Chapter 6 – Special Need

6.1 Introduction

This chapter contains procedures which are designed to ensure that contact between members and a person with a special need is conducted in a manner which is fair and does not place the person at a disadvantage.

For the purposes of this chapter, a reference to a person with a special need is also a reference to a vulnerable person.

The chapter is divided into four areas:

(i) general policy;

(ii) cross cultural issues;

(iii) specific intellectual, physical or health needs; and

(iv) mentally ill persons.

Members seeking information on procedures for children should refer to Chapter 5: 'Children' or Chapter 7: 'Child Harm' of this Manual. Chapter 16: 'Custody' should also be consulted regarding detention of persons with special needs.

6.2 References to legislation

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

6.3 General Policy

The provisions of this section apply to all dealings with people with special needs, whether as suspects, complainants or witnesses, provided that no other specific legislative requirements apply. Where specific legislative provisions apply to dealings with a person with special needs, those specific provisions are to be complied with.

This section will generally apply to persons with special needs who are:

(i) suspects in the commission of simple or regulatory offences;

(ii) respondents, aggrieved or named persons in domestic and family violence matters; and

(iii) complainants, witnesses or victims in all types of offences and incidents.

The *Police Powers and Responsibilities Act* contains a number of provisions that apply to people with special needs and specifically applies processes for questioning persons as suspects about the person's involvement in the commission of an indictable offence. These provisions relate to persons who may be considered to have a special need, such as:

(i) Aboriginal people and Torres Strait Islanders (see s. 420 of the *Police Powers and Responsibilities Act*);

(ii) children (see s. 421 of the *Police Powers and Responsibilities Act*);

(iii) persons with impaired capacity (see s. 422 of the *Police Powers and Responsibilities Act*);

(iv) intoxicated persons (see s. 423 of the *Police Powers and Responsibilities Act*); and

(v) persons unable because of inadequate knowledge of the English language or a physical disability to speak with reasonable fluency in English (see s. 433 of the *Police Powers and Responsibilities Act)*.

The *Police Powers and Responsibilities Act* also contains specific provisions relating to persons with special needs in respect to forensic procedures in Chapter 17 (ss. 445 to 536). Additionally, s. 631 'Special requirements for searching children and persons with impaired capacity' of the *Police Powers and Responsibilities Act* makes specific provision for a limit group of people with special needs.

Where the person involved in an incident under this section is an international homestay school student, see s. 5.9: 'International homestay school students' of this Manual.

6.3.1 Circumstances which constitute a special need

POLICY

When the term 'special need' is used in relation to a person, it refers to persons who, because of any condition or circumstance, have a reduced capacity to look after or manage their own interests.

While it is not possible to supply an exhaustive list of persons who have a special need, the following circumstances should be considered as creating a special need until the contrary becomes apparent:

(i) immaturity, either in terms of age or development;

(ii) any infirmity, including early dementia or disease;

(iii) mental illness;

(iv) intellectual disability;

(v) illiteracy or limited education which may impair the person's capacity to understand the questions being put to them;

(vi) inability or limited ability to speak or understand the English language;

(vii) chronic alcoholism;

(viii) physical disabilities including deafness or loss of sight;

(ix) drug dependence;

(x) cultural, ethnic or religious factors including those relating to gender attitudes;

(xi) intoxication, if at the time of contact the person is under the influence of alcohol or a drug to such an extent as to make them unable to look after or manage their own needs;

(xii) aboriginal people and Torres Strait Islanders;

(xiii) children; and

(xiv) persons with impaired capacity.

6.3.2 Establishing whether a special need exists

ORDER

When an officer wishes to interview a person, including taking a complaint or a witness statement, the officer is to first establish whether a special need exists by evaluating the ability of the person to be interviewed, to look after or manage their own interests. The officer is to establish whether the person is capable of understanding the questions posed, or capable of effectively communicating answers. The person must be capable of understanding what is happening to him/her and fully aware of the reasons why the questions are being asked by the officer. The officer must finally establish if the person is fully aware of the consequences which may result from questioning, and capable of understanding his or her rights at law.

PROCEDURE

In making an evaluation, the officer is to take into account the following factors:

(i) the nature of the condition giving rise to the special need. For instance, some physical handicaps have no effect on the ability of a person to understand and to answer questions. Conversely, some physical conditions do affect the ability of a person to communicate;

(ii) the reason the person is being interviewed, whether as a witness, or in relation to their complicity in an offence. Where the information to be obtained may later be used in a court, it will be necessary to show that any special need was addressed;

(iii) the complexity of the information sought from the person;

(iv) the impact that the results or consequences of the interview may have on the rights or liberty of any person. An interview that may substantially affect the rights or liberty of a person should be subject to greater efforts to address the person's special need than an interview that is likely to have only a minor impact;

(v) the age, standard of education, place and type of education (e.g. special school), proficiency in the English language, cultural background and work history of the person; and

(vi) whether the person has been subject to a life event that may impact on the person's capacity to look after or manage their own interests (e.g. acquired brain injury from an accident).

6.3.3 Interviewing persons with special needs

POLICY

When an officer intends to interview a person with a special need, the officer should take whatever action is necessary to compensate for that special need or to comply with the relevant legislative requirements.

In the case of a child or a person with an intellectual impairment, s. 93A of the *Evidence Act* may apply and officers should refer to s. 7.6.5: 'Recording of evidence of a child witness' of this Manual.

PROCEDURE

Where no specific legislative requirement applies, measures to compensate for special needs include, but are not limited to:

(i) arranging for an interpreter, including sign language interpreters where appropriate, to overcome communication barriers (see s. 6.3.7: 'Interpreters' of this chapter);

(ii) obtaining the assistance of an independent person (see s. 6.3.4: 'Independent persons' of this chapter); and

(iii) phrasing questions in a manner which compensates for a lack of comprehension or understanding.

ORDER

Officers are to ensure interviews are conducted under conditions where the person being interviewed is not oppressed or overborne by any condition, circumstance or person.

PROCEDURE

Officers should:

(i) avoid any situation or circumstance which may give rise to a suggestion of oppression, unfairness, fear or dominance by a police officer, or to any other injustice to the person being interviewed;

(ii) avoid any situation or circumstance whereby the person being interviewed may be overborne, oppressed or otherwise unfairly or unjustly treated;

(iii) ensure that the person being interviewed is provided with sufficient assistance to enable them to exercise their legal rights; and

(iv) consider any cultural or religious factors which might cause the person being interviewed to be reluctant to provide information, e.g., devout Muslim women may be reluctant to speak in the presence of men and aboriginal men may be reluctant to discuss certain issues in the presence of women.

6.3.4 Independent persons

POLICY

For the purpose of this section, independent persons include, but are not limited to, a 'support person' as defined in Schedule 6: 'Dictionary' of the *Police Powers and Responsibilities Act* and interpreters. However, a person with a special need may nominate any person to fulfil the role of independent person in respect of themselves.

An independent person should be in a position to assist the person with a special need in order to overcome the condition or circumstance creating the special need.

This may include acting as an interpreter for a person who is unable to speak English or safeguarding the rights of a person who is unable to effectively look after or manage their own interests.

ORDER

Officers in charge of stations and establishments are to ensure that a list of support persons and interpreters appropriate for their area of responsibility is maintained and revised every six months in compliance with the provisions of s. 440 of the *Police Powers and Responsibilities Act*.

The list is to specify the languages that the person listed is able to understand and speak.

POLICY

In addition to the required list of support persons and interpreters, officers in charge of stations or establishments should maintain a list of other independent persons who are competent and willing to assist members of special needs groups in their dealings with the Service.

Officers may make enquiries with the Disability Information and Awareness Line (see Service Manuals Contact Directory) to identify services that may be appropriate to assist persons whose special need results from a disability.

In compiling lists of suitable independent persons, officers should be aware that an independent person should:

(i) not be likely to overbear or overawe the special needs person;

(ii) not be employed by the Service unless the person for whose benefit the independent person is to be present specifically requests otherwise;

(iii) have an understanding and appreciation of the condition causing the special need;

(iv) have an interest in the welfare of the person with the special need; and

(v) in the opinion of the interviewing officer, be capable of facilitating an interview with a person who has a special need.

PROCEDURE

Where the particular special need indicates that an independent person should be present during an interview, the interviewing officer should:

(i) where possible allow the person with the special need to select an independent person. The person with the special need should be offered the list of support persons, interpreters and independent persons to select from, but may select any person whether or not that person is on the list. However, in cases where the person with the

special need is being interviewed in regard to an incident that may have involved the commission of an offence, an independent person who is a witness or suspected offender, accomplice or accessory should not be permitted to be present during any interview (see also s. 6.3.7: 'Interpreters' of this chapter for details of persons who are considered unsuitable to act as interpreters);

(ii) make arrangements for an independent person to attend if necessary and explain, if possible, the role of that person to the special needs person;

(iii) not commence any interview until the arrival of the independent person;

(iv) upon arrival of the independent person, explain the role of the independent person to the independent person;

(v) allow the person with the special need to consult privately with the independent person prior to the interview; and

(vi) allow the independent person to be present, and to provide assistance to the person with the special need during the interview.

Where the independent person or the person with the special need requests private consultation during the interview, that request should be granted.

6.3.5 The role of the independent person

POLICY

The role of the independent person is to ensure that the condition which creates the special need does not disadvantage the person being interviewed. For this purpose the primary function is to facilitate the conditions mentioned in s. 6.3.2: 'Establishing whether a special need exists' of this chapter.

The role of the independent person does not extend to providing answers for the person being interviewed.

Once the conditions mentioned in s. 6.3.2 have been met, it then remains for the person being interviewed to decide on the appropriate responses to questions. If this capacity cannot be established, the person should not be interviewed.

The independent person is to be permitted initially to consult with the person being interviewed, and to provide support during the interview. This, however, should not be allowed to extend to constant interjections.

6.3.6 Aboriginal and Torres Strait Islander people

POLICY

An Aboriginal person is a person of Aboriginal descent who identifies as such and is accepted as being an Aboriginal person by the community in which he or she resides.

A Torres Strait Islander is a person of Torres Strait Islander descent who identifies as such and is accepted as being a Torres Strait Islander by the community in which he or she resides.

PROCEDURE

All persons having contact with the Service and who claim to be an Aboriginal person or a Torres Strait Islander should be treated as such until the contrary is shown.

POLICY

Persons of Aboriginal and Torres Strait Islander descent should be considered people with a special need because of certain cultural and sociological conditions. When an officer intends to question an Aboriginal person or Torres Strait Islander, whether as a witness or a suspect, the existence of a need should be assumed until the contrary is clearly established using the criteria set out in s. 6.3.2: 'Establishing whether a special need exists' of this chapter.

ORDER

Officers in charge of stations or establishments are to compile and maintain a list of local Aboriginal and Torres Strait Islander Legal Service contacts. See s. 6.3.4: 'Independent persons' of this chapter for information regarding 'independent persons'.

PROCEDURE

See also s. 11.5.11: 'Interview friends' of this Manual and the 'List of interview friends and interpreters' kept pursuant to s. 23J of the *Crimes Act* (Cwlth), located on the Operational Support page of the QPS Corporate Intranet (Bulletin Board), for interview friends and interpreters for Aboriginal and Torres Strait Islander persons.

POLICY

Upon request by an Aboriginal person or Torres Strait Islander for legal advice or legal assistance at any stage during any investigation, officers should endeavour to contact the appropriate Legal Service.

Where Aboriginal or Torres Strait Islander field officers attend in this regard, communications between field officers and clients should be treated with the same confidentiality as that of a solicitor/client relationship, even though the field officers may not be lawyers.

Officers are not to summons Aboriginal or Torres Strait Islander field officers to give evidence of their communications with a client without prior authorisation from a commissioned officer.

Prior to authorising the issuing of summonses for Aboriginal and Torres Strait Islander field officers, commissioned officers should consider the value of evidence expected to be obtained and the need to ensure Aboriginal people and Torres Strait Islanders confidence in the legal system is not undermined.

See Chapter 16: 'Custody' of this Manual for further information regarding Aboriginal people and Torres Strait Islanders in custody.

ORDER

When an adult Aboriginal person or Torres Strait Islander is being investigated for an indictable offence, officers are required to comply with provisions of s. 420 of the *Police Powers and Responsibilities Act* and s. 25: 'Questioning of Aboriginal people and Torres Strait Islanders' of the Responsibilities Code.

In relation to the investigation of any offence when it is necessary to have an independent person present during questioning of an Aboriginal person or Torres Strait Islander, officers are to give preference to arranging for attendance of:

(i) an independent person who is a legal practitioner; or

(ii) a representative of the Queensland Aboriginal and Torres Strait Islander Legal Service.

Where such a person is not available or is unable to be contacted, officers are to note their attempts to contact such person in their notebook and into their station occurrence sheet.

POLICY

If the Aboriginal person or Torres Strait Islander has clearly and expressly indicated that they do not wish an independent person who is a legal practitioner or representative of the Queensland Aboriginal and Torres Strait Islander Legal Service to attend, a relative of the Aboriginal person or Torres Strait Islander, or another person nominated by the Aboriginal person or Torres Strait Islander, should act as the independent person, where possible.

In circumstances where the Aboriginal person or Torres Strait Islander indicates that they do not wish a person to attend, officers should allow the person to make a written or electronic record stating they have expressly and voluntarily waived the right of having an interview friend or other independent person present.

When an Aboriginal person or Torres Strait Islander is to be interviewed, the officer in charge of the investigation should ask the person whether they wish to have present an 'interview friend' or a 'prisoner's friend' (see s. 3.19: 'The Anunga Rules – Aboriginals and Torres Strait Islanders' of the Digital Electronic Recording of Interviews and Evidence Manual).

Although all efforts should be made to contact or obtain the person nominated by the Aboriginal person or Torres Strait Islander, obtaining such a person may be impractical because of time delays or distance constraints.

Consideration should be given to the needs of the investigation against delays which may negatively affect the investigation.

In instances where inordinate delays may be caused or the needs of the investigation hampered, an independent person nominated by the officer in charge of the case should be contacted and requested to attend. See s. 6.3.4: 'Independent persons' of this chapter.

Officers should refer to the Anunga Rules (see s. 3.19: 'The Anunga Rules – Aboriginals and Torres Strait Islanders' of the Digital Electronic Recording of Interviews and Evidence Manual) as a guideline to the interview of Aboriginal and Torres Strait Islanders.

When an officer intends to question an Aboriginal person or Torres Strait Islander, whether as a witness or a suspect, consideration should also be given to the relevant information and guidelines contained in Chapter 9: 'Indigenous Language and Communication' of the Supreme Court of Queensland – Equal Treatment Benchbook.

6.3.7 Interpreters

ORDER

Where an officer seeks to interview a person with a special need in accordance with s. 6.3.1: 'Circumstances which constitute a special need' of this chapter are to arrange for the presence of an interpreter to assist with the interview by virtue of s. 433: 'Right to interpreter' of the *Police Powers and Responsibilities Act* and s. 28: 'Right to interpreter' of the Responsibilities Code. This includes members of the deaf community.

Use and selection of interpreters and translators for spoken written and sign languages

POLICY

Where practicable, officers should provide professional, accessible and equitable services in response to the communication requirements of people from non-English speaking backgrounds, Aboriginal and Torres Strait Islander persons, the deaf and hearing/speech impaired persons.

In relation to general interactions with clients (victims, offenders, informants, witnesses and members of the public requiring assistance), it is Queensland Government policy to provide fair and equitable service to all people in Queensland. This may require the use of an accredited interpreter.

Using Police Liaison Officers, multilingual staff member or other person

Multilingual staff, including Police Liaison Officers (PLOs), family members or other community members are not to be used in instances where an official (professional interpreter) should be used. This has the potential to create the perception of a conflict of interest. i.e. a person employed by the service may not be seen as an impartial person to translate for an offender, victim or witness (see s. 433 of the *Police Powers and Responsibilities Act* and s. 28 of the Responsibilities Code). The circumstances of the interaction will be crucial when deciding whether to use an accredited interpreter, for example:

(i) complexity of the interaction; e.g. where the person is making a complaint of assault;

(ii) any emergency or possible need to gain information quickly;

(iii) availability of suitable people to assist in communication;

(iv) availability of an accredited interpreter in a specific language or dialect;

(v) time required to access an interpreter;

(vi) using a relative may be inappropriate for privacy or other reasons e.g. a family member may not be suitable in family disputes; and/or

(vii) gender roles, particularly when dealing with intimate issues.

A person employed by the Service however may assist during the investigative process, providing language, cultural and protocol advice to investigators as well as liaising with victims and families etc.

Using family members and friends (particularly children) to interpret conversations

POLICY

Although sometimes expedient, the use of family members or friends/colleagues (particularly children) to interpret conversations should be treated with caution by police.

Children should not be used for anything more than initial introductions or in emergency situations.

Arranging an interpreter or translator

Interpreters, translators and Australian Sign Language (AUSLAN) interpreters accredited by the National Accredited Authority for Translators and Interpreters (NAATI) at the level of 'interpreter', 'translator' or higher, should be used when investigating criminal offences, complex legal matters and for court proceedings.

Interpreters and translators without NAATI accreditation qualifications (who may also be known as communicators), should only be used when NAATI accredited interpreters and/or translators are not available.

Sections 436: 'Recording of questioning etc.' and 437: 'Requirements for written record or confession or admission' of the *Police Powers and Responsibilities Act* require the recording of the questioning of persons in custody. The requirement to record the conversation between the interpreter and the person in custody should be considered when deciding upon an interpreting option.

PROCEDURE

When an officer intends to interview a person and an interpreter is required they are to:

(i) seek permission from the client to engage an official interpreter;

(ii) verify the client's language, dialect and the gender preferred for the interpreter. As these may have cultural significance for the client; and

(iii) decide if you need an 'on site' or telephone interpreter.

Appropriate NAATI accredited, interpreters and paraprofessional interpreters and non-accredited telephone and onsite interpreters and translators may be contacted either directly or through an interpreting or translating service provider (see Strategic and Cultural Policy, the NAATI internet site www.naati.com.au or the Service Manuals Contact Directory).

Communication with the Deaf community will require special consideration as it will require an on-site interpreter. Accredited AUSLAN interpreters may be contacted directly, through an interpreting or translating service provider (see Strategic and Cultural Policy, the Deaf Services Queensland or NAATI internet site www.naati.com.au or the Service Manuals Contact Directory).

POLICY

Where local interpreter services are non-existent or inadequate and the use of a telephone interpreter is not appropriate, officers may arrange for suitably qualified onsite interpreters to travel to their area, with charges and rates relating to that particular provider payable, at Service expense.

Officer in Change approval should be sought prior to engaging an interpreter. If the officer in charge is not available, permission from the District Duty Officer, or Patrol Group Inspector should be sought. Officers should complete any local registers or if not available, record the interpreter use in their official police notebook and the station patrol log.

The cost of providing Interpreter services should not be a factor in deciding whether an interpreter is required. If there is any doubt that a client may be disadvantaged, a professional interpreter should be engaged.

Officers requiring assistance or advice in relation to interpreting services can contact Cultural Support Unit, Community Contact Command.

The following forms are available to assist in the engagement of an interpreter:

(i) The Translating and Interpreting Service Queensland 'Request for On-Site/Telephone Interpreting' form; and

(ii) The Deaf Services Queensland 'Interpreter Request form.

Communications and interviews using interpreters

POLICY

Where an officer considers that s. 433: 'Right to interpreter' of the *Police Powers and Responsibilities Act* may apply to a person in custody the officer may ask any question, other than questions related to that person's involvement in the offence, that may assist in determining if the person needs an interpreter. See s. 28: 'Right to interpreter' of the Responsibilities Code.

In the course of an investigation, the following persons are not considered appropriate as interpreters during interviews:

(i) co-offenders or other persons suspected of involvement in the matter, the subject of questioning;

(ii) relatives of the person to be interviewed including children;

(iii) police officers (generally includes PLOs and staff members);

(iv) complainants or witnesses; and

(v) other parties with an interest in the outcome of the investigation.

Officers should also consider the provisions of ss. 419(3), 420(6), 421(3), 424-426 and 441 of the *Police Powers and Responsibilities Act*.

Officers should ensure that the interpreter:

(i) is identified to the person;

(ii) and the person fully understand each other;

(iii) is acceptable to the person; and

(iv) is not seen as exercising authority over the person.

