' (ss. 50 and 52) of the *Police Powers and Responsibilities Act* and s. 13.4.8: 'Breaches of the peace' of this chapter.

13.28.3 Dealing with offences relating to wilful disturbance, trespass and offences relating to directions and orders about conduct or movement at, or entry to, premises of State instructional institutions and non-State schools

The Department of Education, Training and Employment and non-State schools will only make a complaint to, or refer matters to the police when:

- (i) offences under the *Education (General Provisions) Act* are committed and a prosecution is sought; or
- (ii) where relevant provisions of the *Police Powers and Responsibilities Act* may apply and assistance is required to remove persons from State educational institutions' and non-State schools' premises respectively.

PROCEDURE

Officers attending or investigating matters arising from complaints or references made to police in accordance with the above should deal with the matter in accordance with the provisions of ss. 2.4: 'Incident Management' and 2.5: 'Investigation' of this Manual, interview the appropriate person making the complaint (teacher, principal, Chief Executive, non-State school governing body's chairperson), establish the matter of the complaint or reference, obtain copies of all relevant directions previously given and deal with the matter as follows:

- (i) where appropriate, in relation to a person at or near a primary, secondary or special school, officers should give to a person or group of persons doing a relevant act any direction that is reasonable in the circumstances. See Chapter 2, Part 5: 'Directions to move-on' (ss. 45 to 48) of the *Police Powers and Responsibilities Act* and s. 13.23: 'Move-on power' of this Chapter;
- (ii) in situations where the provisions of s. 50: 'Dealing with breach of the peace' of the *Police Powers and Responsibilities Act* apply in relation to State educational institutions and non-State schools, officers should take the steps the officer considers reasonably necessary to prevent the breach of the peace happening or continuing, or the conduct that is the breach of the peace again happening;
- (iii) in situations where a police officer reasonably suspects an offence has been committed, is being committed or is about to be committed in relation to State educational institutions and non-State schools, the officer is to take the steps the officer considers reasonably necessary to prevent the commission, continuation or repetition of the offence. See s. 52: 'Prevention of offences – general' of the *Police Powers and Responsibilities Act*;
- (iv) offences under ss. 333: 'Wilful disturbance' and 334: 'Trespass' of the *Education (General Provisions) Act* only apply to State educational institution and officers should only consider these offences for State educational institutions;
- (v) when considering action in relation to trespass officers should refer s. 13.17: 'Trespass' of this chapter, and where appropriate take action in accordance with the provisions of that section;
- (vi) in relation to suspected offences of failing to comply, without reasonable excuse, with a requirement of a principal for a person, to whom the principal proposes to give a direction under ss. 337, 339, 346, 348 of the *Education (General Provisions) Act*, to state the person's name and residential address or to give evidence of their correctness under ss. 336 or 344 of the *Education (General Provisions) Act*.

(a) ask the person whether the person has a reasonable excuse for not complying with the requirement and, if the person gives an excuse, ask for details or further details of the excuse; and

(b) If the person does not answer the question or gives an excuse that the officer reasonably suspects is not a reasonable excuse, require the person to state the person's name and address under Chapter 2, Part 4: 'Power to require name, address or age' of the *Police Powers and Responsibilities Act*, and

(vii) in relation to offences of failing to comply with a direction under ss. 337, 339, 340, 346, 348, 349 of the Act, if appropriate, warn the person, it is an offence to fail to comply with the relevant direction unless the person has a reasonable excuse and that the person may be arrested or otherwise prosecuted for the offence. The Act contains provisions which allow persons against whom directions have been issued, to appeal. When investigating possible offences against these sections, officers are to ensure that no order has been made suspending such a direction.

13.28.4 Compulsory schooling and participation in education and training

Chapter 9, ss. 176 to 230, of the *Education (General Provisions) Act* provides provisions for compulsory schooling. Under s. 176: 'Obligation of each parent' of the *Education (General Provisions) Act*, each parent of a child of compulsory school age has a legal obligation to ensure their child is enrolled in school and attends the State school or non-State school on every school day for the educational program in which the child is enrolled, unless the parent has a reasonable excuse.

Chapter 10, ss. 231 to 251E of the *Education (General Provisions) Act* provides provisions for compulsory participation in education and training. Under s. 239: 'Obligation to ensure participation' of the *Education (General Provisions) Act*, each parent of a young person in the compulsory participation phase has a legal obligation to ensure their participation full-time in an eligible option, unless the parent has a reasonable excuse.

Non-compliance with compulsory schooling or participation requirements

The Department of Education and Training procedures concerning non-compliance with compulsory schooling or participation requirements under ss. 176: 'Obligation of each parent' or 239: 'Obligation to ensure participation' of the *Education (General Provisions) Act*, are contained in the document titled: 'Managing student absences and enforcing enrolment and attendance at state schools' and is available on the Department of Education and Training web site. The relevant procedures are contained in three attachments to the Department of Education and Training policy document:

- (i) 'Processes for enforcing parental obligation that a child of compulsory school age is enrolled at a state school';
- (ii) 'Processes for enforcing parental obligation that a child of compulsory school age attends on every school day, for the educational program in which the child is enrolled'; or
- (iii) 'Processes for enforcing parental obligation that a young person in the compulsory participation phase participates full time in an eligible option'.

In essence, where there are concerns about a child or young person's enrolment or attendance, multiple attempts are made by the school to contact the parent/s. If the parents then persist in their failure to enrol their child in school, or to ensure that child's attendance or participation, after formal processes have been implemented, consent may be sought from the Chief Executive or delegate (regional director) for the commencement of proceedings against the parent for an offence against ss. 176 or 239 of the *Education (General Provisions) Act* (see ss. 179 and 242: 'Limits on proceedings against a parent' of the *Education (General Provisions) Act*). If the Chief Executive or delegate (regional director) consents to the commencement of proceedings, the matter will then be referred to police for prosecution.

Commencing proceedings for an offence

POLICY

Where a representative of the Department of Education and Training makes a complaint in relation to a parent breaching the compulsory schooling or participation provisions, the reporting officer is to ensure that all relevant documentation, including statements, copies of written notices sent to the parent/s and the Chief Executive's written consent to commence proceedings, are obtained from the Department of Education and Training representative and attached to the relevant QPRIME occurrence.

The reporting officer is to ensure the required evidentiary certificates, which may be issued pursuant to ss. 407 and 410 of the *Education (General Provisions) Act*, accompany the Chief Executive or delegate's (regional director) written consent (see the document titled 'Template 6' of the Department of Education and Training web site).

Despite the provisions of s. 799: 'Provisions restricting starting of proceeding' of the *Police Powers and Responsibilities Act*, officers should only commence proceedings for an offence under s. 176 or s. 239 of the *Education (General Provisions) Act* following a formal complaint from the Department of Education and Training and where the authority of the Chief Executive or delegate (regional director) to commence proceedings under s. 179 or s. 242 of the *Education (General Provisions) Act* has been obtained.

When investigating such an offence, officers are to ensure that consideration is given to the provisions of ss. 3.4.2: 'The decision to institute proceedings' and 3.4.3: 'The discretion to prosecute' of this Manual.

Investigating officers are to ensure that the representative from the Department of Education and Training who made the complaint is advised of the outcome of the investigation and court proceedings.

Where a prosecution under s. 176 or s. 239 of the *Education (General Provisions) Act*, for which the Chief Executive or delegate (regional director) has provided written consent, has failed, the investigating officer should also provide the representative from the Department of Education and Training who made the complaint with an explanation of the reasons why the prosecution failed.

Child of school age detected not attending school by officers

POLICY

The officer in charge of a station or establishment or, where a child protection and investigation unit office exists, the officer in charge of a child protection and investigation unit should ensure liaison occurs between the local police and the State educational institutions and non-State schools in that area to establish a local protocol for dealing with instances of police detecting a child of compulsory school age not attending the institution or school.

The development of such a protocol between the Service and the principal of a State educational institution or non-State school may include discussions with the Department of Communities, Child Safety and Disability Services.

13.29 Noise complaints

The *Police Powers and Responsibilities Act* provides officers with powers to deal with complaints about excessive noise of certain types. The *Police Powers and Responsibilities Act* also provides additional powers to deal with complaints specifically relating to noise emitted by a motorbike being driven on a place that is not a road.

Additionally, three flow charts are contained in Appendices 13.6, 13.7 and 13.8 of this chapter showing the processes for dealing with excessive noise and should be read in conjunction with this section.

Definitions

The definitions for the majority of terms used in this section are contained in s. 69: 'Definitions for ch 4' of the *Police Powers and Responsibilities Act*. However, for the purpose of this section the following definitions also apply:

current NAD means a noise abatement direction, other than a current motorbike NAD, for which the noise abatement period has not expired (see s. 581(3)(a) of the *Police Powers and Responsibilities Act*).

current motorbike NAD means a noise abatement direction contained in a Form 95: 'Noise Abatement Direction (Motorbike)', given to the rider of a motorbike for which the noise abatement period has not expired (see s. 581(3)(b) of the *Police Powers and Responsibilities Act*).

initial impoundment period for a motor vehicle, means:

- (i) a period of 48 hours starting when the motor vehicle is impounded; or
- (ii) if the period of 48 hours ends at any time after 5pm and before 8am on a day, a period starting when the motor vehicle is impounded and ending at 8am next occurring after the period of 48 hours ends (see s. 69: 'Definitions for ch 4' of the *Police Powers and Responsibilities Act*).

(Example – A motorbike is impounded at 2am on the 3rd July because the driver of the motorbike committed a motorbike noise direction offence. The initial impoundment period would end at 8am on the 5th July.)

NAD means a noise abatement direction (see s. 581: 'Power of police officer to deal with excessive noise' of the *Police Powers and Responsibilities Act*).

noise abatement period means

- (i) for a noise abatement direction given in relation to a motorbike being used on a place that is not a road – 48 hours after the direction is given; or
- (ii) for any other noise abatement direction – 96 hours after the direction is given (see s. 582(4) of the *Police Powers and Responsibilities Act*).

Legislative provisions to deal with excessive noise

POLICY

The provisions of Chapter 19, Part 3, ss. 576 to 591: 'Powers relating to noise' of the *Police Powers and Responsibilities Act* provide officers with powers to deal with an environmental nuisance caused by noise that is audible at or near any residential or commercial premises and is excessive in the circumstances. The noise that the legislation applies to is noise of a kind mentioned in ss. 578(1)(b), 579(1)(b), 580(1)(b) or 580(2)(b) of the *Police Powers and Responsibilities Act*, namely noise emitted:

- (i) from a place by:
 - (a) a musical instrument;

- (b) an appliance for electrically producing or amplifying music or other sounds;
 - (c) a motor vehicle, other than a motor vehicle on a road;
 - (d) a gathering of people for a meeting, party, celebration or similar occasion; or
- (ii) by a motorbike being driven on a place that is not a road; or
- (iii) from a motor vehicle on a road or in a public place and is emitted by an appliance for electronically producing or amplifying music or other sounds including, for example, by a radio, CD player or other similar equipment for producing or amplifying music or other sounds that is in the motor vehicle.

Chapter 19, Part 3 of the *Police Powers and Responsibilities Act* does not apply to an environmental nuisance caused by noise emitted from a place:

- (i) while being used for an open air concert or commercial entertainment; or
- (ii) by a public meeting under a permit under a law authorising the amplification or reproduction of sound by:
 - (a) any electrical or mechanical appliance, apparatus or device; or
 - (b) another way; or
- (iii) while the place is being used by motor vehicles under a permit under a law (see s. 576(2): 'Application of pt 3' of the *Police Powers and Responsibilities Act*).