Questioning should take the following form:

(i) if practicable, officers should ensure electronic recording equipment is available for the questioning in compliance of ss. 436 and 437 of the *Police Powers and Responsibilities Act*;

(ii) have the interpreter translate and ask the question;

(iii) listen to the answer;

(iv) have the interpreter translate and repeat the answer; and

(v) record the answer (if written record of interview).

Interpreters used in interviews become potential witnesses for the prosecution and a different interpreter should be used for any subsequent court interpreting.

For further useful information and contact numbers see Strategic and Cultural Policy – Interpreting and translating information.

6.3.8 Police descriptions of persons

POLICY

All communication will be framed, as far as is possible, in non-discriminatory and non-offensive language. Guidelines contained in the Service Non-discriminatory Language Guide should be followed when describing persons by appearance.

6.3.9 Children

Procedures relating to the requirements of the *Youth Justice Act* when interviewing children are included in Chapter 5: 'Children' of this Manual.

ORDER

In all cases, officers are to consider children as having a special need.

6.3.10 Victims of crime

POLICY

Officers required to assist victims of crime should refer to Chapter 2: 'Investigative Process' of this Manual for further information. Officers should advise victims of crime of the assistance available to them through the Victims of Crime Association and any other victim support agency the officer is aware of.

6.3.11 Homeless persons

PROCEDURE

Officers who come in contact with a homeless or destitute person should:

(i) refer that person to an agency for assistance, so that emergency accommodation and resources can be provided, and if asked, supply their name, rank, and station/establishment to the homeless or destitute person;

(ii) record particulars of any assistance provided, and when assistance is offered and declined by the person, record in that officer's activity log (QP161) or official police notebook the names of the agencies referred to and any other assistance offered;

(iii) if the person has been acting unlawfully, consider initiating a prosecution under the relevant statute;

(iv) if the person is a child consider s. 5.2: 'Children (general information)' of this Manual; and

(v) ensure the homeless or destitute person is not recorded as a missing person on the Service computer system. If the person is recorded as a missing person, see s. 12.5.1: 'Responsibility of officers who locate a missing person' of this Manual.

See also s. 6.3.1: 'Circumstances which constitute a special need', s. 6.3.10: 'Victims of crime' and s. 6.5: 'Specific physical, intellectual or health needs' of this chapter.

6.3.12 Public Guardian

The Public Guardian is an independent statutory officer established under the *Public Guardian Act* to protect the rights and interests of:

(i) adults with impaired capacity (a definition of 'impaired capacity' is provided in Schedule 4: 'Dictionary' of the *Guardianship and Administration Act*); and

(ii) relevant children and children staying at visitable sites (definitions of 'relevant children' and 'visitable sites' are provided in Schedule 1: 'Dictionary' of the *Public Guardian Act*).

The functions of the Public Guardian are outlined in ss. 12: 'Functions – adult with impaired capacity for a matter' and 13: 'Functions – relevant child etc.' of the *Public Guardian Act*.

The Public Guardian:

(i) has a variety of investigative powers and the authority to represent or advocate for an adult person with impaired capacity or a relevant child;

(ii) is authorised to consent to health care matters on behalf of for an adult person with impaired capacity or a relevant child; and

(iii) may delegate certain Public Guardian's powers under ss. 20: 'Delegate for investigation' and 146: 'Delegation' of the *Public Guardian Act* to an appropriately qualified member of the Public Guardian's staff or appropriately qualified person, as applicable.

Under s. 146(2), of the *Public Guardian Act* a delegate exercising powers under the Act must, if asked, produce evidence of the delegation.

The Public Guardian and any staff or persons authorised by way of delegation above, are public officials as defined in Schedule 6 of the *Police Powers and Responsibilities Act*.

POLICY

Officers called upon to assist a person exercising the Public Guardian's powers under the *Public Guardian Act* are to comply with the provisions of s. 13.3.2: 'Helping public officials exercise powers under various Acts' of this Manual. In establishing that the person concerned is in fact a public official under the *Public Guardian Act* officers are to, where applicable, ask the person to produce evidence of the delegation.

Members receiving a complaint or report of a suspected offence where an adult person with impaired capacity or a relevant child is a victim are to ensure that such offence is investigated and where appropriate, prosecution action taken against the offender (see s. 3.4: 'General prosecution policy' of this Manual).

Officers investigating an offence involving a person with impaired capacity for whom the Public Guardian is acting or representing under the *Public Guardian Act*, should regularly provide the Public Guardian with information on the status of the investigation and any subsequent prosecution.

Releases of information to the Public Guardian are to be dealt with in accordance with s. 5.6.22: 'Release of information to the Public Guardian' of the Management Support Manual.

6.3.13 Release of victim details to Queensland Health Victim Support Service

In order to provide greater support to victims of offences alleged to have been committed by persons lawfully detained in an authorised mental health service, Queensland Health has established the Victim Support Service.

The Victim Support Service is responsible for ensuring victims of serious sexual offences or other violent offences, and their families, are contacted at the earliest possible opportunity to offer support and where applicable, given information regarding the whereabouts and treatment of offenders.

The Queensland Police Service has agreed to provide the Victim Support Service with victims' personal particulars where the Victim Support Service has provided a facsimile request for the details and subject to appropriate consent being obtained for the release of the particulars. The request will be addressed to the Queensland Police Service District Mental Health Intervention Coordinator of the relevant district where the offence occurred. The request will contain patient and offence details.

Queensland Police Service District Mental Health Intervention Coordinators are authorised to release victim details to the Victim Support Service in accordance with the policy contained within this section. Mental Health Intervention Coordinators have been delegated the Commissioner's power to release information under s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act* (see Delegation No. D 15.46 of the Handbook of Delegations and Authorities).

POLICY

Members receiving a facsimile request for personal particulars of a victim of an offence from the Victim Support Service are to immediately refer the request to the District Mental Health Intervention Coordinator for the area where the offence occurred.

Upon receiving the request, the District Mental Health Intervention Coordinator is to seek consent to release the personal particulars of the victim of the offence, from the victim or where the victim is unable to give consent, from the victim's parent or guardian or immediate family member.

Where consent to release the personal particulars of the victim is given, the District Mental Health Intervention Coordinator is to supply the following victim details to the Manager, Victim Support Service, as soon as practicable:

(i) name;

(ii) residential address;

(iii) telephone number;

(iv) relationship to offender (if known);

(v) confirmation as to whether the victim is a minor; and

(vi) if the victim is a minor, details of next of kin.

The details should be supplied by completing and returning the response section of the request by facsimile, or by forwarding an email containing the details. A written record of the consent and subsequent release of the information should be kept by the District Mental Health Intervention Coordinator.

6.3.14 SupportLink

SupportLink manages a referral framework that allows Police, Government and non-Government agencies to work together for the benefit people requiring assistance in all regions of Queensland.

POLICY

Where members consider an 'at risk' person would benefit by receiving additional support from an external agency, they are to consider referring the person to SupportLink for assistance.

This referral system complements existing requirements under Service policy and legislation and referrals should not be made in lieu of Service policy or statutory obligations.

Situations where a person may be 'at risk' and would consequently benefit from a referral include where the person is subject or exposed to:

(i) personal and property crime (e.g. assault, break and enter);

(ii) domestic violence;

(iii) drug and alcohol abuse;

(iv) mental health problems;

(v) elder abuse and neglect;

(vi) road trauma;

(vii) suicide;

(viii) sexual assault;

(ix) bullying;

(x) street gang affiliation;

(xi) neighbourhood disputes; and

(xii) child safety issues.

SupportLink is the preferred referral network for all referrals for victims of crime. Where a victim specifically requires the services of Victim Assist Queensland, members are to refer the victim to Victim Assist Queensland via SupportLink.

SupportLink receive all electronic referrals submitted by members on the QPS Corporate Intranet (Bulletin Board) and refers them to the appropriate support agency who may provide assistance by:

(i) crime prevention (information mail-outs on home/business security);

(ii) victim support and counselling;

(iii) financial assistance in relation to violent crime;

(iv) support for men/women;

(v) support for parent/carer of young people aged 12 to 25; and

(vi) support for young people aged 12 to 25.

Submitting a SupportLink referral

POLICY

To ensure compliance with the provisions of the *Information Privacy Act*, a referral is only to be made after consent of the 'at risk' person has been obtained.

Where practicable, consent and refusal is to be:

(i) recorded within the officer's official police notebook/diary and signed by the victim; and

(ii) recorded within QPRIME. An example of written consent is as follows:

> I hereby give consent/refuse to consent for my details to be given to SupportLink for the purpose of referral to a support agency.
>
> Signed: _____ Date: _____

Where verbal consent/refusal has been obtained as written consent/refusal was not practicable, the member is to proceed with the referral and record the verbally obtained consent in their official police notebook or diary or QPRIME occurrence.

Where the 'at risk' person is below the age of 16 years, the member is to obtain the written consent from the person's parent or guardian.

Where district officers have implemented SupportLink as the preferred system of referral for domestic violence incidents in that district, written consent must be obtained for each domestic violence referral (see s. 9.6.8: 'Domestic violence referral agencies' of this Manual).

Where the 'at risk' person or, where applicable, the parent or guardian does not provide written or verbal consent, a referral should not be submitted.

Members are to submit a SupportLink referral on each occasion it is deemed necessary to assist the person, regardless of whether the 'at risk' person has been referred on previous occasions.

PROCEDURE

Where a member considers an 'at risk' person would benefit from a SupportLink referral, the member is to:

(i) explain to the person the voluntary referral process;

(ii) where a referral is requested, obtain the person's consent to forward their details to SupportLink who will then co-ordinate appropriate assistance;

(iii) where the 'at risk' person is below the age of 16 years, obtain consent from their parent or guardian;

(iv) where the person is incapable of providing consent e.g. the person is suffering from dementia, obtain the consent from a relative or carer; and

(v) complete and submit a referral on the QPS Corporate Intranet (Bulletin Board).

Obtaining Information from SupportLink

ORDER

Members requiring information relating to clients, previously referred to SupportLink, must forward this request by email to 'SupportLink' on the QPS Corporate email.

6.4 Cross cultural issues

POLICY

Officers may have contact with people from diverse communities and backgrounds in the execution of their duties and should remain aware that many people will have cultural or religious beliefs which may impact on their practices and behaviours.

Officer interaction with diverse community members should be conducted in a manner that is fair and provides for those person beliefs where practicable. See *A Practical Reference to Religious and Spiritual Diversity for Operational Police*.

The following are examples of police interaction with diverse community members, where officers' may:

(i) deal with members of the Sikh community. Baptised Sikhs may find it offensive to be requested by an officer to undo their turban, remove their Kanga (ceremonial comb), Kara (iron bangle) or Kirpan (ceremonial sword) as these are considered to be articles of faith (sacred objects); and

(ii) officers may require confirmation of identification from a Muslim female wearing a full faced hijab, burka or niqab. Such persons may find it objectionable to reveal their face to male officers or in public places as the Islamic dress code requires women to dress modestly, and to cover certain parts of the body.

In such circumstances, officers should consider the provisions relating to searches of persons within s. 624: 'General provision about searches of persons' of the *Police Powers and Responsibilities Act* and s. 16.10: 'Search of persons' of this Manual. This may require same sex officers to make requirements and consider additional arrangements to conduct the search in a manner that protects the dignity of the person.

Members requiring further advice may contact the Cultural Liaison Unit, Community Contact Command.

6.4.1 Education and training

POLICY

The Service will provide education and training to all members as a part of an overall strategy to improve service to Indigenous and multicultural community groups.

ORDER

The Assistant Commissioner, Education and Training Command, is responsible for the development and provision of training to members in Indigenous and multicultural community issues which affect policing in Queensland and ensure that all: Queensland Police Service Academy teaching staff; district/establishment education and training officers; members involved in the development and writing of learning materials; and operational officers, are made aware of policing, education and training issues involving cross cultural issues.

PROCEDURE

Provision of education and training may be facilitated by district education and training coordinators and district/establishment education and training officers.

6.4.2 Community involvement (responsibilities of officer in charge)

POLICY

Officers in charge of stations or establishments should, in managing the provision of services, take into account the specific multicultural demographic characteristics of their area of responsibility and the needs thereby created.

ORDER

Officers in charge of stations or establishments at Aboriginal and/or Torres Strait Islander communities are: responsible for the identification of training issues for Community Police under their control; to be conversant with legislation governing the administration of Aboriginal and Torres Strait Islander communities in Queensland; and to ensure officers under their control are informed of and are adequately trained in legislation governing the administration of Aboriginal and Torres Strait Islander communities in Queensland.

PROCEDURE

To provide quality training and to ensure an effective policing service to the community officers in charge of stations and establishments at Aboriginal and Torres Strait Islander communities should:

(i) liaise with District Education and Training officers; and

(ii) liaise with local community councils to become conversant with local legislation.

6.4.3 Cross Cultural Liaison Officers

Cross cultural liaison officers are available in all regions. The role of a cross cultural liaison officer is to establish and maintain effective liaison between police, Aboriginal, Torres Strait Islander and Multicultural communities to identify the needs of communities and enable appropriate policies and strategies to be developed to ensure the delivery of an equitable service within the district or region.

The principal responsibilities of cross cultural liaison officers include:

(i) managing and coordinating cultural support activities in line with Service policy;

(ii) developing and maintaining effective communication with Aboriginal/Torres Strait Islander and Multicultural community representatives, colleagues and representatives of government departments and external agencies;

(iii) developing and presenting community based policing programs in line with service policy; and

(iv) providing operational support particularly in the investigation of crime in Multicultural, Aboriginal and Torres Strait Islander communities.

PROCEDURE

Officers requiring assistance or advice can obtain the contact numbers for cross cultural liaison officers from the Cultural Liaison Unit, Community Contact Command webpage on the QPS Corporate Intranet (Bulletin Board).

6.4.4 Senior Executive Indigenous Community Visitation

POLICY

Building relations based on trust and confidence between police and Indigenous communities is a priority for the Service.

It is important for all senior executive officers to be actively engaged with Indigenous communities and to periodically visit them.

Assistant Commissioners whose regions include Indigenous communities should seek to visit them at least annually.

All Senior Executive officers should capitalise on opportunities to visit Indigenous communities in a meaningful way with a view to enhancing partnerships and gaining a fuller understanding of issues affecting their area of responsibility. Where possible, the timing of these visits should align with whole of government engagements including negotiation tables or other significant events e.g. opening of new buildings.

Further information regarding principles, resources and advice available may be found in 'The Senior Executive Indigenous Community Visitation Policy Statement', on the Cultural Liaison Unit, Community Contact Command webpage on the QPS Corporate Intranet (Bulletin Board).

6.5 Specific physical, intellectual or health needs

Officers may encounter persons with special needs during the performance of their duties. This section does not intend to provide officers with rules for all situations but is intended to provide policy for situations with which police frequently deal.

6.5.1 Cautioning adults who commit offences

The Service position with respect to the cautioning of adults is that they be given in exceptional circumstances where it is in the public interest. The purpose of adult cautions is to deter minor criminal behaviour, and prevent the disproportionate use of prosecution resources for minor matters.

For Service policy in respect of cautioning adults for traffic offences see s. 8.8: 'Verbal cautions' of the Traffic Manual.

POLICY

An investigating officer may consider a caution appropriate for an adult who is:

(i) of or over the age of sixty-five; or

(ii) intellectually disabled or infirm to the extent there is no real risk of repetition of the offence.

Before a caution may be administered, the following criteria should be met:

(i) the offence must:

(a) be of a type/nature that a court is likely to impose only a nominal penalty (e.g. unauthorised dealing with shop goods); or

(b) be trivial in nature;

(ii) the offender must:

(a) admit the offence;

(b) have no criminal record for dishonesty and no substantial record for other offences; and

(c) consent to being cautioned for the offence. Such consent is to be obtained after a record of interview is conducted or admissions are made, to avoid allegations of inducement; and

(iii) if applicable, any property stolen should be in a fit condition to be returned to the complainant, or alternatively, the administration of a caution may be conditional on payment for the item taken or damage caused; and

(iv) there must be sufficient admissible evidence available to prove a prima facie case.

Should a victim wish to have an offender prosecuted rather than cautioned, those views are to be taken into consideration, but this does not mean automatic prosecution.

PROCEDURE

Officers who consider it appropriate to caution an adult are to create and assign a task to their supervising commissioned officer in the relevant QPRIME occurrence with a request for permission for the offender to be cautioned.

Decision to caution to be made by commissioned officer

ORDER

The decision to caution an offender is to be made by a commissioned officer.

PROCEDURE

In determining whether a caution should be administered in place of the offender being prosecuted, commissioned officers are to consider the:

(i) facts known to them;

(ii) offender's antecedents; and

(iii) merits of the case.

Officers are not to bargain with offenders or complainants.

Cautioning process

POLICY

Cautioning:

(i) should take place as soon as possible after the offence (after proper consideration); and

(ii) may be carried out on more than one occasion in respect of the same offender, if warranted.

Officers are to record cautions as 'clear ups' for statistical purposes and are to furnish occurrence reports and supplementary reports.

PROCEDURE

Officers receiving permission to give a caution to an adult offender should:

(i) where necessary, have an appropriate support person present, see s. 6.3: 'General policy' of this chapter);

(ii) ensure that all persons present understand the purpose, nature and effect of the caution;

(iii) clearly outline the offence or behaviour to the offender;

(iv) make direct reference to the statute and section providing any offence, clearly indicating the prescribed penalty;

(v) point out to the offender the consequences of possible court appearance (prison, effect on family, friends, reputation, re-offending and worsening effects on the offender);

(vi) ascertain whether it is appropriate for the offender to apologise to the victim as part of the caution process;

(vii) make satisfactory mutual arrangements regarding return of property or payment of restitution to the victim where possible;

(viii) word the caution to suit the circumstances and demeanour of the adult offender;

(ix) cover the following points in the caution:

(a) the caution will be recorded in police records but will not be included in the offender's criminal history;

(b) the caution is not a 'let off', but another chance to allow the offender to avoid further anti-social behaviour and conflict with the law; and

(c) after the caution, any detected offences may result in the offender appearing in court; and

(x) where appropriate, refer the offender to another agency for follow-up of a particular problem.

Electronic recording of cautions

POLICY

Wherever possible, adult cautions for indictable offences should be electronically recorded.

Cautions for non-indictable offences may be recorded at the discretion of the investigating officer. However, where an officer considers that a caution for a non-indictable offence may be contentious or that a co-offender is likely to be charged with the same offence, that interview should be electronically recorded.

Electronic recordings of cautions are to be recorded in QPRIME via an Interview Report linked to the offender (see 'Interview' of the QPRIME User Guide) and distributed in accordance with the Digital Electronic Recording of Interviews and Evidence Manual.

An electronic recording of a caution should incorporate the consent of the offender to the caution.

Officers are to refer to Chapter 5: 'Children' of this Manual for specific procedures relating to the cautioning of juveniles.

6.5.2 Intellectual disability

POLICY

Officers should note the distinction between procedures affecting people who are mentally ill and those affecting people who are intellectually disabled. Where an officer is unclear if a person is intellectually disabled, advice should be sought from an appropriate source. Community psychiatric clinics are an appropriate source of advice (see s. 6.6: 'Mentally ill persons' of this chapter).

6.5.3 Guide Dogs

PROCEDURE

Where police are in attendance at an incident at which the owner of a guide dog has been injured and is to be transported by ambulance, the senior officer at the scene should ask the owner of the dog where or to whom the dog is to be taken and as soon as possible thereafter, deliver or arrange for the delivery of the guide dog to the place nominated by the owner.

If the owner of the guide dog is unable to provide advice, the senior officer present should contact or cause to be contacted the Guide Dogs for the Blind Association.

6.5.4 Alcohol and/or drug dependency

POLICY

An officer dealing with a person who appears to be intoxicated should be aware that the person may be exhibiting the symptoms of what could be a genuine medical complaint. A number of conditions may produce signs similar to intoxication, particularly when occurring in conjunction with alcohol ingestion.

ORDER

Where any doubt exists as to whether a person is intoxicated or exhibiting possible symptoms of a medical complaint, officers are to seek medical treatment for that person immediately.

POLICY

Generally officers should not interview a person for an offence when that person is:

(i) under the influence of liquor or a drug; or

(ii) suffering the effects of alcohol or drug withdrawal,

to such an extent that a special need exists.

There will be exceptions to this policy which may include:

(i) offences under s. 79 of the *Transport Operations (Road Use Management) Act*; and

(ii) situations where evidence would otherwise be lost because of circumstances such as the need to protect life or property, or to prevent a co-offender taking flight or absconding.

However, officers should bear in mind that any evidence obtained whilst interviewing a person who is under the influence of liquor or a drug or suffering the effects of alcohol or drug withdrawal may be ruled inadmissible in a court.

6.5.5 Potentially harmful things (volatile substance misuse)

A potentially harmful thing is defined in Schedule 6 of the *Police Powers and Responsibilities Act* and means a thing a person may lawfully possess that is or contains a substance that may be harmful to a person if ingested or inhaled; and

includes methylated spirits; and does not include a thing intended by its manufacturer to be inhaled or ingested by the person using it.

Although methylated spirits and other substances that may be harmful to a person if ingested are included, the definition also relates to volatile substances, the inhalation of which may cause substantial harm.

Volatile substances, or inhalants, refer to a wide range of products containing substances such as toluene and hydrocarbons that produce or release chemical vapours or fumes at room temperature. Volatile substances include:

(i) volatile solvents – glues, paint thinners, dry cleaning fluids, petrol, adhesives, felt tip markers, degreasers;

(ii) aerosols – spray paints, deodorants, hairsprays, insect sprays, air fresheners, vegetable oil sprays;

(iii) gases – butane cigarette lighters, propane gas, nitrous oxide (found in whipped cream dispensers); and

(iv) nitrates – amyl nitrate, butyl nitrate.

Volatile substance misuse (VSM), inhalant use, solvent sniffing, glue sniffing, chroming, and paint sniffing are terms used to describe the deliberate inhalation of fumes or vapours from a volatile substance for an intoxicating effect.

Effects of volatile substance misuse

Volatile substance misuse can produce short and long term adverse health effects which may vary from person to person depending on the type of product used, the amount inhaled, how it is taken, the use of other drugs, individual user characteristics (e.g. age, weight, health, mood, previous experience) and the environment in which the substance is taken.

Volatile substances depress the central nervous system and provide similar effects to alcohol. Intoxication occurs rapidly (in 1-5 minutes) with a recovery period generally of 30-60 minutes. Short term effects can include a loss of inhibition, euphoria, excitement, drowsiness, disorientation, confusion and inappropriate laughter or weeping. Other effects include a loss of coordination, numbness, anxiety, tension, nausea, vomiting and hallucinations.

The long term effects of regular or chronic volatile substance misuse can include memory loss, depression, fatigue, irritability, weight loss, sneezing, coughing, a runny nose, nosebleeds and sores around the nose and mouth. Permanent hearing loss and damage to the major organs and central nervous system can also occur.

In some circumstances the inhaling of volatile substances can also result in unconsciousness, heart failure and sudden death. The likelihood of this occurring is increased where during or shortly after inhaling, an affected person is exposed to an activity or event that causes a sudden rise in heart rate (e.g. the person flees from police).

The Queensland Police Service and the Queensland Ambulance Service (QAS) have developed an immediate response protocol to volatile substance misuse. This document outlines the role of the QAS at a volatile substance misuse incident and what police should know and how they should deal with these incidents. Relevant parts of this protocol have been included in this section and the document is available on the Drug and Alcohol Coordination site on the QPS Corporate Intranet (Bulletin Board).

Responding to incidents involving potentially harmful things

POLICY

When responding to any incident involving potentially harmful things officers should:

(i) consider the issue of safety. The reactions of persons affected by potentially harmful things may vary. Police involvement may cause the person to become agitated and they may try to run or react violently. At all times the primary concern of officers should be their own safety, the immediate safety of the affected person(s) and any members of the public;

(ii) assess the affected persons level of consciousness. If the affected person:

(a) is unconscious;

(b) has an altered level of consciousness; or

(c) has had any reported unconsciousness;

officers are to request assistance from the QAS and render first aid as appropriate;

(iii) remove the potentially harmful thing(s) (see 'Seizing potentially harmful things' of this section);

(iv) avoid unnecessarily chasing or aggravating the affected person. In some cases it may be necessary to chase a person affected by potentially harmful things, if for example the person is suspected of having committed a serious offence or where it is necessary to ensure the immediate safety of any person. However, as outlined above, chasing or aggravating the affected person may cause a serious reaction in a person affected by volatile substances and can lead to unconsciousness and possibly death;

(v) discuss what substance(s) has been used;

(vi) suggest a place of safety for the affected person to recover; and

(vii) provide referral information.

In addition, if the person affected by a potentially harmful thing is:

(i) under seventeen years of age, officers should contact the parents or guardian;

(ii) a child under the age of twelve years, and is at risk of harm and the parents of the child cannot be contacted, officers should consider taking the child to a safe place pursuant to s. 21 of the *Child Protection Act* (see s. 7.4.2: 'Moving a child to a safe place' of this Manual);

(iii) located in a declared locality (s. 604(4) of the *Police Powers and Responsibilities Act*), where possible, officers should ask the person if they are willing to be taken to a place of safety. If the person is unwilling or refuses, officers should consider detaining and taking the person to a place of safety (see 'Detaining persons affected by potentially harmful things' of this section). Localities declared pursuant to s. 604(4) are localities shown on the 'Place of Safety Trial Maps' for Mt Isa, Cairns, Townsville, inner Brisbane, Logan, Rockhampton, Gracemere-Rockhampton and Caboolture (see s. 8N: 'Declared localities – Act, s 604' of the Police Powers and Responsibilities Regulation).

Seizing potentially harmful things

POLICY

A police officer finding a person:

(i) in circumstances in which the police officer reasonably suspects the person is in possession of a potentially harmful thing the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale; or

(ii) in possession of a potentially harmful thing in circumstances in which the police officer reasonably suspects the person has ingested or inhaled, is ingesting or inhaling, or is about to ingest or inhale the thing;

may search the person and anything in the person's possession to find out whether the person is in possession of a potentially harmful thing (s. 603: 'Power to seize potentially harmful things' of the *Police Powers and Responsibilities Act*).

If the person is in possession of a potentially harmful thing officers should:

(i) ask the person to explain why they are in possession of the thing; and

(ii) if the person does not give a reasonable explanation, seize the thing.

Potentially harmful things seized pursuant to this section are forfeited to the State and s. 622 of the *Police Powers and Responsibilities Act* (Receipt for seized property) does not apply (see s. 603(6) and (7) of the *Police Powers and Responsibilities Act*).

When searching a person and/or seizing potentially harmful things pursuant to s. 603 of the *Police Powers and Responsibilities Act* officers are to comply with the following provisions of this Manual:

(i) s. 4.14.3: 'Potentially harmful things'; and

(ii) s. 16.10: 'Search of persons'.

When items other than potentially harmful things are seized or taken from a person affected by potentially harmful things, officers are to comply with the relevant provisions of Chapter 4: 'Property' of this Manual.

The provisions of s. 603 of the *Police Powers and Responsibilities Act* apply in all cases irrespective of the person in possession of the potentially harmful thing being affected or subsequently detained and taken to a place of safety (see 'Detaining persons affected by potentially harmful things' of this section).

Detaining persons affected by potentially harmful things

A place of safety is defined in s. 604(2) of the *Police Powers and Responsibilities Act* as a place, other than a police station or establishment, where an officer considers that the affected person can receive the treatment or care necessary to enable the person to recover safely from the effects of the potentially harmful thing.

Examples of a place of safety include:

(i) a hospital, for a person who needs medical attention;

(ii) a vehicle used to transport persons to a place of safety and under the control of someone other than a police officer (e.g. a QAS vehicle);

(iii) the persons home, or the home of a relative or friend, if there is no likelihood of domestic violence or associated domestic violence happening at the place because of the person's condition, or the person is not subject to a domestic violence order preventing the person from entering or remaining at the place; or

(iv) a place, other than a hospital, that provides specific care for persons who are intoxicated or affected by volatile substances, if such a place or organisation exists within the particular declared locality.

POLICY

Places of safety available at different times and in different declared localities may vary, however because persons affected by potentially harmful things need to be assessed by members of the QAS if they are unconscious, have an

altered level of consciousness or have had any reported unconsciousness, in many instances a QAS vehicle will be the most suitable place of safety.

Officers in charge of stations or establishments within a declared locality are to ensure that an appropriate list of places of safety is maintained and is available to officers under their control. Such a list should include information concerning each place of safety and:

(i) its capacity;

(ii) hours of operation;

(iii) the type of persons able to be taken there; and

(iv) the notification process (i.e. whether it is necessary to call prior to attending).

Within a declared locality:

(i) if, because of the way a person is behaving and other relevant indicators, a police officer is satisfied the person is affected by the ingestion or inhalation of a potentially harmful thing; and

(ii) only if it is appropriate for the person to be taken to a place of safety;

a police officer:

(i) may detain the person for the purpose of taking the person to a place of safety; and

(ii) at the earliest reasonable opportunity is to take the person to a place of safety and release the person at that place, unless:

(a) a person at a place of safety refuses, or is unable, to provide care for the relevant person; or

(b) the relevant person's behaviour may pose a risk of harm, including, but not limited to, an act of domestic violence or associated domestic violence, to other persons at a place of safety; or

(c) the police officer is unable to find a place of safety that is willing to provide care for the relevant person (s. 605(2) of the *Police Powers and Responsibilities Act*).

If a police officer is unable to leave a detained person at a place of safety due to reasons specified in (a)-(c) above, the detained person must be released (s. 605(3) of the *Police Powers and Responsibilities Act*).

Officers who detain a person under s. 604 of the *Police Powers and Responsibilities Act* are to:

(i) comply with the provisions of s. 4.6.16: 'Property of persons detained or arrested' of this Manual;

(ii) before releasing the person at the place of safety, ensure the person apparently in possession or in charge of the relevant place of safety gives a signed undertaking to provide care for the relevant person on a Form 92: 'Place of safety – Carer undertaking' which is available on QPS Forms Select or through QPRIME (see s. 605(4) of the *Police Powers and Responsibilities Act*); and

(iii) as soon as practicable following the release of the detained person:

(a) record a Custody Report against the person under the occurrence 'Volatile Substance Misuse [1582]' on QPRIME; and

(b) file the relevant signed 'Place of Safety – Carer Undertaking' form at the officer's station or establishment.

When a person is taken to and released at a place of safety, officers are not to compel that person to stay at the place of safety, unless another Act otherwise requires (s. 606: 'No compulsion to stay at place of safety' of the *Police Powers and Responsibilities Act*).

Completing a QPRIME custody and search report

A search of a person or seizure of a potentially harmful thing under s. 603: 'Power to seize potentially harmful things', and detention of a person under s. 604: 'Dealing with persons affected by potentially harmful things' of the *Police Powers and Responsibilities Act* are 'enforcement acts' and are therefore to be entered in a register of enforcement acts in accordance with Chapter 21, Part 2: 'Registers', ss. 660-685 of the *Police Powers and Responsibilities Act* and Part 7, ss. 54 to 65A of the Responsibilities Code.

ORDER

Officers are to record the following reports against a person under the occurrence 'Volatile Substance Misuse [1582]': for a search or seizure of the person under s. 603, a 'Person Stop/Search report' (see QPRIME User Guide : Physical Search : Person Stop, Search); or for a detention of the person under s. 604, a 'Custody Report' (see 'Volatile Substance Misuse' and 'Custody : Custody Scenarios – Quick Links to Reports' of the QPRIME User Guide).

(See also s. 2.1.2: 'Registers required to be kept' and s. 16.8: 'QPRIME custody, search and property reports' of this Manual).

Information concerning potentially harmful things

The Drug and Alcohol Coordination Unit site on the QPS Corporate Intranet (Bulletin Board) contains information concerning VSM.

The Alcohol and Drug Information Service (ADIS) can provide additional information for concerned people and parents. They provide a 24 hour, 7 day service which includes advice information and referral to local agencies (see Service Manuals Contact Directory).

The Poisons Information Centre can also provide treatment advice, information and referral 24 hours, 7 days a week (see Service Manuals Contact Directory).

6.6 Mentally ill persons

The *Mental Health Act* is an Act included in Schedule 1: 'Acts not affected by this Act' of the *Police Powers and Responsibilities Act*. As such, the *Police Powers and Responsibilities Act* does not affect the powers or responsibilities an officer has under the *Mental Health Act*.

However, this does not prevent an officer from exercising a power or performing a responsibility under the *Police Powers and Responsibilities Act* that the officer does not have under the *Mental Health Act* (s. 12: 'Relationship to other Acts' of the *Police Powers and Responsibilities Act* refers).

Consequently, officers should fulfil any responsibilities imposed upon them by the provisions of the *Police Powers and Responsibilities Act*, which are not imposed by a similar provision of the *Mental Health Act* (see s. 2.1.1: 'Use of Police Powers and Responsibilities Act' of this Manual).

The *Mental Health Act* sets out strict guidelines regarding the involvement of officers with the involuntary assessment of mentally ill persons. There are four avenues provided in the *Mental Health Act* by which an officer may become involved in the involuntary assessment of mentally ill persons who are not subject to criminal proceedings:

(i) under s. 25: 'Taking person to authorised mental health service', an officer may be required to assist a health practitioner or ambulance officer to take a person for whom assessment documents are in force (see s. 16: 'Assessment documents' of the *Mental Health Act*) to an authorised mental health service for assessment;

(ii) under s. 30: 'Effect of order', an officer may be required to assist a doctor or authorised mental health practitioner who has a 'justices examination order' in respect of a person. An officer may enter a place and detain the person at that place for examination;

(iii) under s. 34: 'Taking person to authorised mental health service', an officer must under certain circumstances (see s. 33: 'Application of sdiv 1' of the *Mental Health Act*) take a person to an authorised mental health service for examination and make an 'emergency examination order (police or ambulance officer)'; and

(iv) under s. 39: 'Taking person to authorised mental health service for examination', an officer may be required to take a person to an authorised mental health service on the authority of an 'emergency examination order (psychiatrist)' (see ss. 37: 'Application of sdiv 2' and 38: 'Making of emergency examination order' of the *Mental Health Act*).

In the circumstances listed above, a person may be taken to a public hospital if there is no authorised mental health service readily accessible for the person's examination or assessment (see s. 15: 'Definition of authorised mental health service for ch 2' of the *Mental Health Act*).

POLICY

In all cases where officers come into contact with a child (for definition of 'child' see s. 8: 'Who is a child' of the *Child Protection Act*) who is mentally ill, officers should enter a child protection [0523] occurrence onto QPRIME and send as a task for information to the local CPIU. The CPIU officer, upon receiving such a child protection [0523] occurrence should assess the occurrence and if deemed necessary complete a Department of Child Safety intake advice form and forward to the Child Safety Services, Department of Communities, Child Safety and Disability Services.

Voluntary referrals to authorised Mental Health Services

POLICY

Many situations involving a person with mental health problems may be resolved through referral to a mental health service provider. When officers consider that a person may be in need of assessment or treatment by a mental health service provider, officers should, where there is no immediate risk to persons or property, canvass the possibility of the person voluntarily obtaining such assessment or treatment before considering other options.

PROCEDURE

Officers contacted by members of the public about a person who may be mentally ill may advise the person to contact the nearest mental health service for advice, unless the person is reported to be behaving in a manner which poses an imminent risk of significant physical harm being sustained by the person or somebody else.

Officers who come into contact with a person who is apparently in need of assessment or treatment by a mental health service provider should discretely ascertain whether the person is currently a client of a mental health service provider (authorised mental health service, private psychiatrist, community mental health centre etc.).

In cases where a person is identified as a client of a mental health service provider, officers may suggest that the person contact the appropriate service provider for follow up.

In cases where a person is not currently a client of a mental health service provider, or where the attending officer is concerned that a person who is a client of a mental health service provider will not make contact with their mental health service provider, the officer may make a direct referral to an authorised mental health service or alternatively, if consent is obtained in accordance with s. 6.3.14 of this chapter, submit a SupportLink referral on the QPS Corporate Intranet (Bulletin Board).

Before making a referral to an authorised mental health service either directly or via a SupportLink referral, officers should:

(i) ensure the person is aware that the officer intends to make the referral; and

(ii) tell the person that they can refuse an offer of service when contacted by the mental health service.

Where an officer makes a referral directly to an authorised mental health service, the officer may make initial contact with the relevant authorised mental health service by telephone, and should complete and fax a QP 0824: 'Police referral to an authorised mental health service for voluntary assessment and treatment' form (available on QPS Forms Select) to the relevant authorised mental health service within twenty-four hours of advising the subject that the referral is to be made.

The authorised mental health service will provide feedback, to the officer in charge of the referring officer, as soon as practicable. If the person refuses an assessment, and staff at the authorised mental health service are concerned about the risks of safety to the person or the community, the authorised mental health service staff will indicate in their feedback that it is recommended police initiate a 'justices examination order'.

Officers in charge who receive a recommendation from staff at an authorised mental health service to initiate a 'justices examination order' should ensure that, where the matters set out in s. 28: 'Making of order' of the *Mental Health Act* can be established, an application is made for a 'justices examination order' under s. 27: 'Application for order' of the *Mental Health Act*.

POLICY

To protect the privacy of persons for whom a referral to an authorised mental health service is being considered, officers are not to release personal information about the subject person to persons other than staff at an authorised mental health service unless the release of such information is otherwise authorised or required by law or Service policy.

To minimise the likelihood that personal information about a subject person will be released by implication, officers should not initiate enquiries with persons, other than the subject person, solely for the purpose of ascertaining the subject person's mental health history or status for a voluntary referral. This restriction does not apply to requests for information from other members of the Service or Service information holdings.

Where a person provides information that may be relevant to the subject person's mental health, officers may make further enquires with that person to obtain clarification or more details.

Completion of QPRIME custody reports for mentally ill persons

POLICY

Officers are to ensure that a Custody Report is recorded against a person in QPRIME under the occurrence 'Mental Health Act [1581]', as soon as practicable after processing the person in accordance with the provisions of the *Mental Health Act* (see QPRIME User Guide : Mental Health Act (incl. Mental Health Warrant)). Officers are not required to record a Custody Report in QPRIME if the person being assisted is transported for voluntary assessment/treatment. See s. 16.8: 'QPRIME custody, search and property reports' of this Manual.

6.6.1 Assistance to an ambulance officer or a health practitioner (s. 25 of the Mental Health Act)

Section 25(1) of the *Mental Health Act* allows an ambulance officer or health practitioner to take a person for whom 'assessment documents' are in force to an authorised mental health service for assessment. Section 16 defines 'assessment documents' as a 'request for assessment' and a 'recommendation for assessment'.

A 'request for assessment' for a person may be made by any adult, including a police officer' in accordance with ss. 17 and 18 of the *Mental Health Act*. A 'recommendation for assessment' may be made by a doctor or authorised mental health practitioner in accordance with ss. 19 and 20 of the *Mental Health Act* and remains in force for seven days after it is made (see s. 21 of the *Mental Health Act*).

For the purposes of s. 25(1) of the *Mental Health Act*, an ambulance officer or health practitioner is a public official for the *Police Powers and Responsibilities Act*.

POLICY

An officer who is asked to help an ambulance officer or health practitioner to take a person to an authorised mental health service for assessment under the provisions of s. 25(1) of the *Mental Health Act* is to ensure that reasonable help is given as soon as practicable.

Officers asked to help an ambulance officer or health practitioner under the provisions of s. 25(3) of the *Mental Health Act* should, prior to helping the ambulance officer or health practitioner, ensure that 'assessment documents' in respect of the person to be taken to an authorised mental health service are in force. Officers will usually not be shown the 'assessment documents' as these documents contain confidential clinical information. Officers should satisfy themselves that 'assessment documents' are in force by asking the relevant ambulance officer or health practitioner or by requesting that the ambulance officer or health practitioner provide a 'Request for police assistance' form where reasonably practicable.