13.29.1 Investigation and first direction

ORDER

As soon as practicable after receiving or being notified of a complaint made by a person including an anonymous complainant about excessive noise, an officer is to investigate the complaint or cause it to be investigated, unless the officer believes the complaint is frivolous or vexatious.

An officer may also take action without a complaint about excessive noise emitted from a motor vehicle on a road or in a public place.

POLICY

A member receiving a complaint about excessive noise is to:

- (i) check with the local police communication centre for any record of a current NAD, current motorbike NAD or motorbike noise abatement order relating to the place from which the noise is being emitted; and
- (ii) if the person details are known, check QPRIME for any noise direction or order flag against the person; and convey any relevant information to the officer detailed to investigate the complaint.

The specific conditions of a current NAD and motorbike NAD are recorded in QPRIME against the person details as a:

- (i) 'Direction noise/move on/eviction' flag;
- (ii) 'MB noise direction' flag; or
- (iii) 'MB noise order' flag,

as appropriate.

Officers who:

- (i) are detailed to investigate a complaint about noise and are attending in response to the complaint and the complaint relates to noise emitted:
 - (a) from a place;
 - (b) by a motorbike being driven on a place that is not a road; or
 - (c) from a motor vehicle on a road or in a public place; or
- (ii) hear noise and the noise is emitted from a motor vehicle on a road or in a public place and are investigating the noise without a complaint having been received; and

a current NAD or a current motorbike NAD is not in force, are to be reasonably satisfied the noise complained of is clearly audible at or near residential or commercial premises or when acting without a complaint being made, the noise is clearly audible at or near residential or commercial premises prior to taking any further action. This may be achieved by attending at or near the residential or commercial premises or when acting without a complaint, the officer is to take note of the location of residential or commercial premises in relation to the road or public place where the motor vehicle is located.

In deciding whether the noise is excessive in the circumstances, officers should have regard to any relevant matters, including:

(i) the degree of interference the noise is causing, or is likely to cause to the conduct of activities ordinarily carried out in the vicinity of the place from which the noise is being emitted and the nature of the lawful uses permitted for premises in the vicinity of the place from which the noise is being emitted; or

(ii) where the investigation relates to noise being emitted from a motor vehicle on a road or in a public place – the degree of interference or annoyance the noise is causing, or is likely to cause, to persons in the vicinity of the road or public place.

An officer who is reasonably satisfied that the noise to which Chapter 19, Part 3: 'Powers relating to noise' of the *Police Powers and Responsibilities Act* applies is excessive in the circumstances:

(i) may:

(a) investigate the emission of excessive noise, or to give a NAD to the person responsible for the emission of excessive noise, from a motor vehicle on a road or in a public place or a motorbike being driven on a place other than a road, require the person in control of a vehicle, to stop the vehicle (see s. 60: 'Stopping vehicles for prescribed purposes' of the *Police Powers and Responsibilities Act*); and

(b) enter the place from which the noise is being emitted without a warrant;

(ii) is to give the person responsible for the noise, a NAD either orally or in writing. When an oral direction is given, the wording of the direction should resemble the following:

'I direct you to immediately abate that excessive noise which is being emitted by (insert source of excessive noise) from this place'

(iii) ensure the direction given, whether orally or in writing, directs any person responsible for the noise, or for permitting the noise to be caused to immediately abate the excess noise from the place. Persons responsible for noise include, if the noise is being emitted from or by a motor vehicle – the person driving the motor vehicle or if the noise is being emitted from another place – the person apparently in charge of the place; or

(iv) if the direction relates to noise emitted by a motorbike being driven on a place that is not a road, give the person(s) responsible for the noise a Motorbike NAD in a Form 95: 'Noise Abatement Direction (Motorbike)' (available in QPRIME and on QPS Forms Select) directing the driver to immediately abate the excessive noise from the motorbike;

(v) if the person to whom a Motorbike NAD is given is a child, ensure a copy of the Form 95: 'Noise Abatement Direction (Motorbike)' is given to the child's parent or guardian if it is reasonably practicable to do so;

(vi) if a NAD or Motorbike NAD is about to be given, is being given or has been given to someone, may require a person to state the person's correct name and address and may require the person to give evidence of the correctness of the stated name and address if, in the circumstances, it would be reasonable to expect the person to be in possession of evidence of the correctness of the stated name or address or to otherwise be able to give the evidence (see s. 40: 'Person may be required to state name and address' of the *Police Powers and Responsibilities Act*).

PROCEDURE

When officers give a person an NAD, the following particulars are to be recorded in their official police notebook and provided to the local police communications centre:

(i) the name, address of the person(s) to whom a NAD was given;

(ii) the time and date the NAD was given;

(iii) if the NAD was given in relation to noise emitted from or by a motor vehicle, the particulars necessary to properly identify the vehicle;

(iv) a general description of the place or, if the NAD relates only to a part of the place, a general description of the part of the place to which the NAD relates;

(v) the substance of the direction;

(vi) name, rank and station/establishment; and

(vii) other relevant information.

When officers give a person a NAD, the details of the NAD including a motorbike NAD are to be recorded in QPRIME as a 'Direction noise/move on/eviction' flag and a 'MB noise direction' flag as appropriate against the person details (see QPRIME User Guide).

When a person is given a Motorbike NAD, the issuing officer is to:

(i) record relevant information as required by the preceding paragraph;

(ii) complete a Form 95: 'Noise Abatement Direction (Motorbike)' (available in QPRIME and on QPS Forms Select) and give to the person where possible and if the person is a child to the child's parent or guardian if it is reasonably practicable to do so; and

(iii) ensure the Form 95 is added as an attachment to the relevant QPRIME occurrence.

Officers in charge of police communication centres are to ensure that a register is maintained in which records of NAD are kept.

See also s. 2.1.2: 'Registers required to be kept' and subsection titled 'Enforcement acts (Register entries and what reports to supply from QPRIME)' of this Manual.

13.29.2 Additional powers of police officers on later investigation

PROCEDURE

If a noise abatement direction has been given about a place and within the noise abatement period, an officer is satisfied on further investigation that the officer must again exercise the powers mentioned in s. 581: 'Powers of police officers to deal with excessive noise' of the *Police Powers and Responsibilities Act* about the same place or the same motor vehicle, an officer may:

- (i) to investigate the emission of excessive noise from a motor vehicle on a road or in a public place or a motorbike being driven on a place other than a road, require the person in control of a vehicle, to stop the vehicle (see s. 60: 'Stopping vehicles for prescribed purposes' of the *Police Powers and Responsibilities Act*);
- (ii) without a warrant, enter the place from which the noise is being emitted (see s. 583: 'Additional powers of police officers on later investigation' of the *Police Powers and Responsibilities Act*);
- (iii) identify the person(s) who may be committing an offence under s. 582: 'Compliance with noise abatement direction' of the *Police Powers and Responsibilities Act*, namely the person to whom a NAD or motorbike NAD was given and any person who knows a NAD was given. If applicable require their correct name and address and give evidence of the correctness of the stated name and address pursuant to s. 40: 'Person may be required to state name and address' of the *Police Powers and Responsibilities Act*;
- (iv) in relation to the property that is or was being used to produce or contribute to the production of the noise:
 - (a) lock, seal or otherwise deal with it in a way to prevent its further use;
 - (b) seize and remove it from the place; or
 - (c) make it inoperable by removing any part or parts and seizing and/or removing the part or parts from the place.(see s. 583: 'Additional powers of police officers on later investigation' of the *Police Powers and Responsibilities Act*);
- (v) if the property is a motorbike and:
 - (a) s. 80: 'Impounding motorbike for motorbike noise direction offence or motorbike noise order offence' of the *Police Powers and Responsibilities Act* applies, impound the motorbike under that section. If consideration is being given to impounding the motorbike (see Chapter 15: 'Impounding motorbikes for noise offences' of the Traffic Manual); or
 - (b) s. 589: 'Noise abatement order – application for order' of the *Police Powers and Responsibilities Act* applies, make an application for a noise abatement order (see s. 13.29.4: 'Motorbike noise abatement orders' of this chapter).

13.29.3 Property seized and removed under s. 583(2) of the Police Powers and Responsibilities Act

PROCEDURE

When any property is seized and removed from a place under s. 583(2): 'Additional powers of police officers on later investigation', of the *Police Powers and Responsibilities Act*, (other than a motorbike impounded under s. 74: 'Impounding motor vehicles' of the *Police Powers and Responsibilities Act*), the officer seizing and removing the property:

- (i) may seek the help of another person (an assistant) the officer reasonably requires and if required, take any assistant, equipment, vehicle, animal or material onto a place the officer reasonably requires and may use necessary and reasonable force (see ss. 612: Assistance in exercising powers', 613: 'Protection for assistants from liability', 614: 'Power to use force – exercise of certain powers' and 615: 'Power to use force against individuals' of the *Police Powers and Responsibilities Act*);
- (ii) should advise the occupier:
 - (a) of the seizure, removal and the police station where the property is being conveyed to;
 - (b) that the property should be claimed and collected from the nominated police station by the owner or the person from whose possession the property was seized, or someone else acting on behalf of these persons; and

(c) that the claim and the collection of the property should be made during office hours on a business day after the end of the noise abatement period as defined in s. 582(5): 'Compliance with noise abatement direction' of the *Police Powers and Responsibilities Act*,

(iii) should remove the property to a police station or establishment, where it is to be held in safe custody;

(iv) ensure that the relevant provisions of Chapter 4: 'Property' of this Manual are complied with in respect to the seized property; and

(v) ensure that the relevant property register is endorsed with the date and time at which the property may be released.

Officers in charge of stations where property seized under these provisions of the *Police Powers and Responsibilities Act* has been removed to should ensure that:

(i) the property is placed in safe custody in accordance with station/establishment Instructions and Chapter 4: 'Property' of this Manual; and

(ii) the property is only given to the owner or the person from whose possession the property was seized or a person acting for these persons at the expiration of the relevant period and in accordance with s. 585: 'Recovery of seized property' of the *Police Powers and Responsibilities Act*.

However, nothing in s. 585: 'Recovery of seized property' of the *Police Powers and Responsibilities Act* prevents a police officer retaining seized property if the police officer reasonably suspects the property is evidence of the commission of an offence.

PROCEDURE

Where an officer has taken possession of property under the *Police Powers and Responsibilities Act* and the owner or person from whom it was seized has failed to arrange for its collection after fourteen days from its seizure, and the property is not required as an exhibit in connection with any prosecution, that officer should:

(i) draft a letter in a format similar to that shown at Appendix 13.1: 'Suggested format for letter under *Police Powers and Responsibilities Act*' of this chapter, to the owner, if known, and the person from whom it was seized, ensuring a three month period is noted from the time the property was seized to the time it will be considered to be unclaimed; and

(ii) submit that letter and the original Property Register entry (reporting officer copy) to the relevant officer in charge.

The officer in charge who receives such a report should ensure the letter(s) is forwarded to the owner of the property, if applicable, and the person from whom it was seized.

If after the three month period from the date of seizure the property has not been claimed, the officer in charge should treat the property as unclaimed property and deal with it in accordance with s. 4.8: 'Disposal of property' of this Manual.

For motorbikes impounded under s. 80 of the *Police Powers and Responsibilities Act*, see Chapter 15: 'Impounding motorbikes for noise offences' of the Traffic Manual.

Notice of damage

POLICY

Officers seizing, handling and/or removing property are to take all reasonable precautions to ensure that no damage is done to the property or any other thing.

ORDER

Where damage is caused to anything by an officer when exercising a power under the *Police Powers and Responsibilities Act*, the officer is to promptly give written notice (QP 0730: 'Notice of Damage' (available in QPRIME or on QPS Forms Select) to the person who appears to be the owner of the thing in accordance with the provisions of s. 636: 'Police officer to give notice of damage' of the *Police Powers and Responsibilities Act*.