Where it is necessary to enter a place to take a patient to an authorised mental health service in accordance with s. 25, of the *Mental Health Act*, where the occupier of the place does not consent to the entry and the place is not a public place (see s. 511 of the *Mental Health Act*), officers are to ensure that a 'Warrant for apprehension of a patient' under the provisions of s. 512 of the *Mental Health Act* (see also s. 6.6.8: 'Warrant for apprehension of a patient' of this chapter) has been obtained.

ORDER

Officers are only to help an ambulance officer or health practitioner to take a person to an authorised mental health service under the provisions of s. 25 of the *Mental Health Act* if: the ambulance officer or health practitioner has explained the relevant powers of the ambulance officer or health practitioner under the *Mental Health Act*; and the ambulance officer or health practitioner is present when the help is to be given. Alternatively, the officer is satisfied that giving the help (i.e. taking the person to an authorised mental health service), in the absence or the ambulance officer of health practitioner is reasonably necessary in the circumstances (see s. 16 of the *Police Powers and Responsibilities Act*).

6.6.2 Providing assistance to a doctor or authorised mental health practitioner with 'justices examination order' (s. 30 of the Mental Health Act)

A person, including a police officer, may apply to a magistrate, justice of the peace for a 'justices examination order' under s. 27 of the *Mental Health Act* (note: a justice of the peace means a justice of the peace (magistrates court) or justice of the peace (qualified) under the *Justices of the Peace and Commissioners for Declarations Act*). If the magistrate or justice of the peace reasonably believes that the matters set out in s. 28 of the *Mental Health Act* apply, the magistrate or justice of the peace may make a 'justices examination order'. Upon issue, the 'justices examination order' and a copy of the application documents will be sent to the administrator of an authorised mental health service.

A 'justices examination order' authorises a doctor or authorised mental health practitioner to enter a place stated in the order, or another place the doctor or authorised mental health practitioner reasonably believes the person may be found, to examine the person to decide whether a recommendation for assessment for the person should be made (see s. 30 of the *Mental Health Act*). A 'justices examination order' must state the time, not more than seven days after the order is made, on which the order ends.

A police officer may detain a person at the place for the examination to be carried out by the doctor or authorised mental health practitioner (see s. 30(4)(b) of the *Mental Health Act*).

For the purposes of s. 30 of the *Mental Health Act*, a doctor or authorised mental health practitioner is a public official for the *Police Powers and Responsibilities Act*.

POLICY

An officer who is asked to help a doctor or authorised mental health practitioner to exercise a power under the provisions of s. 30 of the *Mental Health Act* is to ensure that reasonable help is given as soon as reasonably practicable.

Officers asked to help a doctor or authorised mental health practitioner under the provisions of s. 30 of the *Mental Health Act* should sight a copy of the 'justices examination order' and ensure that it is current before helping the doctor or authorised mental health practitioner.

ORDER

Officers are to help a doctor or authorised mental health practitioner to exercise a power under s. 30 of the *Mental Health Act* only if: the doctor or authorised mental health practitioner has explained the relevant powers of the doctor or authorised mental health practitioner under the *Mental Health Act*; and the doctor or authorised mental health practitioner is present when the help is to be given. Additionally, the officer is satisfied that giving the help (i.e. entering a place), in the absence of the doctor or authorised mental health practitioner is reasonably necessary in the circumstances (see s. 16 of the *Police Powers and Responsibilities Act*).

6.6.3 Emergency examination order (police or ambulance officer) ss. 33, 34 and 35 of the Mental Health Act

PROCEDURE

If an officer reasonably believes:

(i) a person has a mental illness (see s. 12: 'What is mental health' of the *Mental Health Act*);

(ii) there is an imminent risk of significant physical harm being sustained by the person or someone else;

(iii) applying to a magistrate or justice of the peace for a 'justices examination order' would cause dangerous delay and significantly increase the risk of harm to the person or someone else; and

(iv) the person should be taken to an authorised mental health service for examination to decide whether a request and recommendation for assessment should be made;

the officer is to take the person to an authorised mental health service for examination to decide whether assessment documents for the person should be made (see ss. 33: 'Application of sdiv 1' and 34: 'Taking person to authorised mental health service' of the *Mental Health Act*).

Immediately after taking a person to an authorised mental health service, officers are to:

(i) complete an 'Emergency examination order (police or ambulance officer)' form;

(ii) give it to a health service employee at the authorised mental health service. The person may be detained in the authorised mental health service while the order is being made (see s. 35(4): 'Making of emergency examination order' of the *Mental Health Act*); and

(iii) remain with the person for a reasonable time if requested by a health service employee.

In these circumstances officers are permitted to use the force that is reasonable in the circumstances to help the administrator of the health service to detain the person (see s. 516: 'Use of reasonable force to detain person in authorised mental health service' of the *Mental Health Act*). Health service employees will not routinely request officers to remain at an authorised mental health service.

Officers should:

(i) obtain a copy of the 'Emergency examination order (order or ambulance officer)' from the health service employee at the authorised mental health service; and

(ii) ensure the copy of the 'Emergency examination order (police or ambulance officer)' form is scanned into the relevant QPRIME occurrence as an attachment (see QPRIME User Guide).

If it is necessary to enter a place in order to take the person to an authorised mental health service, officers should consider using the provisions of s. 609 'Entry of place to prevent offence, injury or domestic violence' of the *Police Powers and Responsibilities Act* where appropriate.

Upon the making of the 'Emergency examination order (police or ambulance officer)' the person may be detained for not more than six hours in the authorised mental health service for examination by a doctor or authorised mental health practitioner (see s. 36(1): 'Detention and examination' of the *Mental Health Act*).

See s. 8.5.1: 'Suicide' of this Manual for additional action to be taken by officers when a person with mental illness has attempted suicide or made a serious suicide threat.

6.6.4 Emergency examination order (psychiatrist) s. 39 of the Mental Health Act

Under the provisions of s. 38: 'Making of emergency examination order' of the *Mental Health Act* a psychiatrist may, in the circumstances outlined in s. 37, make an 'Emergency examination order (psychiatrist)'. The 'emergency examination order (psychiatrist)' authorises the psychiatrist, a police officer or an ambulance officer to take the person named in the order to an authorised mental health service for examination (see s. 39 of the *Mental Health Act*). Under the provisions of s. 615: 'Power to use force against individuals' of the *Police Powers and Responsibilities Act*, an officer may use reasonably necessary force to take the person to an authorised mental health service.

Upon production of the 'Emergency examination order (psychiatrist)' to a health service employee at the authorised mental health service the person may be detained for not longer than six hours for examination.

POLICY

An 'Emergency examination order (psychiatrist)' can only be made when because of a person's illness there is an imminent risk of significant physical harm being sustained by the person or someone else. Consequently, officers may use the powers provided by s. 609: 'Entry of place to prevent offence, injury or domestic violence' of the *Police Powers and Responsibilities Act* to gain entry to a place where the officer reasonably suspects a person who is subject to an 'Emergency examination order (psychiatrist) may be found and to detain and search the person.

6.6.5 Transport of mentally ill persons

A number of provisions within the *Mental Health Act* provide either a requirement or an authority for officers to transport a mentally ill person to or from an authorised mental health service or place of custody. This may come from either an order of a court or by the request of a public official.

Under the provisions of the *Mental Health Act*, officers may be requested to provide assistance with the transport of patients in the following circumstances:

(i) taking a patient to a stated authorised mental health service for treatment as a result of non-compliance with the patient's treatment under the community category of involuntary treatment order (s. 117 of the *Mental Health Act*);

(ii) taking the patient to an authorised mental health service if the category of the patient's involuntary treatment order is changed from community to in-patient (s. 119 of the *Mental Health Act*);

(iii) moving an involuntary patient from one facility in an authorised mental health service to another facility in the authorised mental health service (s. 163 of the *Mental Health Act*); and

(iv) taking an involuntary patient from one authorised mental health service to another authorised mental health service to which the patient has been transferred (s. 168 of the *Mental Health Act*).

PROCEDURE

In each of the above cases the health practitioner, the authorised mental health service administrator or any person lawfully helping the administrator is a public official for the *Police Powers and Responsibilities Act*.

POLICY

In accordance with s. 16 of the *Police Powers and Responsibilities Act* officers may help a health practitioner, authorised mental health service administrator or any person lawfully helping the administrator to exercise a power under ss. 117, 119, 163 or 168 of the *Mental Health Act* if:

(i) the health practitioner, authorised mental health service administrator or any person lawfully helping the administrator has asked and explained to the police officer the relevant powers of the health practitioner, authorised mental health service administrator or any person lawfully helping the administrator under the *Mental Health Act*; and

(ii) the health practitioner, authorised mental health service administrator or any person lawfully helping the administrator is present when the help is to be given; or

(iii) the officer is satisfied that giving the help in the absence of the health practitioner, the authorised mental health service administrator or any person lawfully helping the administrator is reasonably necessary in the particular circumstances.

Officers transporting a person to an authorised mental health service or place of custody who are not accompanied by a health practitioner, an authorised mental health service administrator or a person lawfully helping the administrator are to:

(i) deliver a copy of any document authorising the detention of the person in the authorised mental health service or place of custody to the person taking custody of the person at the authorised mental health service or place of custody; and

(ii) ensure that any property belonging to the person which is transported with the person is itemised before commencing the transport of the person and a receipt is obtained from the person taking custody of the person at the authorised mental health service or place of custody.

When transporting mentally ill persons to an authorised mental health service, officers are to comply with s. 10.4.25: 'Escort of mentally ill persons' of this Manual.

6.6.6 Restraining mentally ill persons

POLICY

Officers should treat and transport mentally ill persons with respect and in a manner which is mindful of their right to privacy and retains their dignity. Restraints should only be used as a last resort to prevent the person causing injury to themselves or someone else.

6.6.7 Returning patients to an authorised mental health service

Under the provisions of s. 508 of the *Mental Health Act*, a police officer or a health practitioner may take a patient to the in-patient facility of the relevant authorised mental health service if the patient is a patient:

(i) required by a notice under s. 507 of the *Mental Health Act* given by an authorised doctor to return to an authorised mental health service;

(ii) for whom an approval was given under s. 186 of the *Mental Health Act* and the approval is revoked or the period of absence under the approval ends; or

(iii) for whom a court has made an order under s. 101(2), s. 273(1)(b) or s. 337(5) of the *Mental Health Act* and who unlawfully absents himself or herself from the authorised mental health service.

Under the provisions of s. 508(6) of the *Mental Health Act*, if the patient is a 'classified patient' (see s. 69 of the *Mental Health Act*), a 'forensic patient' (see definition in Schedule 2 of the *Mental Health Act*) or is a patient to whom point (iii) above applies, an officer may detain the patient. The effect of this provision is to allow officers to enter and search places without a warrant by using the authority of s. 21 of the *Police Powers and Responsibilities Act* to detain such patients.

An 'Authority to return patient to authorised mental health service' form is issued by an authorised mental health service for the return of a patient to the authorised mental health service pursuant to the provisions of s. 508 of the *Mental Health Act*.

Generally, an authorised mental health service will send the completed 'Authority to return patient to authorised mental health service' form to the Police Information Centre for entering on QPRIME. However, in some instances, it may be desirable to immediately notify officers of the existence of the 'Authority to return patient to authorised mental health service' form. In these cases the form will be sent to the police station in the division in which the authorised mental health service is located, or where the police station is unattended, the police communications centre responsible for the area in which the authorised mental health service is located.

POLICY

The Manager, Police Information Centre is to ensure that 'Authority to return patient to authorised mental health service' forms, or recall notices issued in relation to the cancellation of such authorities, received at the Police Information Centre are promptly recorded on QPRIME under an Authority to Return occurrence (1691) and the relevant station or establishment is tasked to finalise the occurrence. The details of the 'Authority to return patient to authorised mental health service' form to be entered on QPRIME should include the information required for Mental Health Act Warrants in s. 13.20.29: 'Mental Health Act Warrants' of this Manual.

Initial police action

POLICY

Officers in charge of stations or police communication centres receiving an 'Authority to return patient to authorised mental health service' form from an authorised mental health service, or receiving a task with a request for action in relation to an outstanding 'Authority to return patient to authorised mental health service' recorded on QPRIME, are to ensure that:

(i) officers are tasked a job to attend the authorised mental health service, or such other place as may be appropriate, to make inquiries into the location of the patient;

(ii) particulars of the authority are accurately recorded on QPRIME under an Authority to Return occurrence [1691], and a task is created and sent to the officer responsible for making inquiries into the location of the patient (see QPRIME User Guide);

(iii) if no occurrence exists on QPRIME in relation to the 'Authority to return patient to authorised mental health service' form, a copy of the form is forwarded by way of email or facsimile to the Police Information Centre with a request for the authority details to be recorded on QPRIME. Officers are not to email or fax of a copy of an authority that has been executed; and

(iv) ensure that any original forms are retained at the station or establishment unless executed or otherwise recalled by the issuing authorised mental health service or requested by the Police Information Centre.

First response officers tasked to assist in returning a patient to whom s. 508 of the *Mental Health Act* applies, in addition to carrying out first response duties and incident evaluation, are to:

(i) request a certified copy of the authority via the relevant QPRIME occurrence;

(ii) in cases where the patient to whom s. 508 of the *Mental Health Act* applies is classified by Queensland Health as a Person of Special Notification, has a history of serious violent offences or is a patient who represents a high risk of violence to themselves or others, evaluate the incident as a major investigation (see s. 1.4.6: 'Responsibilities of regional duty officer, patrol group inspector, district duty officer and shift supervisor', and s. 2.4.5: 'Major investigations', of this Manual for the responsibilities of officers in regard to major investigations); and

(iii) if the patient cannot be located after extensive inquiries, ensure that any necessary action is taken to report the matter in accordance with s. 12.4: 'Missing person occurrence' of this Manual. A task is to also be created and sent to the Missing Persons Unit and the investigating officer for information only (see 'Tasking' and 'Missing Person' of the QPRIME User Guide).

ORDER

A health practitioner is a public official under the *Police Powers and Responsibilities Act*.

If an officer is asked by a health practitioner to help in the exercise of the health practitioner's powers under s. 508 of the *Mental Health Act*, the officer is to ensure that reasonable help is given as soon as reasonably practicable. It should be noted that officers have an independent authority to take a patient to whom s. 508 of the *Mental Health Act* applies to an inpatient facility of an authorised mental health service or to detain such a patient in certain circumstances. Consequently it is not necessary to act at the request of a health practitioner to exercise an officer's powers under s. 508 of the *Mental Health Act*.

If an officer is requested to help a health practitioner to exercise a power under s. 508 of the *Mental Health Act*, such help is to be given only if:

(i) the health practitioner has explained the relevant powers of the health practitioner under the *Mental Health Act*; and

(ii) the health practitioner is present when the help is to be given; or

(iii) the officer is satisfied that giving the help in the absence of the health practitioner is reasonably necessary in the circumstances (see s. 16 of the *Police Powers and Responsibilities Act*).

Obtaining patient photographs

POLICY

Officers making inquiries to locate a patient who is to be returned to an authorised mental health service may, if considered necessary, request the relevant authorised mental health service to provide a recent photograph of the patient if the patient is a classified patient or a forensic patient.

Before requesting a photograph from an authorised mental health service, officers should ensure that a suitable recent photograph:

(i) has not been previously supplied by the authorised mental health service; and

(ii) is not available from sources within the Service.

Notification of victim, victim's family or other persons on advice from an authorised mental health service

POLICY

Where an authorised doctor at an authorised mental health service believes that the patient poses a threat of harm to a person, the doctor will complete the relevant section on the 'Additional information to accompany authority to return patient to authorised mental health service' form.

The officer in charge receiving the 'Additional information to accompany authority to return patient to authorised mental health service' form is to:

(i) arrange for the nominated person to be contacted and advised about the patient's absence from, or failure to return to, the authorised mental health service; and

(ii) notify a commissioned officer having responsibility for the area in which the nominated person lives or is located.

A commissioned officer who is notified that there is a threat of harm from a patient to a nominated person located or residing within their area of responsibility should determine what, if any, action should be taken to ensure the safety of the nominated person.

Notification of victim, victim's family or other persons on determination by a police officer

POLICY

This policy does not apply in cases where an authorised mental health service has notified police that there is a threat of harm to a person from a patient.

Where officers making inquiries to locate a patient to whom an 'Authority to return patient to authorised mental health service' applies determine that there is a threat of harm to a person from the patient, the senior officer should notify their regional duty officer, patrol group inspector or district duty officer about the details of the threat.

Regional duty officers, patrol group inspectors or district duty officers who are advised of a threat of harm to a person from a patient, should contact the psychiatrist on call at the relevant authorised mental health service to assess the credibility of the threat.

Where the regional duty officer, patrol group inspector or district duty officer, in consultation with the psychiatrist on call, determines that a threat of harm to a person from the patient is credible, the regional duty officer, patrol group inspector or district duty officer should ensure that:

(i) the nominated person is contacted and advised about the patient's absence from, or failure to return to, the authorised mental health service; and

(ii) a commissioned officer having responsibility for the area in which the nominated person lives or is located is advised.

A commissioned officer who is notified that there is a threat of harm from a patient to a nominated person located or residing within their area of responsibility should determine what, if any, action should be taken to ensure the safety of the nominated person.

Action to be taken on location of patient

POLICY

Officers locating a patient to whom s. 508 of the *Mental Health Act* applies in Queensland are to:

(i) take custody of the patient. The taking of a patient to an authorised mental health service should be considered as an enforcement act for the purposes of the *Police Powers and Responsibilities Act* (also see s. 2.1.2: 'Registers required to be kept' and s. 16.8: 'Custody, search and property reports' of this Manual);

(ii) notify the authorised mental health service listed on the 'Authority to return patient to authorised mental health service';

(iii) unless otherwise advised, take the patient to the nearest inpatient facility of an authorised mental health service;

(iv) endorse the 'Authority to return patient to authorised mental health service' form as set out in s. 638: 'Record of execution or warrant or order' of the *Police Powers and Responsibilities Act*;

(v) return the endorsed form to the authorised mental health service where the patient was taken; and

(vi) if the patient has been reported as a missing person, take the action required by s. 12.5.1: 'Responsibility of officers who locate' of this Manual.

ORDER

Officers who take custody of a patient to whom s. 508 of the *Mental Health Act* applies are to execute the 'Authority to return patient to authorised mental health service' record on QPRIME prior to the termination of their shift.

POLICY

Officers are to ensure that a warrant for apprehension of the patient has been obtained in accordance with s. 512 of the *Mental Health Act* if the officer believes that:

(i) it is necessary to enter any place to take a patient to whom s. 508 of the *Mental Health Act* applies to an authorised mental health service; and

(ii) the provisions of s. 511 of the *Mental Health Act* or s. 21 of the *Police Powers and Responsibilities Act* do not authorise such an entry.

When the patient is located interstate or overseas and a member is notified of such location, the member is to immediately advise the Director of Mental Health. Appropriate action with respect to the patient will be decided after consultation between the Queensland Police Service and Queensland Health.

'Authority to return patient to authorised mental health service' (when Authority ceases to have effect)

POLICY

The administrator of a patient's treating health service will notify police when the 'Authority to return patient to authorised mental health service' ceases to have effect. Notice of this fact will be given in a 'Recall Notice – Cancellation of the authority to return patient to authorised mental health service' form which will be emailed or faxed to:

(i) the station/police communication centre responsible for the division/area in which the treating authorised mental health service is located; and

(ii) the Director, Police Information Centre.

The officer in charge receiving a 'Recall Notice – Cancellation of the authority to return patient to authorised mental health service' form is to:

(i) check QPRIME to ascertain to which station the 'Authority to return patient to authorised mental health service' is assigned;

(ii) immediately advise the officer in charge of the station to which the 'Authority to return patient to authorised mental health service' is assigned;

(iii) forward the 'Recall Notice – Cancellation of the authority to return patient to authorised mental health service' to that officer in charge; and

(iv) ensure any flag that may have been entered against the patient's name on QPRIME in relation to the 'Authority to return patient to authorised mental health service' has been removed.

The officer in charge of the station to which the 'Authority to return patient to authorised mental health service' is assigned is to:

(i) ensure that the 'Authority to return patient to authorised mental health service' is returned to the authorised mental health service which issued the form;

(ii) ensure that any copies of the form held at the station are destroyed; and

(iii) where the patient was reported as a missing person, a task is to be created and sent to the Missing Persons Bureau and the investigating officer for information only. (See 'Tasks' and 'Missing Person' of the QPRIME User Guide).