13.29.4 Motorbike noise abatement orders

POLICY

Officers may apply for a motorbike noise abatement order under s. 589: 'Noise abatement order – application for order' of the *Police Powers and Responsibilities Act* if a person (the respondent):

(i) contravenes a noise abatement direction in relation to excessive noise emitted by a motorbike driven on a place other than a road; or

(ii) is given 2 noise abatement directions within a period of 1 month in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of the motorbike on the same place which is not a road.

ORDER

A noise abatement order is an order that the driving of the motorbike by the respondent be restricted in the way requested in the application.

If an officer decides to make an application for a noise abatement order, the application:

- (i) is to be made within 48 hours after the contravention of a motorbike NAD, or if two motorbike NADs were given in one month, within 48 hours after the contravention of the second motorbike NAD; and
- (ii) is to be made to the relevant court using a Form 96: 'Application for a noise abatement order (motorbike)' (available in QPRIME or on QPS Forms Select) or under s. 800: 'Obtaining warrants, orders and authorities, etc. by telephone or similar facility' (see subsection titled: 'Use of *Police Powers and Responsibilities Act* to obtain warrants, orders etc., by telephone or similar facility' of s. 2.1.1: 'Use of *Police Powers and Responsibilities Act* of this Manual).

POLICY

Before applying, the applicant officer is to complete an application in a Form 96: 'Application for noise abatement order (motorbike)' stating the grounds on which the noise abatement order is sought and all other relevant information.

A copy of a completed Form 96: 'Application for noise abatement order (motorbike)' is to be lodged with the Clerk of the Court of the relevant court within the 48 hours period as outlined above.

If the application is made on the grounds that the respondent contravened a motorbike noise abatement direction which has resulted in a prosecution, the stated date for the application should coincide with the date on which the related prosecution will be next mentioned.

ORDER

As soon as reasonably practicable after a date is set for hearing the motorbike noise abatement order application, the applicant officer is to ensure that notice of the application is given to:

- (i) the respondent;
- (ii) if the respondent is not the owner of the motorbike, the owner of the motorbike;
- (iii) if the respondent is:
 - (a) a child; or
 - (b) not the owner of the motorbike and the owner of the motorbike is a child, the child's parent or guardian if it is reasonably practicable to do so; and
- (iv) if the
 - (a) respondent;
 - (b) owner of the motorbike; or
 - (c) child's parent or guardian,

as appropriate, is not the owner of the land on which the contravention happened, the owner of the land if it is reasonably practicable to do so.

When a Form 97: 'Notice of application for noise abatement order (motorbike)' is given to any of the above mentioned persons, the officer giving the notice is to complete and sign the endorsement outlining when the notice was given.

POLICY

The identity of the owner of a motorbike may be ascertained by asking the driver of the motorbike, checking QPRIME and/or conducting checks with the Department of Transport and Main Roads in accordance with Chapter 7: 'Obtaining information from external bodies' of the Management Support Manual.

To identify the owner of the land, requests for information may be made to external agencies, such as the Department of Environment and Heritage Protection or the Residential Tenancies Authority, in accordance with Chapter 7 of the Management Support Manual.

PROCEDURE

The applicant officer is required to provide the evidence which is available in support of the motorbike noise abatement order application to the relevant police prosecutions corps no later than fourteen days before the matter is set for hearing wherever practicable. The evidence includes:

- (i) a copy of the relevant Form 96: 'Application for noise abatement order (motorbike)';
- (ii) if the application is on the grounds that the respondent contravened a motorbike NAD, a copy of the Form 95: 'Noise abatement direction (motorbike)';
- (iii) if the application is on the grounds that the respondent was given two motorbike NAD within a period of one month in relation to excessive noise emitted by a motorbike and the directions both relate to the driving of the

motorbike on the same place which is not a road, copies of both directions (i.e. Form 95: 'Noise abatement direction (motorbike)');

(iv) statements/affidavits by the applicant officer, and others taken from witnesses, including those of a corroborative, conflicting or negative nature;

(v) copies of each endorsed Form 97: 'Notice of application for noise abatement order (motorbike)' given in compliance with the previous order; and

(vi) a Form 98: 'Noise abatement order (motorbike)' (available on QPS Forms Select) prepared for issuance by the relevant magistrates court.

13.29.5 Duties of police prosecutors and officers in charge after the application for a motorbike noise abatement order is determined

PROCEDURE

After an application for a Motorbike Noise Abatement Order is heard and determined, the police prosecutor who prosecuted the application is to:

- (i) if the application was successful, obtain the Form 98: 'Noise abatement order (motorbike)' from the court and:
 - (a) ensure a 'MB Noise Order' flag is entered on QPRIME against the person named in the order with details of the order (see QPRIME User Guide); and
 - (b) send the order to the officer in charge of the station or establishment to which the applicant officer was attached.

Officers in charge, upon receipt of a motorbike noise abatement order, are to ensure:

- (i) that it is added as an attachment to the relevant QPRIME occurrence; and
- (ii) appropriately filed.

13.29.6 Appeals against motorbike noise abatement order

POLICY

Section 591: 'Noise abatement order – appeal against order' of the *Police Powers and Responsibilities Act* allows an adult or child against whom a noise abatement order has been made to appeal against the order to the district court or, the childrens court constituted by a judge, respectively within 28 days after the day the order was made.

Officers are to comply with the relevant provisions of s. 3.11: 'Appeals' of this Manual when appeals are, or are to be, commenced.

13.29.7 Offences/powers

POLICY

A police officer who reasonably suspects that an offence against provisions of Chapter 19, Part 3, ss. 576 to 591: 'Powers relating to noise' of the *Police Powers and Responsibilities Act* has been committed and a person may be able to give information about the offence, the officer may require the person to answer a question about the offence (see s. 588: 'Power to require answers to questions' of the *Police Powers and Responsibilities Act*).