'Authority to return patient to authorised mental health service' (doubt about validity)

POLICY

If officers have any doubt about the current validity of the authority described in the 'Authority to return patient to authorised mental health service', before acting under the authority they should check with the authorised doctor or authorised mental health service who issued the form, or on QPRIME to determine whether the authority is still valid.

In cases where the authority is no longer valid, members are:

(i) not to return the patient;

(ii) to deal with the 'Authority to return patient to authorised mental health service' form as requested by the authorised doctor or authorised mental health service who issued the form;

(iii) to destroy any copies of the form held at the station; and

(iv) to update the relevant QPRIME occurrence and forward a task to the Police Information Centre with a request to amend the status of the 'Authority to return patient to authorised mental health service' accordingly.

If the validity of the authority described in the 'Authority to return patient to authorised mental health service' cannot be ascertained, the authority should not be exercised and further enquiries should be made.

Release of information to media

POLICY

The officer in charge of the investigation is to determine whether it is necessary to release information, including photographs, to the media that identifies a patient to whom s. 508 of the *Mental Health Act* applies. The decision on whether to release information is to be based on what are the best interests of the patient balanced with the safety needs of the community. As the premature release of a photograph and information may impede an investigation, officers are to take all reasonable steps to locate the patient before considering release of a photograph and information.

In making decisions about the release of information, officers are to take into account information provided by Queensland Health and, where necessary, seek further advice. Any release of information or comment to the media should be consistent with guidelines provided on the Media and Public Affairs Group webpage.

6.6.8 Warrant for apprehension of a patient

If it is necessary to enter a place to take a patient to an authorised mental health service in accordance with ss. 25, 117, 119 or 508 of the *Mental Health Act*, an authorised person or an officer may apply to a magistrate for a warrant for apprehension of the patient under the provisions of s. 512 of the *Mental Health Act*.

ORDER

Before exercising a power, or helping a public official to exercise a power, under the provisions of ss. 25, 117, 119 or 508 of the *Mental Health Act*, officers are to ensure that if entry to a place is required, and such entry is not authorised by the provisions of s. 511 of the *Mental Health Act* or s. 21 of the *Police Powers and Responsibilities Act*, a warrant for apprehension of the patient has been obtained.

Officers are to exercise their powers under s. 21 of the *Police Powers and Responsibilities Act* when acting under a 'Warrant for apprehension of patient' only at the place nominated in the warrant as the place 'Where the patient is likely to be found'.

The 'Warrant for apprehension of patient' effectively authorises an officer to enter, stay for a reasonable time and search the place to find the person only at the place nominated in the warrant as the place 'Where the patient is likely to be found'.

Should it become necessary for an officer to apply for a warrant for apprehension of the patient, officers are to:

(i) complete an 'Application for warrant for apprehension of patient' (see s. 512 of the *Mental Health Act*) making sure to include sufficient information for a magistrate to be satisfied that:

(a) there are reasonable grounds for suspecting the patient may be found at the place; and

(b) the warrant is necessary to enable the patient to be taken to an authorised mental health service for assessment, treatment or care (see s. 513 of the *Mental Health Act*); and

(ii) if the application is to be made in person:

(a) swear the application;

(b) contact the registrar of the nearest magistrates court (clerk of the court) to determine a suitable time to make the application to a magistrate; and

(c) make the application at the appropriate time; or

(iii) if the application is to be made by phone, fax, radio or other form of communication due to urgent circumstances or other special circumstances including the remote location of the officer (see s. 514 of the *Mental Health Act*):

(a) contact the magistrate and make the application;

(b) take receipt of a facsimile copy of the warrant; or

(c) if it is not possible to receive a facsimile copy of the warrant, complete a 'Warrant form – completed on issue of special warrant' in accordance with s. 514(5) of the *Mental Health Act*: and

(d) at the first reasonable opportunity send the sworn application and a copy of the completed 'Warrant form – completed on issue of special warrant', if applicable, to the issuing magistrate.

After executing a warrant for apprehension of the patient, the officer is to endorse the back of the warrant as required under the provisions of s. 638 of the *Police Powers and Responsibilities Act*.

POLICY

See s. 13.18.28: 'Mental Health Act warrants' of this Manual for warrant handling procedures for this type of warrant.

Unless the officer reasonably believes immediate entry to the place is necessary to ensure the effective execution of the warrant is not frustrated, before entering a place under the authority of a warrant for apprehension of the patient, officers are to:

(i) identify themselves in accordance with s. 637 of the *Police Powers and Responsibilities Act* to a person at the place who is an occupier of the place;

(ii) give the person a copy of the warrant or warrant form; and

(iii) tell the person the officer is permitted to enter and search the place to find the patient (see s. 515 of the *Mental Health Act*).

6.6.9 Persons with a mental illness suspected of having committed or charged with offences

Persons with a mental illness suspected of having committed an offence

Persons with a mental illness may be criminally responsible for their actions despite their illness. It should not be assumed that a person with a mental illness will automatically be entitled to a defence under s. 27: 'Insanity' of the Criminal Code or that they are necessarily unfit for trial. Section 26: 'Presumption of sanity' of the Criminal Code provides that every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

POLICY

A person who has, or is reasonably suspected of having, a mental illness and who is suspected of having committed an offence should generally be dealt with in the same manner as any other person suspected of having committed an offence. In addition to any other relevant provisions regarding the interviewing of suspects for indictable offences, officers are to apply the provisions of s. 422: 'Questioning of persons with impaired capacity' of the *Police Powers and Responsibilities Act* to interviews of suspects who are reasonably suspected to be suffering from a mental illness.

In deciding what action to take with regard to a person who is reasonably suspected to be suffering from a mental illness, officers should consider:

(i) the seriousness and nature of the alleged offence;

(ii) the severity and nature of the person's apparent mental illness;

(iii) the need to collect and preserve evidence which may be on the person or in their possession;

(iv) the need to interview the person promptly;

(v) the apparent capacity of the person to take part in any interview; and

(vi) the likelihood that an investigation with regard to the person could be adequately conducted at a later time.

After considering the circumstances officers should either:

(i) complete their investigation and commence any proceeding by arrest, notice to appear or complaint and summons prior to taking any necessary action to have the person's mental health assessed; or

(ii) take the necessary action to have the person's mental health assessed prior to completing the investigation into the alleged offence.

Appropriate action to have the person's mental health assessed includes facilitating a voluntary referral for assessment, making an emergency examination order, applying for a justices examination order or requesting that a watchhouse manager make a custodian's assessment authority depending on the circumstances (see s. 6.6: 'Mentally ill persons', s. 6.6.2: 'Providing assistance to a doctor or authorised mental health practitioner with 'justices examination order' – s. 30 of the *Mental Health Act* and s. 6.6.3 of this chapter, 'Emergency examination order (police or ambulance officer) – ss. 33, 34 and 35 of the Mental Health Act' and 'Persons in watchhouses (custodian's assessment orders)' of this section).

Where officers take a person to an authorised mental health service under an emergency examination order or make application for a justices examination order prior to completing their investigation into the alleged offence, the officer should note the relevant occurrence number on the 'Emergency examination order (police or ambulance officer)' or 'Application for justices examination order' in the 'Reasons' section.

The authorised mental health service to which a person is taken will notify the officer who completed the emergency examination order or made the application for a justices examination order whether the person meets the eligibility criteria for treatment. Upon receipt of such advice the officer should update the report on the relevant occurrence report. The investigation should then be completed and decision made whether to commence a prosecution in accordance with s. 3.4.2: 'The decision to institute proceedings' and s. 3.4.3: 'Factors to consider when deciding to prosecute' of this Manual and Guideline 5(vi): 'Mental Illness' of the Director of Public Prosecutions (State) Guidelines.

Persons in watchhouses (custodian's assessment orders)

POLICY

Where a prisoner charged with an offence appears to be suffering from a mental illness and is in need of immediate treatment or control, the watchhouse manager should consider the provisions of s. 16.15.2: 'Removing a prisoner at a watchhouse, suffering from a mental illness, to an authorised mental health service for assessment' of this Manual.

Persons before the court (court assessment orders)

When a person charged with a simple or indictable offence is before a court, the court may make a 'court assessment order' in respect of a defendant if:

(i) a recommendation and agreement for assessment that are in force for the person are given to the court; and

(ii) the court is satisfied the person should be detained in an authorised mental health service for assessment (see s. 58 of the *Mental Health Act*).

If a 'court assessment order' is made the court will adjourn the proceedings for the offence with which the defendant is charged and remand the defendant accordingly.

If the court is satisfied that the defendant can be assessed other than as an in-patient of an authorised mental health service, the court will remand the person in custody or grant bail and ensure that arrangements are made for the defendant's assessment (see s. 59 of the *Mental Health Act*).

Once the person is taken to an authorised mental health service they become a 'classified patient' (see s. 69 of the *Mental Health Act*). The person is then detained in the authorised mental health service and the administrator of the authorised mental health service assumes legal custody of the classified patient while detained in the health service.

Upon becoming a 'classified patient' proceedings against the person for any offence (other than a Commonwealth offence) are suspended until the person ceases to be a 'classified patient' (see s. 75 of the *Mental Health Act*. The chief executive for justice will advise the relevant prosecutor if a person has been detained as a 'classified patient'.

Within three days after becoming a 'classified patient' an authorised doctor in an authorised mental health service will assess the person. The 'classified patient' will be regularly assessed by an authorised psychiatrist while detained in an authorised mental health service.

At the initial assessment and during regular assessments the authorised doctor or psychiatrist will decide whether the patient has a mental illness and needs to continue to be detained in the authorised mental health service as a classified patient (see ss. 71-74 of the *Mental Health Act*).

The Director of Mental Health will advise the chief executive for justice if a 'classified patient' does not need to be detained in an authorised mental health service. The chief executive for justice will give written notice to the relevant prosecutor advising that the person is not to be detained as a 'classified patient' (see s. 86 of the *Mental Health Act*). A person about whom a notice under s. 86 of the *Mental Health Act* is made must be brought before the appropriate court to be dealt with as soon as practicable after the notice is received by the prosecutor, but in any case within three days (see s. 87 of the *Mental Health Act*). A police officer may take a person from the authorised mental health service to appear before the court (see s. 87 of the *Mental Health Act*).

POLICY

Officers to whom a 'court assessment order' is directed should ensure that the person in respect of whom the 'court assessment order' was made is transported to an in-patient facility of the stated authorised mental health service as soon as practicable (see s. 68 of the *Mental Health Act*).

Police prosecutors receiving notice that proceedings have been suspended should advise the investigating officer as soon as practicable.

Investigating officers who are advised that proceedings have been suspended should notify the complainant and any witnesses who have either been subpoenaed or requested to make themselves available to give evidence.

Prosecutors receiving notice that a person is not to be detained as a 'classified patient' are to comply with s. 6.6.11: 'Continuing proceedings' of this chapter. Generally advice should be received on a 'Patient to be brought before court' form.

Orders by the Supreme or District Court

If a person pleads guilty before the Supreme or District Court for an indictable offence (other than a Commonwealth offence) or is appearing for sentencing in respect of an indictable offence (other than a Commonwealth offence), and it is alleged or appears to the court that the person is mentally ill or was or may have been mentally ill when the alleged offence was committed, the court may:

(i) order a plea of not guilty be entered for the person;

(ii) adjourn the trial;

(iii) refer the matter of the person's mental condition relating to the offence to the Mental Health Court; and

(iv) remand the person in custody or grant the person bail.

If the person is remanded in custody the court may also make a 'court assessment order' (ss. 61 and 62 of the *Mental Health Act*).

6.6.10 References and reviews on the mental condition of persons charged

References to the Office of the Director of Public Prosecutions or Mental Health Court

Persons who are subject to a charge may have their mental condition referred to the Office of the Director of Public Prosecutions or the Mental Health Court under certain circumstances. The Office of the Director of Public Prosecution receives references in respect of simple offences and indictable offences which are not of a serious nature. The Mental Health Court receives references in respect of indictable offences only.

A person who is charged with a simple or indictable offence and is subject to:

(i) an involuntary treatment order; or

(ii) a forensic order;

will be examined by a psychiatrist and the person's mental condition may be referred to the Mental Health Court or Office of the Director of Public Prosecutions (see ss. 236-242 of the *Mental Health Act*). The chief executive for justice will advise the relevant prosecutor that proceedings in respect of the offence are suspended until further advised.

Section 257 of the *Mental Health Act* outlines other methods by which a person's mental condition relating to an offence may be referred to the Mental Health Court by other persons.

When a person's mental condition is referred to the Mental Health Court or Office of the Director of Public Prosecutions, proceedings against the person are suspended until:

(i) the Office of the Director of Public Prosecutions has made a decision on the matter;

(ii) the Mental Health Court has made a decision on the matter; or

(iii) the involuntary treatment or forensic order about the person is revoked (see s. 243 of the *Mental Health Act*).

Upon referral of a person's mental condition to the Office of the Director of Public Prosecutions, the who may decide that:

(i) proceedings against the person are to continue (see s. 6.6.11: 'Continuing proceedings' of this chapter);

(ii) proceedings against the person are to be discontinued (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter); or

(iii) the matter be referred to the Mental Health Court if the matter relates to an indictable offence.

Upon referral of a person's mental condition to the Mental Health Court, the Court may decide that the person:

(i) is fit for trial and proceedings are to continue (see s. 6.6.11: 'Continuing proceedings' of this chapter);

(ii) is not fit for trial temporarily and proceedings are to be stayed (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter);

(iii) was of unsound mind or of diminished responsibility when the alleged offence was committed and proceedings are to be discontinued (see s. 282 of the *Mental Health Act* in respect of diminished responsibility); or

(iv) is permanently unfit for trial and proceedings are to be discontinued (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter).

Upon the revocation of an involuntary treatment or forensic order, the chief executive of justice will advise the relevant prosecutor and the registrar of the relevant court (this term includes a clerk of the court under the *Justices Act*). If an involuntary treatment or forensic order is revoked, the prosecution of the person may be continued (see s. 6.6.11: 'Continuing proceedings' of this chapter).

If the Mental Health Court decides that the person is fit for trial, the court may order that the person be granted bail, remanded in custody or detained in an authorised mental health service until the person is granted bail or brought before a court for continuing the proceeding (see s. 273 of the *Mental Health Act*). The decision of the Mental Health Court will

be advised to the registrar of the court in which proceedings are to be continued. The registrar will advise the relevant prosecutor.

POLICY

Officers to whom orders of the Mental Health Court are directed which require the transport of a person to a place of custody or to an authorised mental health service are to ensure that the person named in the order is promptly transported to the place nominated in the order (see s. 273 of the *Mental Health Act*). Officers transporting such persons should ensure that a copy of the relevant order is delivered to the person in charge of the place of custody or authorised mental health service upon the arrival of the person at that place of custody or authorised mental health service.

Police prosecutors receiving notice that proceedings have been suspended should advise the investigating officer as soon as practicable.

Investigating officers who are advised that proceedings have been suspended should notify the complainant and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Reviews by Mental Health Review Tribunal to decide fitness for trial

The Mental Health Review Tribunal (MHRT) will review the mental condition of persons who are:

(i) determined by the Mental Health Court to be unfit for trial but not permanently unfit for trial; or

(ii) found by a jury upon their trial to be incapable of understanding a proceeding at their trial or not of sound mind.

The MHRT will decide whether the person is fit for trial and will advise the Attorney-General of its decision.

If proceedings are to be discontinued the Attorney-General will advise the relevant prosecutor (see s. 216 of the *Mental Health Act*) (see also s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter).

In accordance with s. 218 of the *Mental Health Act* if proceedings are to be continued the chief executive of justice will give written notice to the relevant prosecutor (see s. 6.6.11: 'Continuing proceedings' of this chapter). In these cases the person must be brought before a court within seven days to be dealt with according to law.

6.6.11 Continuing proceedings

Responsibilities of prosecutors

POLICY

When a police prosecutor receives advice that proceedings are to be continued against a person in respect to an offence, the police prosecutor should:

(i) consult with the registrar of the court, where the matter is to be dealt with, to ascertain

(a) whether, if the defendant is in custody, it is more convenient and practicable that the matter should be transferred to another court closer to the relevant authorised mental health service (see s. 139 of the *Justices Act*); and

(b) a suitable time and date for the continuation of proceedings bearing in mind the time limitations imposed by the relevant provision of the Act e.g. s. 247(1) requires a classified patient to be brought before the court within 7 days;

(ii) notify the investigating officer and the officer in charge of the investigating officer as soon as practicable that the matter has been recommenced and the time, date and place of the proceedings; and

(iii) where a defendant is in custody at an authorised mental health service, request the officer in charge of the division in which the authorised mental health service is located to make arrangements for the transportation of the defendant from the authorised mental health service to the relevant court to ensure the defendant's appearance at the appropriate time and date.

In matters being prosecuted by the Director of Public Prosecutions, the investigating officer and the officer in charge of the investigating officer should be advised by the prosecutor attached to the Office of the Director of Public Prosecutions, that proceedings have been recommenced against a person in respect of an indictable offence and the time, date and place of the proceedings. The Director of Public Prosecutions will also, where a defendant is in custody at an authorised mental health service, request the officer in charge of the division in which the authorised mental health service is located to make arrangements for the transportation of the defendant from the authorised mental health service to the appropriate court.

Responsibilities of officers in charge and investigating officers

POLICY

Where an officer in charge is requested by a prosecutor to make arrangements for the transportation of the defendant from the authorised mental health service to the appropriate court, the officer in charge is to ensure that any necessary arrangements are made for the transportation of the person from the authorised mental health service to court (see s. 10.5.9: 'Responsibility for arranging escorts within Queensland' of this Manual). A person who was held in custody

immediately prior to admission to an authorised mental health service and who has not since been granted bail may be held in a watchhouse while being transported from the authorised mental health service to court.

In making arrangements for the transport of a classified patient for whom proceedings have been continued under s. 247(1) of the *Mental Health Act*, from an authorised mental health service to a court, officers in charge are to consult with health practitioners or staff from the authorised mental health service as to whether it would be more appropriate for a person to be transported by police officers or health practitioners or both as authorised by s. 252A: 'Continuation of proceedings' of the *Mental Health Act*.

Officers in charge who make arrangements to transport a person from the authorised mental health service to court are to advise the relevant prosecutor of the arrangements as soon as practicable.

Investigating officers who are advised that proceedings are to be continued should notify the complainant and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Notice of decision in relation to charges

If the Director of Public Prosecutions decides that a proceeding is to continue, the chief executive for justice will give written notice of this decision to the relevant prosecutor or arresting officer (see s. 250 of the Act). The notice will be given on a 'Notice of decision in relation to charges' form. Notices will be sent for service to the officer in charge of the division within which the defendant was last known to reside.

POLICY

Where an arresting officer receives a 'Notice of decision in relation to charges' form from the chief executive for justice that the Director of Public Prosecutions has decided under the provisions of s. 247(1)(a) that proceedings are to continue, the officer is to:

(i) liaise with the registrar of the relevant court and the relevant police prosecutor to determine a suitable time, date and court at which to continue the proceedings;

(ii) complete the relevant portion of the 'Notice of decision in relation to charges' advising the defendant that the proceedings are to continue and the time, date and place at which the proceeding will be continued; and

(iii) ensure that the 'Notice of decision in relation to charges' is served personally on the defendant unless the person is in lawful custody other than in an authorised mental health service (see s. 250(3) of the Act). An appropriate oath of service should be made on the 'Notice of decision in relation to charges' and the notice should be returned to the court at which the defendant is required to appear.

An officer in charge who receives a 'Notice of decision in relation to charges' form to serve for the Director of Public Prosecutions is to ensure that the notice is detailed to an officer for service and that the matter is attended to promptly.

Officers required to serve a 'Notice of decision in relation to charges' form for the Director of Public Prosecutions are to serve the 'Notice of decision in relation to charges' personally on the defendant unless the person is in lawful custody other than in an authorised mental health service (see s. 250(3) of the Act). An appropriate oath of service should be made on the 'Notice of decision in relation to charges' and the notice should be returned to the Director of Public Prosecutions.

If an officer is unable to serve the 'Notice of decision in relation to charges' on the defendant after taking reasonable steps to do so, the investigating officer is to prepare an affidavit outlining the steps taken to serve the 'Notice of decision in relation to charges' and forward the affidavit together with the 'Notice of decision in relation to charges' to the relevant prosecutor prior to the date set for the continuation of proceedings. In such cases the prosecutor should, if the defendant does not appear before the court, request that the court issue a warrant for the defendant's arrest to be brought before the court.

Matters to be heard in the court nearest the authorised mental health service

POLICY

There may be cases where a person has been detained in an authorised mental health service outside the court district where the matter is to be heard. In such cases, a decision to seek the transfer of the matter to the court nearest the authorised mental health service may need to be made by the relevant prosecutor (see ss. 133 and 139 of the *Justices Act*).

In making such a determination, the following should be considered:

(i) financial costs to the Service;

(ii) human resource commitments;

(iii) the consent or otherwise of the defendant; and

(iv) the well being of the defendant.

Transfer of matters for hearing

POLICY

If a proceeding is to be continued and a decision has been made to seek the transfer of the matter to the court nearest the authorised mental health service where the person is detained, a request to transfer the matter is to be made by the police prosecutor to the registrar of the relevant court.

The registrar of the relevant court will forward in writing, their consent or refusal to transfer. Upon receiving consent, the police prosecutor should:

(i) inform the police prosecutor, in that district where the matter is to be transferred and ascertain a suitable time and date for the matter to be heard;

(ii) ensure all documentation required for the hearing is forwarded to the police prosecutor; and

(iii) inform the investigating officer where the matter is to be transferred and the time and date of hearing.

6.6.12 Discontinuing or staying proceedings

POLICY

Members receiving advice that proceedings have been discontinued or stayed at the order of the Mental Health Court or the Office of the Director of Public Prosecutions are to ensure that the relevant prosecutor is aware of the status of the proceeding.

Police prosecutors who are advised that a proceeding has been stayed on the order of the Mental Health Court or the Office of the Director of Public Prosecutions are to notify the investigating officer.

Police prosecutors who are advised that a proceeding has been discontinued on the order of the Mental Health Court or the Office of the Director of Public Prosecutions are to:

(i) seek approval to withdraw the relevant charge(s) in accordance with s. 3.4.4: 'Withdrawal of charges' of this Manual;

(ii) withdraw the charge(s) as soon as practicable after approval is granted;

(iii) notify the investigating officer; and

(iv) attach a copy of the written advice of the Mental Health Court or Office of the Director of Public Prosecutions to the relevant Court Brief (QP9) for forwarding to the Manager, Police Information Centre.

The Manager, Police Information Centre, should ensure a relevant flag is entered against the person's name on QPRIME in circumstances where information is received indicating that proceedings against a person have been withdrawn on the order of the Mental Health Court or Office of the Director of Public Prosecutions. Specific details concerning the date and place of confinement of the person should be entered on the street check occurrence where such details are available.

An investigating officer who is notified that a prosecution has been discontinued or stayed as a result of a decision of the Mental Health Court or Office of the Director of Public Prosecutions is to notify all complainants and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Officers conducting inquiries in relation to persons flagged as *Mental Health Act* patients on QPRIME should update the street check occurrence accordingly (see s. 16.4: 'Responsibilities of officers' of this Manual).

If the Mental Health Court orders either the staying or discontinuing of proceedings after finding that a person is of unsound mind or is not fit for trial either temporarily or permanently, the court may make a forensic order that the person be detained in a stated authorised mental health service for involuntary treatment or care (see s. 288 of the *Mental Health Act*).

Officers to whom forensic orders of the Mental Health Court are directed which require the transport of a person to an authorised mental health service are to ensure that the person named in the order is promptly transported to the place nominated in the order (see s. 292 of the *Mental Health Act*). Officers transporting such persons should ensure that a copy of the relevant forensic order is delivered to the person in charge of the authorised mental health service.

6.6.13 Information to be supplied to the Mental Health Court and assessing psychiatrists

POLICY

Pursuant to s. 400: 'Registrar's power to require production of documents' of the *Mental Health Act* the registrar of the Mental Health Court may ask the Commissioner to give the registrar a written report about the criminal history of a person, the subject of a reference to the Mental Health Court, or a brief of evidence. A criminal history requested under s. 400 of the *Mental Health Act* is prepared under different rules to those which apply to the preparation of criminal histories generally (see Schedule 2: 'Dictionary' of the *Mental Health Act* for the definition of 'criminal history').

Requests under s. 400 of the *Mental Health Act* for criminal histories will generally be made directly to the Manager, Police Information Centre. Other members receiving such requests should refer the request to the Manager, Police

Information Centre. The Manager, Police Information Centre is to comply with the request and provide the required criminal history.

Requests under s. 400 of the *Mental Health Act* for briefs of evidence will generally be made directly to the relevant prosecuting authority. Where the brief is held by the Service, the request should be directed to the officer in charge of the police prosecutions corps at which the brief is held, who is to comply with the request and provide the required brief of evidence. Where the brief is held by the Office of the Director of Public Prosecutions, the request should be referred to that office. Where a brief is held at the Police Information Centre the request should be referred to the Manager, Police Information Centre.

Where an offender's mental condition relating to an offence is referred to the Mental Health Court under the *Mental Health Act*, victims may submit material for consideration of the Mental Health Court. Officers are to consider whether material referred to in s. 284(1B): 'Submission and consideration of material from victim or concerned person etc.' of the *Mental Health Act* should be added to the statement of the victim and submitted as part of the brief of evidence. See also s. 2.12.1: 'Victims of Crime Assistance Act', under heading 'Principle eight: Giving details of impact of crime on victim during sentencing' of this Manual.

Occasionally, the registrar of the Mental Health Court may request information, other than criminal histories or briefs of evidence, from an officer. In these cases officers should respond to such requests in writing and in accordance with s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual.

Officers who are requested to supply information to an administrator of a treating health service under s. 237A: 'Copies of particular documents may be requested from prosecuting authority' of the *Mental Health Act* should refer to s. 3.4.31: 'Supply of information to administrators of a treating health service under Mental Health Act' and s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual.

6.6.14 Supply of information to the Office of the Director of Public Prosecutions

In the case of persons who are subject to a charge who have had their mental condition referred to the Office of the Director of Public Prosecutions, who may require a copy of any relevant Court Brief (QP9) to ensure they are properly informed about the circumstances.

ORDER

Upon request from the Office of the Director of Public Prosecutions, officers in charge of police prosecution corps are to provide copies of any Court Brief (QP9) relevant to the reference of a person's mental condition to the Office of the Director of Public Prosecutions.

6.6.15 Execution of warrants on patients detained under the Mental Health Act

ORDER

When executing or attempting to execute warrants on patients receiving treatment for a mental illness, officers are to comply with the provisions of s. 796 of the *Police Powers and Responsibilities Act.*

PROCEDURE

When officers become aware that the subject of a warrant is a patient of an authorised mental health service, contact should be made with the Clinical Director of the service before executing or attempting to execute the warrant. Information should be sought from the Clinical Director or treating medical practitioner regarding the condition and treatment needs of the patient.

After contacting the Clinical Director or treating medical practitioner, but before taking any action with regard to the warrant, officers should consult with a commissioned officer to determine the appropriate course of action.

A patient subject to the provisions of the *Mental Health Act*, who is on leave from a mental health service is still a patient of that mental health service while on leave and contact should be made with the mental health service as outlined above.

Arrest warrants and warrants in the first instance

POLICY

Where an arrest warrant or warrant in the first instance has been issued for a person believed to be suffering from a mental illness the warrant should be executed.

However, where appropriate, a proceeding against a mentally ill person is to be commenced by way of notice to appear or complaint and summons, see s. 3.5: 'The institution of proceedings' of this Manual.

Arrest and Imprisonment Warrants

PROCEDURE

Courses of action open to officers are:

(i) afford the patient a reasonable opportunity to pay the outstanding amount (as outlined in s. 13.18.31: 'Arrest and Imprisonment Warrants' of this Manual); or

(ii) execute the warrant and take the patient into police custody. Arrangements are then made for the patient's assessment at an authorised mental health service. The officer in charge of the watchhouse at the time the patient is received is responsible for making arrangements for the patient's assessment. See s. 16.15.2: 'Removing a prisoner at a watchhouse, suffering from a mental illness, to an authorised mental health service for assessment' of this Manual.

Wherever practicable, patients should be taken for assessment to the authorised mental health service which is currently treating them.

6.6.16 Deaths of mentally ill persons

Specific requirements relating to the investigation of the death of a person whilst detained under a provision of the *Mental Health Act* are contained in s. 8.5.16: 'Deaths in care' of this Manual.

6.6.17 Mentally ill persons and weapons/weapons licences

POLICY

Officers who believe that a person who appears to be mentally ill is not a fit and proper person to hold a weapons licence or possess weapons are to:

(i) check the Weapons System Index on the QPS computer system to ascertain if the person holds a weapons licence; and

(ii) if the Weapons System Index indicates that the person holds a weapons licence:

(a) make application to an authorised officer for the issue of a revocation notice pursuant to s. 29 of the *Weapons Act 1990*;

(b) upon determination of the application, notify the Inspector Weapons Licensing if a revocation notice has been issued; and

(c) if a revocation notice has been issued ensure that the notice is served on the person and the person's weapons licence and any weapons are surrendered as required by the notice (see s. 30 of the *Weapons Act*).

6.6.18 Non-contact orders

Under certain circumstances, the Mental Health Review Tribunal (ss. 228A to 228C) or the Mental Health Court (ss. 313B to 313C), may make a non-contact order against a person who has been charged with an indictable offence committed against the person of someone (a personal offence).

A non-contact order prohibits a person from contacting a stated person for a stated time or going to a stated place, or within a stated distance of a stated place, for a stated time (ss. 228B and 313B). Contravention of a non-contact order is an offence (ss. 228G and 313G).

Non-contact orders will generally be forwarded directly to the Police Information Centre.

PROCEDURE

Members who receive a non-contact order should ensure that the order is forwarded to the Manager, Police Information Centre for input into QPRIME.

Officers investigating allegations of breaches of non-contact orders should check QPRIME to ascertain details of the relevant non-contact order. Details of the non-contact order are recorded in the 'Cautions/flags' tab of the QPRIME record for the person against whom the order has been made.

6.6.19 Protection of children of mentally ill persons

POLICY

In the event officers become aware that a person, who is apparently suffering from a mental illness, is a parent or guardian of a child or children under 18 years of age, officers should consider the welfare of the children with respect to their obligations and powers under the *Child Protection Act* and the *Domestic and Family Violence Protection Act*.

PROCEDURE

Officers who come into contact with a mentally ill person who has children in their care should:

(i) if they consider that the children are at immediate risk of harm, comply with the provisions of s. 7.4.1: 'Children at immediate risk of harm' of this Manual. However, before taking action under the *Child Protection Act*, officers are to, where practicable, consult with an officer from the Child Protection and Investigation Unit (CPIU); or

(ii) if they consider that there is no immediate risk of harm but still hold concerns for the welfare of the children, advise the local CPIU by telephone and creating a child protection [0523] occurrence on QPRIME, as soon as practicable. The following details are to be included in the occurrence:

(a) details of the mentally ill person;

(b) details of the children in their care;

(c) details of what care arrangements have been made for the children;

(d) the nature of the mentally ill persons behaviour;

(e) any concerns that the children may be in need of protection; and

(f) the name and location of the treating mental health service.

Officers who cannot contact the CPIU for advice or assistance, should direct enquiries to the 'Child Safety After Hours Service Centre' (See Service Manuals Contact Directory).

Officers taking a mentally ill person into custody under the provisions of the *Mental Health Act* should make all reasonable enquiries to ascertain whether a mentally ill person has responsibility for the care of children and apply the provisions of s. 16.4.5: 'Arrest of persons who have others in their care' of this Manual as appropriate.

6.6.20 Mental health intervention coordination and training

Definitions

For the purposes of this section:

Mental disorder

is a generic term referring to a clinically significant behavioural or psychological condition that is associated with current distress, disability or risk. Examples of mental disorder include schizophrenia, mood disorders, anxiety disorder, personality disorder, substance-use disorders and intellectual disability.

Mental health incident

means an incident that:

(i) involves a series of events and a combination of circumstances in which a person appears to be mentally disturbed, impaired in judgement and exhibiting highly disordered behaviour;

(ii) may involve serious and imminent risk to the health and/or safety of the person or of another person; and

(iii) requires communication and coordination between relevant mental health services and police, and assessment at the earliest opportunity to:

(a) ascertain the need for treatment;

(b) prevent further deterioration in the mental condition and/or physical health of the person; and

(c) thereby prevent or lessen harm to the safety and health of the person or any other person or to the safety and health of the public in general.

Mental illness

as defined in s. 12: 'What is *mental illness*' of the *Mental Health Act*.

includes a range of recognised, medically diagnosable illnesses that result in significant impairment of an individual's cognitive, affective or relational abilities.

Mental health intervention first response officer training

A critical element of Mental Health Intervention (MHI) Program is the training of first response officers in de-escalation of mental health incidents through enhanced tactical communication skills. It is anticipated these officers will have the ability to identify, provide support and effectively intervene in situations which may otherwise result in mental health incidents.

POLICY

Officers in charge of regions are to ensure sufficient first response officers under their control complete the 'Mental Health Intervention' training package (Course Code QC0550). Where practicable, the numbers trained should support the maintenance and rostering of a trained officer on every shift.

Officers undertaking the mental health intervention training program are to complete the Competency Acquisition Program book Mental Health (QCI001).

Mental health intervention coordinators

Service MHI coordinators are to be appointed in identified health service districts on a regional and district level.

Regional MHI coordinators

ORDER

Officers in charge of regions are to appoint a regional MHI coordinator to coordinate mental health issues and activities within their region and allocate adequate time and resources to those officers to enable them to carry out their stated functions.

POLICY

The functions and duties of the regional MHI coordinator include:

(i) overviewing the implementation and ongoing effectiveness of the MHI Project and objectives within their region;

(ii) liaising with the State MHI Project Coordinator as necessary;

(iii) facilitating regional mental health intervention meetings on a regular basis;

(iv) overviewing the development and existence of regional and district instructions and protocols;

(v) overviewing and monitoring the training of first response officers in mental health intervention;

(vi) coordinating the functions and activities of district MHI coordinators;

(vii) ensuring that, in the absence of a district MHI coordinator, a suitable officer performs the functions and duties;

(viii) representing the Service at regional level, with other government and non-government agencies;

(ix) managing the project evaluation response and consultation process with stakeholders; and

(x) overviewing the management of allocated budget and operating costs.

District MHI coordinators

ORDER

Officers in charge of regions are to appoint district MHI coordinators within their area of responsibility and allocate adequate time and resources to those officers to enable them to carry out their stated functions.

POLICY

The functions and duties of the district MHI coordinator include:

(i) coordinating mental health policing strategies and monitoring the effectiveness of those strategies in dealing with mental health issues within the district;

(ii) leading and coordinating the implementation of the MHI Project within their district;

(iii) providing direction, guidance and advice to Service members and the community, on issues associated with mental health issues;

(iv) liaising with government and non-government organisations to develop referral networks and preventative strategies for dealing with mental health issues;

(v) assisting district education and training offices in developing and conducting education and training on legislation, policy, orders and procedures, including associated issues in dealing with mental health issues;

(vi) liaising with representatives from authorised mental health services to ensure consistent and appropriate standards and responses are maintained in dealing with mental health legal issues;

(vii) liaising with the regional MHI coordinator regarding strategies to deal with mental health;

(viii) reporting quarterly on their functions to their officer in charge and Regional MHI Coordinator;

(ix) chairing district mental health intervention meetings;

(x) overviewing the development and standardisation of district instructions relating to mental health incidents;

(xi) conducting pre-crisis planning, case management and assisting in the preparation of crisis intervention plans outlined in the arrangement 'Preventing and Responding to Mental Health Crisis Situations and Information Sharing Guidelines' between the Service and Queensland Health (QH); and

(xii) providing assistance to officers in the assessment and response to mental health incidents according to local protocols and where necessary, assisting with requests for information from QH and Queensland Ambulance Service (QAS).

Attributes of MHI coordinators

Mental health intervention coordinators should be appointed on the basis of the following attributes:

(i) a sound knowledge of the *Mental Health Act*, s. 6.6: 'Mentally ill persons' of this chapter and this section;

(ii) the ability to rapidly acquire or a demonstrated ability to research, analyse and resolve complex issues in a well-structured manner and provide quality advice;

(iii) the ability to rapidly acquire or a demonstrated commitment to the effective policing of issues pertaining to mental health issues;

(iv) the ability to rapidly acquire or a demonstrated understanding of the effective policing of mental health issues;

(v) the ability to rapidly acquire or a demonstrated ability to communicate effectively; and

(vi) the ability to rapidly acquire or a demonstrated ability to liaise, consult, and negotiate with members of the QPS, other government departments, external organisations and the community.

Information sharing

For the performance of their role, mental health intervention coordinators have been delegated the Commissioner's power in relation to the disclosure of information to QH and/or the QAS as required in the relevant Memorandum of Understanding (MOU) and Information Sharing Guidelines between those agencies (See Delegation D 15.46 of the Handbook of Delegations and Authorities).

Pursuant to the guidelines, QH has agreed to provide mental health consultation for the prevention and intervention phases of mental health incidents.

Prevention planning

The prevention phase of mental health response includes pre-planning and the development of crisis intervention plans. A crisis intervention plan is a mechanism by which clients of mental health services can actively contribute to their treatment and maximise their health and safety. The plan is designed to outline relevant aspects of the person's illness, behaviour, disability, culture, history and treatment that may be used by police to resolve mental health incidents. Importantly for police, the crisis intervention plan should identify a person (i.e. a senior clinician) whom the client would prefer the police to contact in a mental health incident.

Although a crisis intervention plan is confidential, QH will notify the Service of the existence of the plan for recording on QPRIME. In addition, QH will disclose the information contained in the plan to the Service where the client to whom the plan relates, has given consent for its release or where a mental health incident exists. The information will ordinarily be disclosed to a MHI coordinator.

POLICY

For the purpose of prevention planning and case management, a MHI coordinator may exchange information with authorised representatives of QH or QAS to ensure the safety and effective treatment of a person suffering a mental disorder.

MHI coordinators are to, as far as practicable, ensure any release of information held by the Service complies with the relevant provisions of s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual.

Intervention in incidents

The intervention phase of mental health response allows the Service to initiate a request for consultation for which the following action will be taken by QH.

Where a person is not known to the contacted health service district, but is known as a client to another health service district, then police will be provided with contact details for the relevant health district. If the person is not known at all to QH mental health services then general advice only will be provided.

If the person is known to a mental health service (e.g. is a mental health service client) and the incident involves a serious risk of harm to the person or others, the mental health service will provide relevant information specific to the person in order to prevent or lessen the risk of harm to the person or others. The type of information that QH has agreed to provide includes:

(i) the person's name, date of birth, present address;

(ii) nature of mental illness;

(iii) medical history/chart information, including recent behaviour, latest evaluation and expected responses;

(iv) details of individuals who could best assist (e.g. caseworker, psychiatrist, treating doctor);

(v) propensity for violence or self-harm;

(vi) current medication including effects of medication and of non-compliance;

(vii) warning signals indicating deterioration in the person's mental condition;

(viii) 'triggers' (i.e. issues that may escalate the situation);

(ix) previous suicide attempts/tendencies;

(x) de-escalation strategies;

(xi) history of possessing firearms, dangerous weapons or drugs;

(xii) next of kin details; and

(xiii) details of any person(s) nominated for contact in an incident.

Points (i) to (xiii) above are not an exhaustive list. They do not limit the provision of further information by QH to the Service.

If the incident for which police have contacted the mental health service does not involve a serious risk of harm to the person or others, or the person is not a mental health service client, the mental health service will only provide general advice that may assist police in de-escalating the incident.

Such assistance may be limited to:

(i) advice about how to respond to a person suffering from a mental illness including an acute episode;

(ii) advice about how particular disturbances of mental state (i.e. symptoms) may impact on the communication process, interpretation of events and behaviour;

(iii) suggestions of possible communication strategies; and

(iv) advice from a medical practitioner with regard to the type and effects of medications.