A person required to answer a question under s. 588: 'Power to require answers to questions' of the *Police Powers and Responsibilities Act* and contravenes such a requirement given by a police officer may commit an offence under s. 791: 'Offence to contravene direction or requirement of police officer' of the *Police Powers and Responsibilities Act* unless the person has a reasonable excuse.

If a person fails to comply with the requirement, prior to taking any action under s. 791 of the *Police Powers and Responsibilities Act*, officers are to comply with the provisions of s. 633: 'Safeguards for oral directions or requirements' of the *Police Powers and Responsibilities Act* by warning the person that it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse and that the person may be arrested for the offence. Additionally, the police officer is to give the person a reasonable opportunity to comply with the requirement.

Offences relating to excessive noise, failing to comply with a noise abatement direction and failure to answer questions should, where possible, be commenced by way of complaint and summons, notice to appear or an infringement notice where applicable (see s. 3.5: 'The institution of proceedings' of this Manual). In some cases, the arrest provisions of s. 365 of the *Police Powers and Responsibilities Act* may apply.

13.29.8 Other noise complaints

PROCEDURE

Complaints made about motor vehicles creating excessive noise on a road, where the provisions of s. 580 of the *Police Powers and Responsibilities Act* do not apply, should be dealt with as a breach of s. 291: 'Making unnecessary noise or smoke' of the Transport Operations (Road Use Management – Road Rules) Regulation (See codes 2296 and 2297)

of the Infringement Notice Offence Codes and Penalties on the QPS Corporate Intranet (Bulletin Board) or s. 69A(1)(d) of the *Police Powers and Responsibilities Act*.

Persons making complaints relating to noise which are outside the scope of s. 580 of the *Police Powers and Responsibilities Act* and cannot be otherwise dealt with by police should be referred to the local government authority. Complaints which cannot be dealt with by the local government authority should be referred to the Environmental Protection Agency.

13.30 Starting a civil proceeding

Officers are at times required to commence a civil proceeding in a Queensland court. In Queensland a civil proceeding starts when an originating process is issued by the court (see rule 8: 'Starting proceedings' of the Uniform Civil Procedure Rules).

The Uniform Civil Procedure Rules provides for the following types of originating processes:

- (i) Claim (Form 2);
- (ii) Application:
 - (a) (Form 5: 'Originating application – used to start a proceeding); or
 - (b) (Form 9: 'Application' – used to obtain an order in a proceeding that is already underway);
- (iii) Notice of appeal; and
- (iv) Notice of appeal subject to leave.

(These forms may be obtained from website: <http://www.courts.qld.gov.au/107.htm#ucpr>)

A proceeding must be started by claim unless these rules require or permit the proceeding to be started by application (see rule 9: 'Claim compulsory' of the Uniform Civil Procedure Rules). Rule 10 of the Uniform Civil Procedure Rules outlines when a proceeding must be started by application, rule 11 outlines when a proceeding may be started by application.

An example of commencing a civil proceeding by originating application (Form 5) is when a police officer makes an application for:

- (i) an order under s. 694: 'Application by police officer for order if ownership dispute' of the *Police Powers and Responsibilities Act* (see s. 4.8.2: 'Disputed ownership (disposal)' of this Manual); or
- (ii) a variation or revocation of an offender prohibition order under s. 22: 'Varying or revoking an offender prohibition order' of the *Child Protection (Offender Prohibition Order) Act*.

See Appendix 13.9: 'Example of completed Form 5 – Originating Application' of this chapter. See also s. 694: 'Application by police officer for order if ownership dispute' of the *Police Powers and Responsibilities Act*.

An example of commencing a civil proceeding by application (Form 9) is when a police officer makes an application for or for authorisation of substituted service when documents are unable to be served personally on the respondent under s. 57(5): 'Service of documents' of the *Child Protection (Offender Prohibition Order) Act*. See Appendix 13.13: 'Example of completed Form 9 – Application' of this chapter.

Suggested procedure for police commencing a civil proceeding in a Queensland court

PROCEDURE

When an officer seeks to commence a civil proceeding in a Queensland court, the applicant officer should:

- (i) liaise with the local Service prosecutor and the registrar of the relevant Queensland court to ensure the required originating process, forms and affidavits in relation to the civil proceeding are used and a suitable hearing date is obtained;
- (ii) complete the required originating process in accordance with the subsection titled 'Completing the originating process' of this section;
- (iii) complete an affidavit in relation to the application:
 - (a) see Appendix 13.14: 'Example of completed Form 46 – Affidavit by reporting officer' (for s. 694 of the *Police Powers and Responsibilities Act*); or
 - (b) see Appendix 13.15: 'Example of completed Form 46 – Affidavit by reporting officer' (for s. 57 of the *Child Protection (Offender Prohibition Order) Act*);

of this chapter, ensuring not to include hearsay evidence (see rule 430 of the Uniform Civil Procedure Rules);

- (iv) sign each and every page of their affidavit (see rule 432 of the Uniform Civil Procedure Rules);

(v) where evidence of additional witnesses is to be relied upon to aid the application, ensure it is supplied in the form of an affidavit which has been sworn or affirmed in accordance with rule 432 of the Uniform Civil Procedure Rules. (Note – Officers are not to attach copies of previously obtained QP 0125: ‘Statement of Witness’ to the originating process in lieu of a properly sworn or affirmed affidavit);

(vi) complete a Form 47: ‘Certificate of Exhibit or Exhibits’ for each document which is an exhibit and is mentioned in an affidavit. In completing a Form 47, ensure that a letter, number or other identifying mark is placed on the Form 47, on the relevant document and is referred to in the affidavit. For example, the first exhibit from Senior Constable Stephen James BROWN could be marked and referred to as ‘SJB 1’. Each document is to be attached to the relevant Form 47. See rule 435 of the Uniform Civil Procedure Rules regarding exhibits. See also appendix 13.14: ‘Example of completed Form 46 – Affidavit by reporting officer’ (for s. 694 of the *Police Powers and Responsibilities Act*) showing an example of a completed Form 47;

(vii) file the originating process, including forms and affidavits with the registrar of the relevant Queensland court (see Part 6: ‘Where to start a proceeding’ of the Uniform Civil Procedure Rules);

(viii) serve a copy of the above court stamped documents on all persons listed as respondents in the originating process in accordance with the provisions of Chapter 4: ‘Service’ of the Uniform Civil Procedure Rules. Officers serving copies of the originating process and any affidavits are to complete an ‘Affidavit of Service’ and return it before the date of the hearing of the application to the relevant court. An example of a completed ‘Affidavit of Service’ is shown in Appendix 13.12: ‘Example of completed Affidavit of Service’ to this chapter;

(ix) forward to the Service prosecutor all documentation in relation to the matter. A covering report should also be attached to the file showing the date of hearing; and

(x) attend at the court at the nominated day and time. The officer starting the proceeding may be required to give evidence.