QH will provide on-site mental health consultation for mental health incidents where the relevant district mental health service has the capacity to provide such a response and information supplied by police strongly indicates the person requires assessment and/or treatment for a mental disorder.

POLICY

Officers responding to a mental health incident should, as soon as practicable, ensure that advice or information is sought in relation to the subject person from the relevant QH mental health service to ensure the health and safety of the person or any other person.

The request should be made:

(i) by the senior officer attending the scene of the mental health incident;

(ii) where it is not practicable for an officer attending the scene to make the request, by a member working in a police communications centre or otherwise performing the role as a communications officer; or

(iii) a member assigned by the relevant supervisor (i.e. shift supervisor, district duty officer), to make such a request.

Request for information from Queensland Health

POLICY

A member of the Service who requests advice or information from a mental health service in relation to a mental health incident, may release the following information to an employee of QH:

(i) the nature of the incident;

(ii) the person's name, date of birth and present address;

(iii) the current location of the person;

(iv) any problems relating to the person including indications the person is suffering a mental disorder;

(v) the current behaviour of the person;

(vi) if the risk of harm to the person or others is serious, imminent and likely;

(vii) details of other services that are involved in the incident;

(viii) the presence or availability of family members;

(ix) any evidence of firearms, dangerous weapons or drugs; and

(x) any other information requested by QH which the member believes may assist in ensuring the health and safety of any person.

Pursuant to s. 10.2: 'Authorisation of disclosure' of the *Police Service Administration Act*, the Commissioner has, in relation to a mental health incident, authorised any member to release the information in above points (i) to (x).

ORDER

A member of the Service who requests advice or information from a mental health service is to provide their full name, rank/designation and employee number, station and contact details, and the reasons for the request.

Notification of request to be provided to district MHI coordinator

POLICY

Members requesting information from QH are to notify the relevant district MHI coordinator or officer nominated by the district officer, as soon as practicable after such request is made. Such notification is to be in writing (e.g. email) and should contain brief details of the request made and what information was provided by QH.

District MHI Coordinators or nominated officers are to monitor requests for information made to QH and ensure any issues arising as a result of the request are addressed.

Roles of the Queensland Ambulance Service and the Service

The Service has entered into an MOU with the QAS that broadly identifies each agency's responsibilities with respect to working collaboratively towards the prevention and safe resolution of mental health incidents.

Generally, this MOU requires the Service and the QAS to work in full cooperation to promote a coordinated system of response to ensure effective and efficient delivery of services to meet the needs of people with a mental disorder. The MOU acknowledges and agrees that when dealing with persons with an actual or suspected mental disorder and where there is a risk to safety that:

(i) police have the responsibility to protect the safety of all parties; and

(ii) ambulance personnel have the responsibility of addressing the physical needs of the person, including transportation to a medical facility.

POLICY

Unless exceptional circumstances exist, officers responding to a mental health incident are to:

(i) obtain the assistance of the QAS to:

(a) ensure the best possible medical response to the situation; and

(b) provide transportation for a person who is deemed in need of assessment at an authorised mental health facility;

(ii) provide all possible assistance to the QAS personnel in such situations (this may include assisting with transportation where QAS personnel attend the scene and request such assistance); and

(iii) provide sufficient information to QAS personnel to enable them to prevent or lessen a threat to the safety and health of any person involved in the mental health incident (e.g. providing the name, address, date of birth or any known mental health history of the person; see also s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual).

Likewise, the role of the QAS is to also provide sufficient information to Service member to enable them to prevent or lessen a threat to the safety and health of any person involved in the mental health incident.

Officers in charge of regions should ensure local arrangements are developed to support the MOU entered into between the QPS and the QAS.

See also s. 6.6.5: 'Transport of mentally ill persons' of this chapter.

Accessibility of memorandum of understanding, agreements and guidelines

MOUs, arrangements and guidelines relating to mental health intervention entered into by the Service with other agencies are located on the Policy Branch, Public Safety Business Agency (PSBA) website.

6.6.21 Acute psychotic episodes

Persons who suffer from schizophrenia, schizo-affective disorders, bipolar disorder, severe mood disorders, and delusional disorders may become extremely agitated, irrational, impulsive and paranoid, which may lead the person to behave in an aggressive and/or violent manner.

Persons suffering from an acute episode can rapidly develop an excited delirium condition, which can result in death.

See s. 14.3.6: 'Acute psychostimulant-induced episode and excited delirium' of this Manual for information on identifying, responding to, and risks associated with this condition.

6.6.22 Attempted suicide by mentally ill persons

For policy and procedure regarding action to be taken by officers attending an attempted suicide see s. 8.5.1: 'Suicide' of this Manual.

6.7 Forensic Disability Act 2011

The *Forensic Disability Act* is an Act included in Schedule 1: 'Acts not affected by this Act' of the *Police Powers and Responsibilities Act*. As such, the *Police Powers and Responsibilities Act* does not affect the powers or responsibilities an officer has under the *Forensic Disability Act*. However, this does not prevent an officer from exercising a power or performing a responsibility under the *Police Powers and Responsibilities Act* that the officer does not have under the *Forensic Disability Act* (s. 12: 'Relationship to other Acts' of the *Police Powers and Responsibilities Act* refers). Consequently, officers should fulfil any responsibilities imposed upon them by the provisions of the *Police Powers and Responsibilities Act,* which are not imposed by a similar provision of the *Forensic Disability Act* (see s. 2.1.1: 'Use of Police Powers and Responsibilities Act' of this Manual).

The *Forensic Disability Act* has created provisions for the involuntary detention, care, support and protection for forensic disability clients.

The *Forensic Disability Act* applies to persons who have committed indictable offences and are subject to a forensic order (Mental Health Court – disability), as issued by the Mental Health Court (see s. 288 'Mental Health Court may make forensic order' of the *Mental Health Act*).

The *Forensic Disability Act* applies where police are requested to take a forensic disability client, if requested by a practitioner or health practitioner, to a forensic disability service or an authorised mental health service (see s. 113(6): 'Taking client to forensic disability service or authorised mental health service' of the *Forensic Disability Act*).

Where a forensic disability client is taken to a mental health service provider, the forensic disability client is under the provisions of the *Mental Health Act*, despite the person being given a forensic order (Mental Health Court – disability) under the provisions of the *Forensic Disability Act* (see s. 37: 'Taking client to authorised mental health service if transferred' of the *Forensic Disability Act*).

6.7.1 Definitions

Cognitive disability

is a condition that is attributed to a cognitive impairment and a disability within the meaning of the *Disability Services Act* (see s. 11 of the *Forensic Disability Act*).

Intellectual disability

is a disability within the meaning of the *Disability Services Act* that is characterised by significant limitations in intellectual functioning and adaptive behaviour and originates before a person reaches 18 years of age (see s. 12 of the *Forensic Disability Act*).

Forensic disability client

is an adult with an intellectual or cognitive disability for whom a forensic order (Mental Health Court – Disability) is in force for the persons detention in a forensic disability service (see s. 10 of the *Forensic Disability Act*).

Relevant Place

is referred to in section 113(4) and (5) of the *Forensic Disability Act* as a forensic disability service or an authorised mental health service or a place for limited community treatment.

6.7.2 Police assistance (return of a forensic disability client to a forensic disability service or an authorised mental health service)

POLICY

The *Forensic Disability Act* sets out guidelines regarding the involvement of officers with the involuntary detention of persons who are subject to a forensic order (Mental Health Court – disability), issued by the Mental Health Court.

Under the provisions of s. 113: 'Taking client to forensic disability service or authorised mental health service' of the *Forensic Disability Act* a practitioner or health practitioner or police officer, upon request of a practitioner or health practitioner, may take a forensic disability client to a forensic disability service or authorised mental health service.

Section 113(6) of the *Forensic Disability Act* provides that police, if requested by a practitioner or health practitioner, are to take a forensic disability client to a forensic disability service or an authorised mental health service. An officer who is requested to assist a practitioner or health practitioner is to ensure that reasonable help is given as soon as practicable.

Section 113(7) of the *Forensic Disability Act* outlines that a police officer is taken to have responded to a request by a public official under the *Police Powers and Responsibilities Act* (see s. 16(3) 'Helping public officials exercise powers under other Acts' of the *Police Powers and Responsibilities Act*).

Section 113(8) of the *Forensic Disability Act* provides that a police officer may detain a forensic disability client for the purpose of taking the forensic disability client to a forensic disability service or an authorised mental health service.

In circumstances where the forensic disability client is located in a division outside of the stated location of the forensic disability service, police should;

(i) take the forensic disability client to the nearest in-patient facility of the authorised mental health service; and

(ii) notify and advise the location of the forensic disability client to the forensic disability service or the authorised mental health service that is listed on the 'Authority To Return – Forensic Disability Client' form.

In accordance with s. 309B(1) of the *Mental Health Act* if a forensic disability client is taken to an authorised mental health service under s. 113(2)(b) or (4) of the *Forensic Disability Act* the client may be detained in the health service (see s. 309B of the *Mental Health Act*).

Where it is necessary to enter a place to take or detain a forensic disability client to a forensic disability service or an authorised mental health service in accordance with s 113(8) of the *Forensic Disability Act*, where the occupier of the place does not consent to the entry and the place is not a public place, officers are to comply with the provisions of s. 21: 'General power to enter to arrest or detain someone or enforce warrant' of the *Police Powers and Responsibilities Act*.

Section 37: 'Taking client to authorised mental health service if transferred' of the *Forensic Disability Act* provides that a practitioner may, under a transfer order, take a forensic disability client to an authorised mental health service. Section 10(4) 'Who is a forensic disability client' of the *Forensic Disability Act* provides that where a forensic disability client is detained temporarily in an authorised mental health service, under s. 309B of the *Mental Health Act*, the person remains a forensic disability client until a transfer order for the person is made.

Initial police action

Under the provisions of s. 112 'Senior practitioner may require return of client' of the *Forensic Disability Act*, a senior practitioner may, by written notice request the forensic disability client to return to the forensic disability service. It is the onus of the senior practitioner or their representative to ensure that the forensic disability client understands the written request.

Officers requested to help a practitioner or health practitioner under the provisions of s. 113 of the *Forensic Disability Act* should, prior to helping the practitioner or health practitioner, ensure that the 'Authority to Return – Forensic Disability Client' form is entered on QPRIME prior to taking the person to a forensic disability service or an authorised mental health service. Officers may request that the relevant practitioner or health practitioner provide a 'Request for police assistance – Forensic Disability Act' form where reasonably practicable.

An 'Authority to Return – Forensic Disability Client' form is issued by a forensic disability service or an authorised mental health service for the return of a forensic disability client to the forensic disability service or the authorised mental health service pursuant to the provisions of s. 113 of the *Forensic Disability Act*.

First response officers tasked to assist in returning a forensic disability client to whom s. 113 of the *Forensic Disability Act* applies, in addition to carrying out first response duties and incident evaluation, are to:

(i) obtain a scanned copy of the 'Authority to Return – Forensic Disability Service' via the relevant QPRIME entry;

(ii) in cases where the forensic disability client to whom s. 113 of the *Forensic Disability Act* applies has a history of serious violent offences or is a client who represents a high risk of violence to themselves or others, evaluate the incident as a major investigation (see s. 2.4.5: 'Major investigations' and s. 1.4.6: 'Responsibilities of regional duty officer, patrol group inspector, district duty officer and shift supervisor' of this Manual for the responsibilities of officers in regard to major investigations); and

(iii) if the forensic disability client cannot be located after extensive inquiries, ensure that any necessary action is taken to report the matter in accordance with s. 12.4: 'Missing person occurrence' of this Manual. A task is to also be created and sent to the Missing Persons Bureau and the investigating officer for information only (see QPRIME User Guide).

Offender Management, Warrant Bureau

Generally, a forensic disability service or an authorised mental health service will email the completed 'Authority to Return – Forensic Disability Client' form to the Offender Management, Warrant Bureau for entering on QPRIME. However, in some instances, it may be desirable to immediately notify officers of the existence of the 'Authority to Return – Forensic Disability Client' form. In these cases the form will be emailed or faxed to a police communications centre.

POLICY

The Manager, Offender Management, Warrant Bureau is to ensure that 'Authority to Return – Forensic Disability Client' form, or 'Recall Notice – Cancellation of Authority to Return Forensic Disability Client' form is issued in relation to the cancellation of such authorities received at the Offender Management, Warrant Bureau are promptly recorded on QPRIME under an Authority to Return (Forensic Disabilities Act) occurrence [1691] and the relevant station or establishment is tasked to finalise the occurrence.

Officers in charge of stations or police communication centres

POLICY

Officers in charge of stations receiving an 'Authority to Return – Forensic Disability Client' form from a forensic disability service or an authorised mental health service, or else receiving a task with a request for action in relation to an outstanding 'Authority to Return – Forensic Disability Client' recorded on QPRIME, should ensure that:

(i) officers are tasked a job, via police communications, to attend the forensic disability service or the authorised mental health service, or such other place as may be appropriate, to make inquiries into the location of the forensic disability client;

(ii) particulars of the authority are accurately recorded on QPRIME under an Authority to Return (Forensic Disabilities Act) occurrence [1691], and a task is created and sent to the officer responsible for making inquiries into the location of the forensic disability client (see QPRIME User Guide);

(iii) if no occurrence exists on QPRIME in relation to the 'Authority to Return – Forensic Disability Client' form, a copy of the form is forwarded by way of email to the Offender Management, Warrant Bureau with a request for the authority details to be recorded on QPRIME. Officers are not to forward a copy of an authority that has been executed; and

(iv) ensure that any original forms are retained at the station or establishment unless executed or otherwise recalled by the issuing forensic disability service, authorised mental health service or requested by Offender Management, Warrant Bureau.

6.7.3 A health practitioner is a public official under the Police Powers and Responsibilities Act

POLICY

If an officer is asked by a practitioner or a health practitioner to help in the exercise of powers under s. 113 of the *Forensic Disability Act*, the officer is to ensure that reasonable help is given as soon as reasonably practicable.

If an officer is requested to help a practitioner or a health practitioner to exercise a power under s. 113 of the *Forensic Disability Act*, such help is to be given only if:

(i) the practitioner or the health practitioner has explained the relevant powers of the health practitioner under the *Forensic Disability Act*; and

(ii) the practitioner or the health practitioner is present when the help is to be given; or

(iii) the officer is satisfied that giving the help in the absence of the practitioner or the health practitioner is reasonably necessary in the circumstances (see s. 16 of the *Police Powers and Responsibilities Act*).

6.7.4 Release of information

Release of information to media

POLICY

The officer in charge of the investigation is to determine whether it is necessary to release information, including photographs, to the media that identifies a forensic disability client to whom s. 113 of the *Forensic Disability Act* applies. The decision on whether to release information is to be based on what are the best interests of the forensic disability client balanced with the safety needs of the community. As the premature release of a photograph and information may impede an investigation, officers are to take all reasonable steps to locate the forensic disability client before considering release of a photograph and information.

In making decisions about the release of information, officers are to take into account information provided and, where necessary, seek further advice. Any release of information or comment to the media should be consistent with the media guidelines provided on the Media and Public Affairs web page.

Obtaining patient photographs

POLICY

Officers making inquiries to locate a forensic disability client who is to be returned to a forensic disability service or an authorised mental health service may, if considered necessary, request that the relevant forensic disability service or authorised mental health service provide a recent photograph of the forensic disability client.

Before requesting a photograph from a forensic disability service or an authorised mental health service, officers should ensure that a suitable recent photograph:

(i) has not been previously supplied by the forensic disability service or the authorised mental health service; and

(ii) is not available from sources within the Service.

6.7.5 Notification of victim, victim's family or other persons on advice from a forensic disability service or an authorised mental health service

POLICY

Where an authorised practitioner or health practitioner at a forensic disability service or an authorised mental health service believes that the forensic disability client poses a threat of harm to a person, the practitioner or the health practitioner will complete the relevant section on the 'Authority To Return – Forensic Disability Client' form.

The officer in charge receiving the 'Authority to Return – Forensic Disability Client' form is to:

(i) Identify and verify the threat level; and

(ii) notify a commissioned officer, regional duty officer or district duty officer having responsibility for the area in which the nominated person lives or is located.

Commissioned officers, regional duty officers, patrol group inspectors or district duty officers who are advised of a threat of harm to a person from a forensic disability client should contact the practitioner or the health practitioner on call at the relevant forensic disability service or authorised mental health service to assess the credibility of the threat.

Where the commissioned officer, regional duty officer, patrol group inspector or district duty officer, in consultation with the practitioner or the health practitioner on call, determines that a threat of harm to a person from the forensic disability client is credible, the commissioned officer, regional duty officer, patrol group inspector or district duty officer should ensure that the nominated person is contacted and advised about the forensic disability client's absence from, or failure to return to, the forensic disability service or the authorised mental health service.

Referral to support agency

Officers in charge, commissioned officers, regional duty officers, patrol group inspectors or district duty officers should consider if a referral to support link may be appropriate upon notification of the victim, victims family (see s. 5.6.25: 'Release of information under the Victims of Crime Assistance Act' of the Management Support Manual and s. 6.3.14: 'SupportLink' of this chapter).

6.7.6 Action to be taken on location of forensic disability client

POLICY

Officers locating a forensic disability client to whom s. 113 of the *Forensic Disability Act* (FDA) applies in Queensland are to:

(i) detain and take the forensic disability client to a forensic disability service or an authorised mental health service, the detaining of a forensic disability client should be considered as an enforcement act for the purposes of the *Police Powers and Responsibilities Act* (PPRA) (also see ss. 2.1.2: 'Registers required to be kept' and 16.8: 'QPRIME custody, search and property reports' of this Manual);

(ii) notify the forensic disability service or the authorised mental health service listed on the 'Authority to Return – Forensic Disability Client' form;

(iii) endorse the 'Authority to Return – Forensic Disability Client' form as set out in s. 638: 'Record of execution of warrant or order' of the PPRA;

(iv) fax and email the endorsed 'Authority to Return – Forensic Disability Client' form to the forensic disability service or the authorised mental health service where the forensic disability client was taken; and

(v) if the forensic disability client has been reported as a missing person, take the action required by s. 12.5.1: 'Responsibility of officers who locate a missing person' of this Manual.

In circumstances where the forensic disability client is located in a division outside of the stated location of the Forensic Disability Service, officers should;

(i) take the forensic disability client to the nearest in-patient facility of an authorised mental health service; and

(ii) notify the forensic disability client to the forensic disability service or the authorised mental health service listed on the 'Authority to Return – Forensic Disability Client' form of the location of the forensic disability client;

In accordance with s. 309B(1) of the *Mental Health Act* (MHA) if a forensic disability client is taken to an authorised mental health service under s. 113(2)(b) or (4) of the FDA the client may be detained in the health service (see s. 309B of the MHA).

ORDER

Officers who detain a forensic disability client to whom s. 113 of the FDA applies are to execute the 'Authority to Return – Forensic Disability Client' recorded on QPRIME prior to the termination of their shift.

Officers have the power to enter any place to take a forensic disability client in accordance with the provisions of s. 21 'General power to enter to arrest or detain someone or enforce warrant' of the PPRA.

POLICY

When the forensic disability client is located interstate or overseas and a member is notified, they are to immediately advise the Director of Forensic Disability or Mental Health. Appropriate action with respect to the forensic disability client will be decided after consultation between the Service, forensic disability service and the authorised mental health service.

Restraining of a forensic disability client

POLICY

Officers should treat and transport forensic disability clients with respect and in a manner which is mindful of their right to privacy and retains their dignity. Restraints should only be used as a last resort to prevent the person causing injury to themselves or someone else.

Completion of QPRIME custody reports for forensic disability clients

POLICY

Officers are to ensure that a Custody Report is recorded against a person in QPRIME under the occurrence 'Forensic Disability Act [1691]', as soon as practicable after processing the person in accordance with the provisions of the FDA. See s. 16.8: 'QPRIME custody, search and property reports' of this Manual.

6.7.7 When 'Authority to Return – Forensic Disability Client' form ceases to have effect

POLICY

The administrator of a forensic disability client's treating health service will notify police when the 'Authority to Return – Forensic Disability Client' form ceases to have effect. Notice of this fact will be given in a 'Recall Notice – Cancellation of the Authority to Return Forensic Disability Client' form which will be emailed to the Manager, Offender Management, Warrant Bureau.