Completing the originating process

PROCEDURE

When completing an originating process, officers are to ensure:

- (i) the words ‘a state-related person’ is inserted after their name in the originating process;
- (ii) a business address for service, contact telephone numbers, fax numbers and email address of the applicant are entered (see rule 17 of the Uniform Civil Procedure Rules);
- (iii) if a solicitor is appointed to act for the applicant or plaintiff, the residential or business address of the plaintiff or business address of the applicant, the name and firm of the solicitor, the address of the solicitor’s place of business, the solicitor’s telephone number, fax number, email address and document exchange address are entered;
- (iv) all affected persons are named (see rule 26 of the Uniform Civil Procedure Rules);
- (v) the relief sought and the name and section of the Act under which the application is made is specified (see rule 26 of the Uniform Civil Procedure Rules);
- (vi) the day set for hearing the application is specified (see rule 26 of the Uniform Civil Procedure Rules);
- (vii) all affidavits to be relied on at the hearing are listed (see rule 26 of the Uniform Civil Procedure Rules); and
- (viii) at least two original copies of the process are signed (i.e. one for filing) (see rules 19 and 27 of the Uniform Civil Procedure Rules).

All forms are available from QPS Forms Select or the Queensland Courts website.

For service of an interstate originating process see s. 14.29.6: ‘Interstate service of an originating process’ of this Manual.

13.31 Policing of criminal organisations

See Commissioner’s Circular 11/2013.

13.32 Social media

The Service has developed policies and procedures relating to the use of social media, see s. 5: ‘QPS Use of Social Media Policy and Procedures’ of the Information Management Manual. The ‘QPS Use of Social Media Policy and Procedures’ covers the following areas:

- (i) managing, monitoring and analysing social media accounts;

- (ii) approval and implementation procedures for the establishment and use of an official Queensland Police Service social media channel or site including 'myPolice' website blogs;
- (iii) alignment with Service responsibilities under the *Disaster Management Act*;
- (iv) use of social media for personal, non-work related purposes;
- (v) legislative and policy requirements and information management principles;
- (vi) governance structure roles and responsibilities across the Service; and
- (vii) risk management strategies for information security, defamation, privacy and intellectual property infringement.

OPM Issue 48
Public Edition

Police Station
19 Knowsley Street
Coorparoo Qld 4151

20 July 2000

Ms Denise SMITH
4/56 Cyprus Street
Greenslopes Qld 4120

Dear Ms SMITH

As you are aware, on Saturday 3 July 2000, Senior Constable JOHNSON from this station had cause to investigate complaints of excessive noise issuing from your premises at the above address. As a result of those complaints, Senior Constable SMITH took possession of 1 Sanyo brand 3 in 1 stereo, serial number 885968.

This property is now stored at the Property Section, Upper Mount Gravatt Police Station, 1234 Logan Road, Upper Mount Gravatt.

The property has been in the possession of the Service since 3 July 2000 and you have not as yet arranged to collect it.

This letter is forwarded to advise you that should you fail to collect the property on or before 3 September 2000, the Commissioner of the QPS may order that this property be forfeited to the State.

You will receive no further notice in relation to this matter. Should you wish to retrieve the property please arrange for its removal prior to the above date.

Yours sincerely

I.J. PLANT
Sergeant 9999
Officer in Charge

Appendix 13.2 Written warning to interested person (s. 229K of the Criminal Code)

(s. 13.11.14)

Date:

To:

of:

Take notice that premises situated at (accurately describe the premises including the street address) of which you are an interested person in terms of s. 229K of the Criminal Code in that:

[outline how the person is an interested person in terms of subsection (1)]

You are hereby warned in accordance with subsection (5) of s. 229K of the Criminal Code that those premises are being used for the purpose of prostitution by two or more prostitutes.

For your information:

Subsection (2) of s. 229K provides:

A person who:

(a) is an interested person in relation to premises; and

(b) knowingly allows the premises to be used for the purposes of prostitution by two or more persons commits a crime.

Subsection (4) provides:

A person allows premises to be used for the purposes of prostitution if the person:

(a) knowingly permits the premises to be used for the purpose of prostitution; or

(b) knowing that the premises are being used for the purposes of prostitution, fails to take every reasonable step to stop that use.

Subsection (7) provides:

If a person who is an interested person in relation to premises:—

(a) is served with a warning under subsection (5) in relation to premises; or

(b) otherwise has reasonable grounds to suspect that the premises are being used for the purposes of prostitution by two or more prostitutes;

the person may, by writing served on an occupier or user of the premises, require the occupier or user to leave the premises not later than seven days after the service of the notice and not return.

Subsection (8) provides:

A person who, without reasonable excuse, contravenes a requirement made of the person under subsection (7) commits a crime.

You are also warned that should you be convicted of any offence you may be liable to forfeit any or all of your tainted property to the Crown under the *Criminal Proceeds Confiscation Act 2002*.