The officer in charge receiving a 'Recall Notice – Cancellation of the Authority to Return Forensic Disability Client' form is to:

(i) update the relevant QPRIME occurrence and forward a task to the Offender Management, Warrant Bureau with a request to amend the status of the 'Authority to Return – Forensic Disability Client' accordingly;

(ii) check QPRIME to ascertain to which station the 'Authority to Return – Forensic Disability Client' is assigned;

(iii) immediately advise the officer in charge of the station to which the 'Authority to Return – Forensic Disability Client' is assigned;

(iv) forward the 'Recall Notice – Cancellation of the Authority to Return Forensic Disability Client' form to that officer in charge;

(v) ensure any BOLO flag that may have been entered against the forensic disability client's name on QPRIME in relation to the 'Authority to Return – Forensic Disability Client' has been removed; and

(vi) where the forensic disability client was reported as a missing person, a task is to be created and sent to the Missing Persons Bureau and the investigating officer for information only. (See 'Tasking and 'Missing Persons' of the QPRIME User Guide).

'Authority to Return – Forensic Disability Client' form (doubt about validity)

POLICY

If officers have any doubt about the current validity of the authority described in the 'Authority to Return – Forensic Disability Client' form, before acting under the authority they should check with the practitioner or the health practitioner of the forensic disability service or the authorised mental health service who issued the form, or on QPRIME to determine whether the authority is still valid.

In cases where the authority is no longer valid, members are:

(i) not to return the forensic disability client; and

(ii) to update the relevant QPRIME occurrence and forward a task to the Offender Management, Warrant Bureau with a request to amend the status of the 'Authority to Return – Forensic Disability Client' accordingly.

If the validity of the authority described in the 'Authority to Return – Forensic Disability Client' form cannot be ascertained, the authority should not be exercised and further enquiries should be made to ascertain validity with the practitioner or health practitioner who issued the 'Authority to Return – Forensic Disability Client' form.

6.7.8 Forensic disability clients suspected of having committed or charged with further offences

Forensic disability clients suspected of having committed an offence

Forensic disability clients may be criminally responsible for their actions despite their disability. It should not be assumed that a forensic disability client will automatically be entitled to a defence under s. 27: 'Insanity' of the Criminal Code or

that they are necessarily unfit for trial. Section 26: 'Presumption of sanity' of the Criminal Code provides that every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proven.

POLICY

A person who has, or is reasonably suspected of having a disability and who is suspected of having committed an offence should generally be dealt with in the same manner as any other person suspected of having committed an offence. In addition to any other relevant provisions regarding the interviewing of suspects for indictable offences, officers are to apply the provisions of s. 422: 'Questioning of persons with impaired capacity' of the *Police Powers and Responsibilities Act* to interviews of suspects who are reasonably suspected to have a disability (see also s. 6.5: 'Specific physical, intellectual or health needs' of this chapter).

In deciding what action to take with regard to a person who is reasonably suspected to have a disability, officers should consider:

(i) the seriousness and nature of the alleged offence;

(ii) the severity and nature of the person's apparent disability;

(iii) the need to collect and preserve evidence which may be on the person or in their possession;

(iv) the need to interview the person promptly;

(v) the apparent capacity of the person to take part in any interview; and

(vi) the likelihood that an investigation with regard to the person could be adequately conducted at a later time.

After considering the circumstances officers should either:

(i) complete their investigation and commence any proceeding by arrest, notice to appear or complaint and summons prior to taking any necessary action to have the person's disability assessed; or

(ii) take the necessary action to have the person's disability assessed prior to completing the investigation into the alleged offence.

Orders by the Supreme or District Court

If a person pleads guilty before the Supreme or District Court for an indictable offence (other than a Commonwealth offence) or is appearing for sentencing in respect of an indictable offence (other than a Commonwealth offence), and it is alleged or appears to the court that the person is disabled or was or may have been disabled when the alleged offence was committed, the court may:

(i) order a plea of not guilty be entered for the person;

(ii) adjourn the trial;

(iii) refer the matter of the person's disability relating to the offence to the Mental Health Court; and

(iv) remand the person in custody or grant the person bail.

6.7.9 References and reviews on the disability of persons charged

References to the Office of the Director of Public Prosecutions or Mental Health Court

Persons who are subject to a charge may have their disability referred to the Office of the Director of Public Prosecutions or the Mental Health Court under certain circumstances. The Office of the Director of Public Prosecution receives references in respect of simple offences and indictable offences which are not of a serious nature. The Mental Health Court receives references in respect of indictable offences only.

A person who is charged with a simple or indictable offence and is subject to: or

(i) an involuntary treatment order; or

(ii) a forensic order;

will be examined by a psychiatrist and the person's disability may be referred to the Mental Health Court or the Office of the Director of Public Prosecutions (see s. 203A of the *Mental Health Act*). The chief executive for justice will advise the relevant prosecutor that proceedings in respect of the offence are suspended until further advised.

Section 257(1)(e) of the *Mental Health Act* outlines other methods by which a person's disability relating to an offence may be referred to the Mental Health Court by other persons.

When a person's disability is referred to the Mental Health Court or the Office of the Director of Public Prosecutions, proceedings against the person is suspended until the:

(i) the Office of the Director of Public Prosecutions has made a decision on the matter; or

(ii) Mental Health Court has made a decision on the matter; or

(iii) involuntary treatment or forensic order about the person is revoked (see s. 243 of the *Mental Health Act*).

Upon referral of a person's disability to the Office of the Director of Public Prosecutions, who may decide that:

(i) proceedings against the person are to continue (see s. 6.6.11: 'Continuing proceedings' of this chapter); or

(ii) proceedings against the person are to be discontinued (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter); or

(iii) the matter be referred to the Mental Health Court if the matter relates to an indictable offence (see s. 288: 'Mental Health Court may make forensic order' of the *Mental Health Act*).

Upon referral of a person's disability to the Mental Health Court, the Court may decide that the person:

(i) is fit for trial and proceedings are to continue (see s. 6.6.11: 'Continuing proceedings' of this chapter); or

(ii) is not fit for trial temporarily and proceedings are to be stayed (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter); or

(iii) was of unsound mind or of diminished responsibility when the alleged offence was committed and proceedings are to be discontinued (see s. 282 of the *Mental Health Act* in respect of diminished responsibility); or

(iv) is permanently unfit for trial and proceedings are to be discontinued (see s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter).

Upon the revocation of an involuntary treatment or forensic order, the chief executive of justice will advise the relevant prosecutor and the registrar of the relevant court (this term includes a clerk of the court under the *Justices Act*). If an involuntary treatment or forensic order is revoked, the prosecution of the person may be continued (see s. 6.6.11: 'Continuing proceedings' of this chapter).

If the Mental Health Court decides that the person is fit for trial, the court may order that the person be granted bail, remanded in custody or detained in a forensic disability service or an authorised mental health service until the person is granted bail or brought before a court for continuing the proceeding (see s. 273 of the *Mental Health Act*). The decision of the Mental Health Court will be advised to the registrar of the court in which proceedings are to be continued. The registrar will advise the relevant prosecutor.

POLICY

Officers to whom orders of the Mental Health Court are directed which require the transport of a person to a forensic disability service or an authorised mental health service are to ensure that the person named in the order is promptly transported to the place nominated in the order (see s. 273 of the *Mental Health Act*). Officers transporting such persons should ensure that a copy of the relevant order is delivered to the person in charge of the forensic disability service or the authorised mental health service upon the arrival of the person at the forensic disability service or the authorised mental health service.

Police prosecutors receiving notice that proceedings have been suspended should advise the investigating officer as soon as practicable.

Investigating officers who are advised that proceedings have been suspended should notify the complainant and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Reviews by Mental Health Review Tribunal to decide fitness for trial

The Mental Health Review Tribunal (MHRT) will review the disability of persons who are:

(i) determined by the Mental Health Court to be unfit for trial but not permanently unfit for trial; or

(ii) found by a jury upon their trial to be incapable of understanding a proceeding at their trial.

The MHRT will decide whether the person is fit for trial and will advise the Attorney-General of its decision.

If proceedings are to be discontinued the Attorney-General will advise the relevant prosecutor (see s. 216 of the *Mental Health Act*) (see also s. 6.6.12: 'Discontinuing or staying proceedings' of this chapter).

In accordance with s. 218 of the *Mental Health Act*, if proceedings are to be continued the chief executive of justice will give written notice to the relevant prosecutor (see s. 6.6.11: 'Continuing proceedings' of this chapter). In these cases the person must be brought before a court within seven days to be dealt with according to law.

Non-contact orders

Under certain circumstances, the Mental Health Review Tribunal (ss. 228A to 228C of the *Mental Health Act*) or the Mental Health Court (ss. 313B to 313C of the *Mental Health Act*), may make a non-contact order against a person who has been charged with an indictable offence committed against the person of someone (a personal offence).

A non-contact order prohibits a person from contacting a stated person for a stated time or going to a stated place, or within a stated distance of a stated place, for a stated time (ss. 228B and 313B of the *Mental Health Act*). Contravention of a non-contact order is an offence (ss. 228G and 313G of the *Mental Health Act*).

Non-contact orders will generally be forwarded directly to the Offender Management, Warrant Bureau.

PROCEDURE

Members who receive a non-contact order should ensure that the order is forwarded to the Manager, Offender Management, Warrant Bureau for input into QPRIME.

Officers investigating allegations of breaches of non-contact orders should check QPRIME to ascertain details of the relevant non-contact order. Details of the non-contact order are recorded in the 'Cautions/flags' tab of the QPRIME record for the person against whom the order has been made.

6.7.10 Continuing proceedings

Responsibilities of prosecutors

POLICY

When a police prosecutor receives advice that proceedings are to be continued against a person in respect to an offence, the police prosecutor should:

(i) consult with the registrar of the court, where the matter is to be dealt with, to ascertain:

(a) whether, if the defendant is in custody, it is more convenient and practicable that the matter should be transferred to another court closer to the relevant forensic disability service or authorised mental health service (see s. 139: 'Where summary cases to be heard' of the *Justices Act*); and

(b) a suitable time and date for the continuation of proceedings.

In matters being prosecuted by the Office of the Director of Public Prosecutions, the investigating officer and the officer in charge of the investigating officer should be advised by the prosecutor attached to the Office of the Director of Public Prosecutions, that proceedings have been recommenced against a person in respect of an indictable offence and the time, date and place of the proceedings.

Responsibilities of officers in charge and investigating officers

POLICY

Section 151: 'Taking client to appear before court and return to forensic disability service' of the *Forensic Disability Act* allows a practitioner to take a person from the forensic disability service to appear in the relevant court, also providing provisions for the practitioner to return the forensic disability client back to the forensic disability service.

Section 155: 'Use of reasonable force' of the *Forensic Disability Act* allows the practitioner to request help, using minimum force, if necessary and reasonable in the circumstances.

In making arrangements for the transport of a forensic disability client for whom proceedings have been continued under s. 247(1): 'Director of public prosecution's powers on reference' of the *Mental Health Act*, from a forensic disability service or an authorised mental health service to a court, officers in charge are to consult with health practitioners or staff from the forensic disability service or the authorised mental health service as to whether it would be more appropriate for a person to be transported by police officers or health practitioners or both as authorised by s. 252A: 'Continuation of proceedings' of the *Mental Health Act*.

Officers in charge who make arrangements to transport a person from the forensic disability service or the authorised mental health service to court are to advise the relevant prosecutor of the arrangements as soon as practicable.

Investigating officers who are advised that proceedings are to be continued should notify the complainant and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Notice of decision in relation to charges

If the Office of the Director of Public Prosecutions decides that a proceeding is to continue, the chief executive for justice will give written notice of this decision to the relevant prosecutor or arresting officer (see s. 250: 'Effect of decision to continue proceedings' of the *Mental Health Act*). The notice will be given on a 'Notice of decision in relation to charges' form. Notices will be forwarded for service to the officer in charge of the division within which the defendant was last known to reside.

POLICY

Where an arresting officer receives a 'Notice of decision in relation to charges' form from the chief executive for justice that the Office of the Director of Public Prosecutions has decided under the provisions of s. 247(1)(a) of the *Mental Health Act* that proceedings are to continue, the officer is to:

(i) liaise with the registrar of the relevant court and the relevant police prosecutor to determine a suitable time, date and court at which to continue the proceedings;

(ii) complete the relevant portion of the 'Notice of decision in relation to charges' advising the defendant that the proceedings are to continue and the time, date and place at which the proceeding will be continued; and

(iii) ensure that the 'Notice of decision in relation to charges' is served personally on the defendant unless the person is in lawful custody other than in a forensic disability service or an authorised mental health service (see

s. 250(3) of the *Mental Health Act*). An appropriate oath of service should be made on the 'Notice of decision in relation to charges' and the notice should be returned to the court at which the defendant is required to appear.

Matters to be heard in the court nearest the forensic disability service or the authorised mental health service

POLICY

There may be cases where a person has been detained in a forensic disability service or an authorised mental health service outside the court district where the matter is to be heard. In such cases, a decision to seek the transfer of the matter to the court nearest the forensic disability service or the authorised mental health service may need to be made by the relevant prosecutor (see ss. 133: 'Remand to another place' and 139 of the *Justices Act*).

In making such a determination, the following should be considered:

(i) financial costs to the Service;

(ii) human resource commitments;

(iii) the consent or otherwise of the defendant; and

(iv) the wellbeing of the defendant.

Transfer of matters for hearing

POLICY

If a proceeding is to be continued and a decision has been made to seek the transfer of the matter to the court nearest the authorised mental health service where the person is detained, a request to adjourn and transfer the matter is to be made by the police prosecutor to the relevant court.

The relevant court will forward in writing, their consent or refusal to transfer. Upon receiving consent, the police prosecutor should:

(i) inform the police prosecutor in that district where the matter is to be transferred and ascertain a suitable time and date for the matter to be heard;

(ii) ensure all documentation required for the hearing is forwarded to the police prosecutor; and

(iii) inform the investigating officer where the matter is to be transferred and the time and date of hearing.

Discontinuing or staying proceedings

POLICY

Members receiving advice that proceedings have been discontinued or stayed at the order of the Mental Health Court or the Office of the Director of Public Prosecutions are to ensure that the relevant prosecutor is aware of the status of the proceeding.

Police prosecutors who are advised that a proceeding has been discontinued either on the order of the Mental Health Court or the Office of the Director of Public Prosecutions are to:

(i) notify the investigating officer; and

(ii) update the relevant QPRIME entry and attach a copy of the written advice from the Mental Health Court or Office of the Director of Public Prosecutions for forwarding to the Offender Manager, Warrant Bureau, Police Information Centre.

An investigating officer who is notified that a prosecution has been discontinued or stayed either as a result of a decision of the Mental Health Court or the Office of the Director of Public Prosecutions is to notify all complainants and any witnesses who have been subpoenaed or requested to make themselves available to give evidence.

Officers conducting inquiries in relation to persons flagged as forensic disability clients on QPRIME should update the street check occurrence accordingly (see s. 16.4: 'Responsibilities of officers' of this Manual).

If the Mental Health Court orders either the staying or discontinuing of proceedings after finding that a person is of unsound mind or is not fit for trial either temporarily or permanently, the court may make a forensic order that the person be detained in a stated forensic disability service or authorised mental health service for involuntary treatment or care (see s. 288: 'Mental Health Court may make forensic order' of the *Mental Health Act*).

Officers who are requested by a practitioner or health practitioner, under the provisions of s. 113: 'Taking a client to forensic disability service or authorised mental health service' of the *Forensic Disability Act* to transport a forensic disability client to forensic disability service or an authorised mental health service are to ensure that the person named in the order is promptly transported to the place nominated in the order. Officers transporting such persons should ensure that a copy of the relevant forensic order is delivered to the person in charge of the forensic disability service or the authorised mental health service.

Information to be supplied to the Mental Health Court and assessing psychiatrists

POLICY

Pursuant to s. 400 of the *Mental Health Act* the registrar of the Mental Health Court may ask the commissioner to give the registrar a written report about the criminal history of a person, the subject of a reference to the Mental Health Court, or a brief of evidence. A criminal history requested under s. 400 of the *Mental Health Act* is prepared under different rules to those which apply to the preparation of criminal histories generally (see Schedule of the *Mental Health Act* for the definition of 'criminal history').

Requests under s. 400 of the *Mental Health Act* for criminal histories will generally be made directly to the Manager, Police Information Centre. Other members receiving such requests should refer the request to the Manager, Police Information Centre. The Manager, Police Information Centre is to comply with the request and provide the required criminal history.

Requests under s. 400 of the *Mental Health Act* for briefs of evidence will generally be made directly to the relevant prosecuting authority. Where the brief is held by the Service, the request should be directed to the officer in charge of the police prosecutions corps at which the brief is held, who is to comply with the request by providing the required brief of evidence. Where the brief is held by the Office of the Director of Public Prosecutions, the request should be referred to that office. Where a brief is held at the Police Information Centre the request should be referred to the Manager, Offender Management, Community Contact Command.

Where an offender's disability relating to an offence is referred to the Mental Health Court under the *Mental Health Act*, victims may submit material for consideration of the Mental Health Court. Officers are to consider whether material referred to in s. 284(1B): 'Submission and consideration of material from victim or concerned person etc.' of the *Mental Health Act* should be added to the statement of the victim and submitted as part of the brief of evidence. See also s. 2.12.1: 'Victims of Crime Assistance Act', under heading 'Principle eight: Giving details of impact of crime on victim during sentencing' of this Manual.

Occasionally, the registrar of the Mental Health Court may request information, other than criminal histories or briefs of evidence, from an officer. In these cases officers should respond to such requests in writing and in accordance with s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual.

Officers who are requested to supply information to an administrator of a treating health service under s. 237A of the *Mental Health Act* should refer to s. 5.6.14: 'Requests for information from other government departments, agencies or instrumentalities' of the Management Support Manual and s. 3.4.34: 'Supply of information to administrators of a treating health service under Mental Health Act' of this Manual.

Supply of information to the Office of the Director of Public Prosecutions

In the case of persons who are subject to a charge and who have had their disability referred to the Office of the Director of Public Prosecutions, such office may require a copy of any relevant Court Brief (QP9) to ensure they are properly informed about the circumstances.

ORDER

Upon request from the Office of the Director of Public Prosecutions, officers in charge of police prosecution corps are to provide copies of any Court Brief (QP9) relevant to the reference of a person's disability to the Office of the Director of Public Prosecutions.

6.7.11 Deaths of forensic disability clients

Specific requirements relating to the investigation of the death of a person whilst detained under a provision of the *Forensic Disability Act* are contained in s. 8.5.16: 'Deaths in care' of this Manual.

6.7.12 Protection of children of forensic disability clients

POLICY

In the event officers become aware that a person, who is apparently suffering from a disability, is a parent or guardian of a child or children under 18 years of age, officers should consider the welfare of the children with respect to their obligations and powers under the *Child Protection Act* and the *Domestic and Family Violence Protection Act*.

Officers taking a disabled person into custody under the provisions of the *Forensic Disability Act* should make all reasonable enquiries to ascertain whether a disabled person has responsibility for the care of children and apply the provisions of s. 16.4.5: 'Arrest of persons who have others in their care' of this Manual as appropriate.

PROCEDURE

Officers who come into contact with a disabled person who has children in their care should:

(i) consider whether, due to the nature of the person's disability, the children are at immediate risk of harm, and if so, comply with the provisions of s. 7.4.1: 'Children at immediate risk of harm' of this Manual; or

(ii) if the officer considers there is no immediate risk of harm but still holds concerns for the welfare of the children, advise the local Child Protection and Investigation Unit (CPIU) by entering a task for information in a child protection [0523] occurrence on QPRIME and ensure the following details are included:

(a) details of the disabled person;

(b) details of the children in their care;

(c) details of what care arrangements have been made for the children;

(d) the nature of the disabled persons behaviour;

(e) any concerns the children may be in need of protection; and

(f) the name and location of the treating forensic disability service or authorised mental health service.

Where advice or assistance is required as to the appropriate course of action, officers should contact the CPIU or if the CPIU is unable to be contacted, enquiries should be directed to the 'Child Safety After Hours Service Centre' (see Service Manuals Contact Directory).