Name, rank and registered number

Police station

Appendix 13.3 Notification under s. 799 of the Police Powers and Responsibilities Act 2000 of the starting of a proceeding

(s. 13.22.5)

Notification under s. 799 of the *Police Powers and Responsibilities Act 2000* of the starting of a proceeding

OPM Issue 48
Public Edition

Discrimination and Sexual Harassment Complaint Form

OPM Issue 48
Public Edition

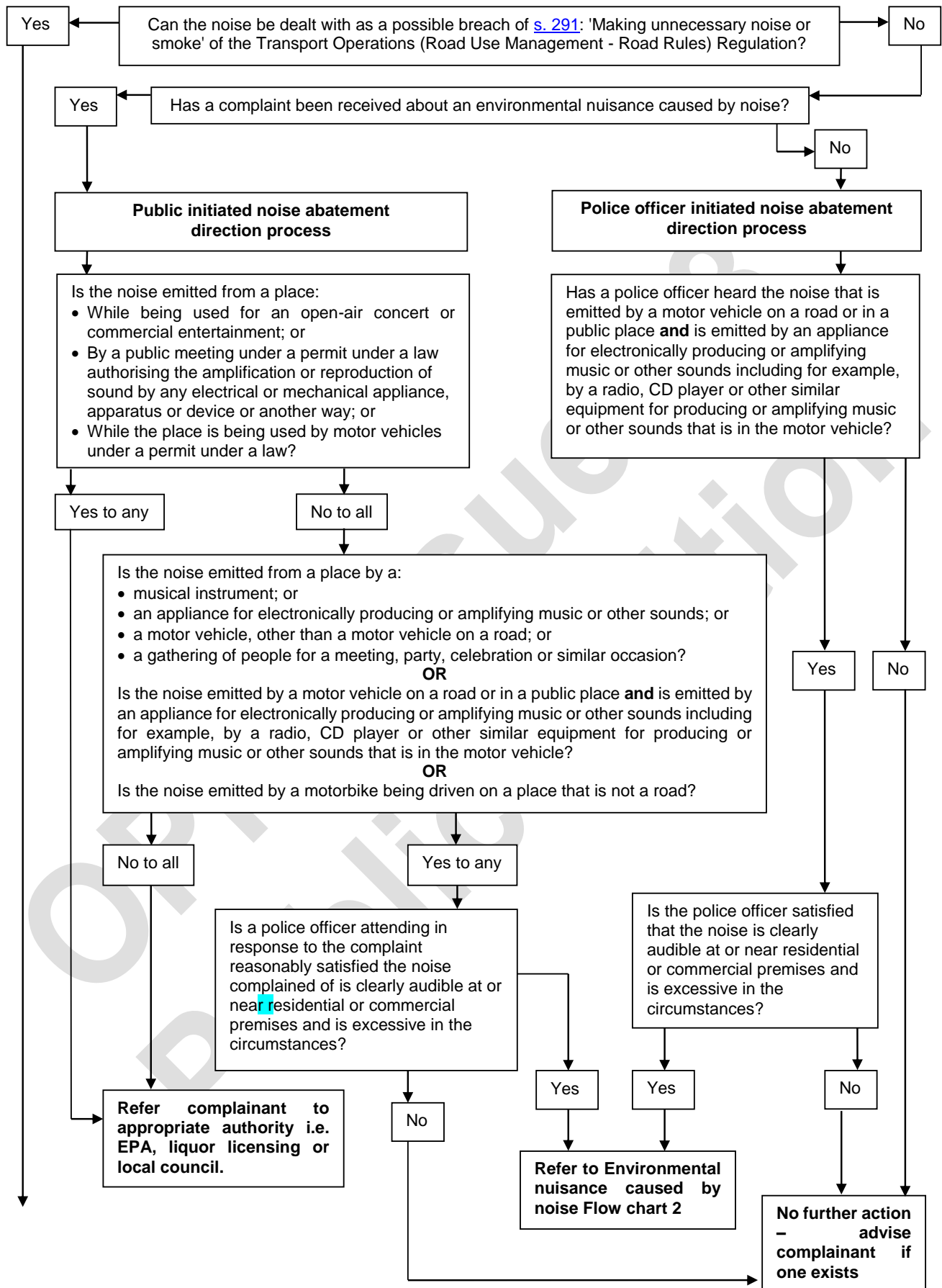
Appendix 13.5 Suggested format for advice regarding a complaint of an offence against s. 131A of the Anti-Discrimination Act 1991

(s. 13.26)

Suggested format for advice regarding a complaint of an offence against s. 131A of the Anti-Discrimination Act 1991

OPM Issue 48
Public Edition

Appendix 13.6 Environmental nuisance caused by noise – flow chart 1



OPM Issue 48
Public Edition

OPM Issue 48
Public Edition

Example of a completed Form 5 – Originating Application

OPM Issue 48
Public Edition

Example of a completed Form 46 – Affidavit by reporting officer

OPM Issue 48
Public Edition

Appendix 13.11 Example affidavit in support of an application under s. 694 of the Police Powers and Responsibilities Act

(s. 13.30)

Example affidavit in support of an application under s. 694 of the *Police Powers and Responsibilities Act*

OPM Issue 48
Public Edition

Example of completed affidavit of service

OPM Issue 48
Public Edition

Example of a completed Form 9 – Application

OPM Issue 48
Public Edition

**Appendix 13.14 Example of completed Form 46 – Affidavit by reporting officer
(For s. 694 of the Police Powers and Responsibilities Act)**

(s. 13.30)

Example of completed Form 46 – Affidavit by reporting officer (For s. 694 of the *Police Powers and Responsibilities Act*)

OPM Issue 48
Public Edition

Appendix 13.15 Example of completed Form 46 – Affidavit by reporting officer (For application for substituted service under s. 57 of Child Protection (Offender Prohibition Order) Act)

(s. 13.30)

Example of completed Form 46 – Affidavit by reporting officer (For application for substituted service under s. 57 of Child Protection (Offender Prohibition Order) Act)

OPM Issue 48
Public Edition

QPRIME functionality for capturing liquor seizures

OPM Issue 48
Public Edition